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THE JAPANESE JUDICIARY

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The Japanese Judiciary

By J. Mark Ramseyer*

Abstract: In this essay for the Oxford Handbook of Japanese Politics, I survey the state of (and the research into) the Japanese judiciary. Japan operates a largely honest and meritocratic judiciary. The court's administrative office (and indirectly, the ruling party) can reward and punish judge for the quality of the work they do -- and has. For the most part, the administrative office uses that capacity to reward good work. It can also use the capacity to punish opposition politics -- but self-selection into the judiciary seems to keep the (perceived) need for that political intervention to a minimum.

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1. The Courts.¹

1.1. Basic structure. -- The Japanese government maintains one national court system; prefectures do not have separate courts. The national government specifies court structure by statute (the Saibansho ho; Courts Act).² In that context, it also sets the number of judges by statute: 15 Supreme Court justices, about 3000 lower court judges, and another 800 summary court judges.³ And it manages these courts through career judges staffing the judicial administrative office -- known as the Supreme Court (Saikosai) Secretariat (jimu sokyoku).

The Cabinet and Prime Minister appoint Supreme Court justices directly (Courts Act, Sec. 39). Typically, they name men and women in their early 60s, and these justices then serve until mandatory retirement at 70 (Courts Act, Sec. 50). The justices face popular review at the first general election after their appointment, and every ten years thereafter (an obvious non-issue given their age of appointment).⁴ No justice has ever come close to losing a review vote.

The lower courts include high courts (koto saibansho), district courts (chiho saibansho), and family courts (katei saibansho). The eight high courts also staff six regional branch offices (shibu) and a special branch for intellectual property cases. The district courts and family courts number fifty each, and both sets of courts each staff about 200 branch offices.

The cabinet appoints the lower-court judges (Courts Act, Sec. 40), and appoints most of them directly after they graduate from the one national law school, the Legal Research & Training Institute (the LRTI; the Shiho kenshu jo). Theoretically, it could appoint more judges mid-career (as with U.S. federal judges), but it does not. In practice, it approves the judicial candidates

¹ See generally J. Mark Ramseyer & Eric B. Rasmusen, *Measuring Judicial Independence: The Political Economy of Judging in Japan* (Chicago: University of Chicago Press, 2003); J. Mark Ramseyer & Frances McCall Rosenbluth, *Japan's Political Marketplace* (Cambridge: Harvard University Press, 1995); Daniel H. Foote, *Na mo nai kaomo nai shiho [A Nameless, Faceless Judiciary]* (Tokyo: NTT shuppan 2007); Daniel H. Foote, *The Supreme Court and the Push for Transparency in Lower Court Appointments in Japan*, 88 Wash. U.L. Rev. 1745 (2010-2011); John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, in Daniel J. Foote, ed., *Law in Japan: A Turning Point* (Seattle: University of Washington Press, 2007); Shin'ichi Nishikawa, *Saibankan kanbu jinji no kenkyu [Research on Personnel Management of Senior Judges]* (Tokyo: Gogatsu shobo, 2010); Shin'ichi Nishikawa, *Shiho kanryo no keireki teki shigen [Career Resources of Judicial Bureaucrats]*, *Meiji daigaku shakai kagaku kenkyujo kyo*, 46: 49 (2008).

² Saibansho ho [Courts Act], Law No. 59 of 1947.

³ Saibansho shokuin teiin ho [Authorized Employees of the Courts Act], Law. No. 53 of 1951..

⁴ *Nihon koku kenpo [The Japanese Constitution]*, promulgated May 3, 1947, art. 7. See Shin'ichi Nishikawa, *Saikosai saibankan kokumin shinsa no jisshoteki kenkyu [An Empirical Study of Public Review of Supreme Court Justices]* (Tokyo: Gogatsu shobo, 2012).

selected for it by the Secretariat (see Section 1.4, below). Once appointed, judges serve a series of ten year terms (Constitution, art. 80), and face mandatory retirement at age 65 (Courts Act, Sec. 50). Most tend to retire in their late 50s or early 60s.

The judiciary includes another 400-odd summary courts (kan'i saibansho). The judges in these courts face a mandatory retirement age of 70 (Courts Act, Sec. 50). They handle minor crimes and disputes involving controversies of 1.4 million yen or less.⁵ A few lower-court judges choose to become summary court judges upon retirement from the lower courts at 65. Most summary court judges, however, did not attend the LRTI.

1.2. The Supreme Court. -- The Supreme Court stands administratively outside the other courts. Unlike the lower court judges who rotate through a wide range of courts (see Section 1.4, below), the justices in the Supreme Court are appointed specifically to that court. By tradition, the Secretariat maintains informal quotas⁶ for justices appointed from the lower courts, justices appointed from the private bar, justices appointed from among prosecutors, justices appointed from university law faculties, and justices appointed from elsewhere in the bureaucracy.

The justices hear the vast majority of their cases on five judge panels (unfortunately often translated as a "Petty Bench"; shohotei) (Courts Act, Sec. 9). They hear cases of constitutional importance en banc (often translated "Grand Bench"; daihotei) (Courts Act, Sec. 10). These en banc cases, however, are very rare.

Supreme Court justices occasionally write concurring or dissenting opinions (lower court judges never do). Usually, the justices who write them are those who come from a career in a university or private practice. Note that in doing their work, Supreme Court justices can call on the help of lower court judges temporarily (typically for three years) appointed to the Secretariat.

In addition to his work on the court, the Chief Justice administers the court system as a whole. More specifically, he supervises the Secretary General of the Secretariat. In turn, the Secretary General supervises the judges working in the personnel bureau of the Secretariat, and those judges oversee their colleagues in the lower courts. Note that Chief Justices tend themselves to have served as Secretary General of the Secretariat during their careers in the lower courts.

1.3. Secretariat. -- Of the various posts that lower court judges can hold, those in the Secretariat probably carry the greatest prestige. As just observed, some Secretariat judges write memoranda and draft opinions for the cases on appeal to the Supreme Court. Some serve in the personnel office and decide which of their colleagues to transfer to what city, whom to appoint as instructors to the LRTI, whom to second to the prosecutors' office, who deserves a raise, who should serve as chief judge of a district court, who should go to a branch office, and who should succeed them at the Secretariat itself.

A stint at the Secretariat is not just any judicial appointment. It is a post that those in the Secretariat assign to those colleagues they most trust. The judges who spend time there are judges on the fast track. They are the ones most likely to become president of one of the several high courts, and most likely eventually to serve on the Supreme Court.

1.4. The lower courts. -- (a) Appointment and reappointment. In selecting judges to staff the lower courts, the Cabinet picks from among candidates nominated by the Secretariat (Courts

⁵ Saibansho ho [Courts Act], Law No. 59 of 1947, Sec. 33.

⁶ Subject to the binding quotas specified in the Courts Act, Sec. 41.

Act, Sec. 40). During the course of their LRTI education, law students intern at a court. There, the judges serving as instructors can monitor students with reasonable care. By most accounts, they encourage their preferred students to consider a career in the courts.

Once appointed, judges work a series of 10-year terms. Only rarely does the Secretariat not recommend a judge for reappointment. Article 78 of the Constitution provides that a judge cannot lose his job except by impeachment. The article apparently applies, however, only when the courts terminate a judge within the course of a 10-year term.

In 1971, the Secretariat declined to renew the appointment of judge Yasuaki Miyamoto. By doing so, it caused a minor crisis. Miyamoto maintained clear fringe-left ties, and had written several left-leaning opinions. His political allies accused the Secretariat of politicizing the courts; his detractors claimed he was merely slow in his work (Ramseyer & Rasmusen 2003, 22-23).

Since 2003, the Supreme Court has maintained an advisory committee on judicial appointments and reappointments. The committee includes both lawyers and non-lawyers, and reviews applications. According to one former judge, the Secretariat introduced the committee as an attempt to reinstate quality control in the wake of the Miyamoto dispute. After the controversy, he explained, the Secretary became wary of turning anyone down. "Some judges are problems by anyone's standards," the judge noted, "but they were all being reappointed."⁷

Over the course of the last 15 years, the Secretariat has indeed denied reappointments. In Table 1, I give the number of judges for whom the Advisory Committee recommended reappointment, and number for which it then recommended non-reappointment. As a measure of the number of judges actually denied reappointment by the Secretariat, I add the number of judges who left the courts upon the end of a ten-year term (in order to exclude judges who were simply retiring, I drop those who had joined the courts at least 35 years earlier).

[Insert Table 1 about here.]

(b) Rotation. During the course of a judge's career, the Secretariat's personnel office shifts him through a wide variety of posts. It tends to move judges every three years (or so). The judges will welcome some of the moves, resent others. They will see some of the moves as a step up, others a step down.

Most judges see assignments with administrative responsibilities as carrying prestige. They tend to covet posts at the Secretariat itself, teaching assignments at the LRTI, mid-career appointments to "sokatsu" posts giving administrative responsibility at a local court, and late-career appointments as district court chief judges or high court "presidents." They shun assignments to small branch offices. They interpret appointments to small claims courts as signaling something close to career death.

Most judges also welcome appointments to metropolitan centers, particularly Tokyo. In part, they prefer Tokyo for professional reasons: the administrative core of the judiciary lies in Tokyo, and Tokyo courts handle the highest profile cases. In part, they prefer it for personal reasons: urban centers offer the greatest range of the educational and cultural facilities so important to professional class families.

Inter-city moves obviously strain family ties. Tokyo (or other metropolitan) judges who find themselves assigned to a small and unfamiliar city will sometimes leave their family in Tokyo. They will then commute during the week to their job, return home on weekends, and hope for

⁷ Zadankai: Atarashii sanbankan jinji hyoka seido no 15 nen ... [Panel: Fifteen Years of the New Judge Personnel Evaluation System ...], Libra, Sept. 2018, at 8, 12-13.

reassignment to their home city at the end of their three-year term. Recognizing these strains, the Secretariat tends to relocate mid-career judges less frequently than it does the very new judges.

Average and star judges will have careers that differ only subtly. Most judges will spend some of their career in Tokyo or Osaka; most will also spend some time in small cities and branch offices. The distinctions between average and star judges lie in the fraction of their careers that the judges spend in each. Those bound for the district-court chief judgeships and high court presidencies will spend relatively more time in the urban centers and administrative posts. Those not likely to cap their careers in those favored positions will spend more in the branch offices in the outback.

(c) Disciplinary actions. Just as the Secretariat terminates judicial appointments by non-renewal more often than before, it also seems to discipline judges more often. Generally, it disciplines them for entirely a-political misconduct. Judges have been impeached for accepting gifts from lawyers,⁸ for soliciting child prostitution,⁹ for taking photos up the skirts of women in crowded trains.¹⁰ They been criminally convicted of demanding sex from a defendant,¹¹ or of groping a woman in a bus.¹² The public discipline is probably not the whole story, of course: as recently as two decades ago, the Secretariat quietly pressured misbehaving judges to leave the courts, only to be welcomed by unsuspecting employers. Probably, it still does this.

And anecdotes remain as ambiguous as they ever were, of course. Take the case of judge Kiichi Okaguchi. Okaguchi wrote books about the courts, maintained a popular twitter feed -- and is vehemently left of center. Politicians pressured court administrators to impeach him, but the administrators apparently stalled impeachment by promising the politicians that they would convince Okaguchi to shut down his twitter feed. Toward that end, in late 2018 they disciplined him for posting entirely innocuous comments on twitter about a case involving an abandoned dog, and cut his pay in punishment.¹³

Lawyers championed Okaguchi on behalf of freedom of expression. Constitutional law professors joined the cause.¹⁴ American law professor Colin Jones joined the cause.¹⁵ And self-

⁸ e.g., Fuhai unda mujikaku [Unawareness that Led to Rot], Asahi shimbun, July 11, 1981. Haley acknowledges cases like this, but somewhat oddly writes that "Judicial corruption is virtually unknown. Judges do not take bribes." Bribery does indeed seem to be rare, though it obviously is not zero.

⁹ E.g., shoji baishun de muraki kosai hanji wo romen [Muraki High Court Judge Dismissed for Child Prostitution], Asahi Shimbun, Nov. 28, 2001.

¹⁰ E.g., Tosatsu no hanji fu wo dangai saiban ni sotsui [Assistant Judge Taking Secret Photos Pushed into Impeachment Trial], Asahi Shimbun, Nov. 14, 2012.

¹¹ Kiokutte ate ni naranai naa [Memory is Unreliable], Nov. 14, 2012, available at: <https://ameblo.jp/redsnakecomeon/entry-11403918370.html>.

¹² Moto hanji yuzai hanketsu [Former Judge Convicted], Asahi shimbun, July 7, 2009.

¹³ Buriifu hanji "kibishi sugiru chokei shobun" no gen'in ha Abeseiken hihanka? [Is Criticism of the Abe Government the Reason for the "Excessively Harsh Disciplinary Measures" Against Judge Underpants?], Litera, Oct. 22, 2018, available at: <https://lite-ra.com/2018/10/post-4327.html>.

¹⁴ See essays collected in Hanrei jiho, vol. 2392, Mar. 1, 2019.

¹⁵ Colin P.A. Jones, Dog Tale Bites Judge, Japan Times, Sept. 5, 2018.

appointed public intellectuals described the discipline as punishment for the way Okaguchi had criticized the Abe administration.¹⁶

To put it this way entirely misleads, however, for the case was wildly over-determined. "Judge White Underpants," internet fans and detractors called him. Google "Okaguchi Kiichi" in Japanese Google, hit "images," and ready yourself for endless variations on a middle-aged man's selfies of himself in his underpants.

Fairly obviously -- to this socially timid senior professor -- the socially timid senior judges in the Secretariat and Supreme Court thought it unseemly to discipline a judge for posting pictures of himself in his underwear. The unstated issue was "judgment": courts do not do well if cases involving murder, rape, pricefixing, and million-dollar contracts are adjudicated by men who think nothing of posting pictures of themselves in their underwear. Rather than restate what everyone knew (or should have known), they framed the issues in terms of a discreet dispute about an abandoned dog tweet.

The puzzle is why Secretariat judges did not let Okaguchi go at the end of his first 10-year term. Perhaps they have been wondering that too. Fairly obviously, they realized he needed to go. Okaguchi joined the court in 1994. By 1997, the Secretariat judges had demoted him to a summary court -- and kept him there for twenty years running. They apparently thought he would resign on his own. He refused -- and now they have a "Judge White Underpants."

(d) Pay. All this has financial implications. By Article 80 of the Constitution, the government may not lower a judge's pay (apparently, the court treats formal disciplinary proceedings as an exception). Yet a successful judge starts his career at low pay and ends it at relatively high pay, and no rule of either constitution or statute requires the government to promote all judges at the same pace.

The judicial pay scale leaves administrators considerable range to reward and punish.¹⁷ As of 2018, a new judge started his career at 232,000 yen per month. The president of the Tokyo High Court earned 1,406,000 per month. Compensation consultants estimated that the average judge in his early 30s earned 6.24 to 7.24 million yen per year, in his early 40s earned 8.04 to 9.28, and in his early 50s 10.04 to 11.14.¹⁸

Although judicial pay is confidential, it correlates with observable markers. Roughly two decades into his career, the Secretariat will appoint the average judge to a "sokatsu" administrative

¹⁶ Buriifu hanji "kibishi sugiru chokei shobun" no gen'in ha Abeseiken hihanka? [Is Criticism of the Abe Government the Reason for the "Excessively Harsh Disciplinary Measures" Against Judge Underpants?], *Litera*, Oct. 22, 2018, available at: <https://lite-ra.com/2018/10/post-4327.html>.

¹⁷ Judicial pay is set by statute, Saibankan no hoshuto ni kansuru horitsu [Law Regarding Compensation, Etc., of Judges], Law No. 75 of 1948. The pay scale as of January 2018 is available at:

<http://yamanaka-bengoshi.jp/saibankan/wp-content/uploads/2018/09/>.

¹⁸ Saibankan (hanji) no heikin nenshu [Average Salary of Judges]. Heikin nenshu.jp, available at: <https://heikinnenshu.jp/shi/judge.html#chapter6>. For incomes for practicing attorneys as of 2004, see Minoru Nakazato, J. Mark Ramseyer & Eric Rasmusen, *The Industrial Organization of the Japanese Bar*, 7 **J. Empirical Legal Stud.** 460 (2010).

post. Given that this coincides with appointment to pay grade 3, an interested scholar can use the appointment to gauge the pace at (or extent to) which a judge is climbing the pay scale.¹⁹

2. Meritocratic administration.

The Secretariat largely manages judicial careers as a meritocracy. Most prominently, those judges who graduate from the most selective universities -- especially the University of Tokyo -- spend more time in big cities, spend more time in administrative posts, and reach sokatsu status more quickly than their colleagues. They are more likely to start their careers at the Tokyo District Court (a signal that the Secretariat considers the judge among the most promising in his age cohort), and more likely to end their careers at the highest prestige assignments.

Crucially, these men and women passed the hardest university entrance exams -- and those exams test a person's ability to solve hard problems quickly and correctly. Employers value people who bring that ability. They bid for them in the market and appoint them to key positions in an organization. Those private-sector Tokyo lawyers who graduated from elite schools earned more than others;²⁰ those in the courts who attended those schools reached more highly coveted positions.

Other less obvious metrics similarly signal meritocratic operation. From a judge's birth year and bar entry date, a scholar can estimate the number of times he failed the bar exam (more precisely, the entrance exam to the LRTI; shiho shiken). During the first post-war decades, the pass rate on this exam ranged between 1 and 4 percent. That rate has risen since then, but remains extremely low by American standards.²¹ University background held constant, judges who passed the exam quickly -- again, men and women who could solve hard legal problems quickly and correctly -- were more likely to start their careers at the Tokyo District Court, to spend more time in metropolitan centers and in administrative positions, to spend less time in provincial cities and branch offices, to climb the pay scale more rapidly, and to reach more prestigious capstone positions.

University of Tokyo graduates do not succeed because they went to the University of Tokyo; they succeed because the intellectual ability that let them pass the entrance exam also enabled them to work more productively.²² This is not a position that public intellectuals take, of course. As in the U.S., Japanese intellectuals instead insist that the public focuses on the prestige markers for their own sake, and that those who did attend elite schools help each other out of tribal loyalty.

At least in terms of the University of Tokyo graduates, the public intellectuals are wrong. University of Tokyo graduation does not matter; productivity does. To measure productivity, take the number of opinions a judge publishes during his time on a district court. One might reasonably suppose that the Secretariat focuses not on published opinions but on docket-clearance rates -- but

¹⁹ Shin'ichi Nishikawa, *Shiho gyosei kara mita saibankan* [Judges from the Perspective of Judicial Administration], June 1, 2013; available at <http://www.nichikawashin-ichi.net>; Ramseyer & Rasmusen, *supra* note, at 37-43.

²⁰ Ramseyer & Rasmusen, *supra* note (ind org).

²¹ J. Mark Ramseyer & Eric B. Rasmusen, *Lowering the Bar to Raise the Bar: Licensing Difficulty and Attorney Quality in Japan*, 41 *J. Japanese Stud.* 113 (2015).

²² J. Mark Ramseyer, *Talent Matters: Judicial Productivity and Speed in Japan*, 32 *Int'l Rev. Law & Econ.* 38 (2012); J. Mark Ramseyer, *Do School Cliques Dominate Japanese Bureaucracies? Evidence from Supreme Court Appointments*, 88 *Wash. U. L. Rev.* 1681 (2011).

docket clearance rates are not publicly available. Probably the Secretariat does focus on docket clearance rates, but whatever measure it uses apparently correlates with published opinions.

Of all judges hired between 1959 and 1961 (subject to several qualifications), University of Tokyo graduates constituted 22.7 percent. They were 30.6 percent of the judges who eventually became district court chief judges, 63.6 percent of the judges who became high court presidents, and 28.6 percent of the judges who joined the Supreme Court. They were also, however, more productive. On average, the University of Tokyo graduates published 2.30 opinions per year while on a district court bench. University of Kyoto graduates published 1.61 per year, and all other judges published 1.41 per year.²³ Regress Supreme Court appointment on graduation from the University of Tokyo or University of Kyoto, on the number of times a judge failed the LRTI exam, on whether he started at the Tokyo District Court, and his productivity (published opinions) per year on the district court bench, and the coefficient on productivity is statistically significant. The coefficient on University of Tokyo is not.

3. Women.

Legally trained women disproportionately opt for judicial careers. In 2018, women constituted 26.5 percent of the 2,782 district- and high-court judges.²⁴ Among the judges in the first decade of their careers (in 2016), however, they were 36.4 percent.²⁵ Yet they were typically only 20-30 percent of those graduating from the LRTI. Obviously, we cannot tell whether the courts were aggressively recruiting women, or whether women were choosing the courts as a (plausibly) more family-friendly career than private practice. But Table 2 gives the percentage of women among the population graduating from the LRTI, followed by the percentage entering the courts. From 2010 to 2014, the fraction entering the courts is notably larger than the fraction graduating from legal training.

[Insert Table 2 about here.]

Women were not always such a large fraction of the courts. Of the judges hired from 1960 to 1969, they were 5.2 percent.²⁶ They did not have successful careers. With university background and the number of times they failed the LRTI held constitute, they reached sokatsu status 3-1/2 years later than men. Given that appointment to sokatsu correlated with salary, they were moving up the pay scale substantially less successfully than their male counterparts.²⁷

²³ See Ramseyer, *supra* note (Do school cliques), for details on sample selection.

²⁴ Bengoshi hakusho [Lawyers White Paper] (Tokyo, 2018), p. 62. Available at: https://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2018/1-3-4_tokei_2018.pdf. On selection of women into the very top ranks of court, see Shin'ichi Nishikawa, Saikin no saibankan jinji no keiko [Recent Trends in Judicial Personnel], June 17, 2018, available at: <http://www.nishikawashin-ichi.net/oral-reports/oralreports-57.pdf>.

²⁵ Joseihanji oyobi joseihanjifu no ninzu oyobi wariiai no suii [Trends in the Number and Proportion of Female Judges and Assistant Judges], Apr. 27, 2017, available at: <http://yamanaka-bengoshi.jp/saibankan/2019/04/27/jyoseisaibankan-suii/>.

²⁶ Ramseyer & Rasmusen, *supra* note, at 40.

²⁷ Ramseyer & Rasmusen, *supra* note (book), at 41; see Leon Wolff, *Gender, Justice and the Japanese Judiciary*, Tohoku daigaku jendaa ho nempo (2007).

By the 21st century, that pay bias against women may have disappeared.²⁸ Take the 281 judges hired between 1978 and 1981, and ask whether they reached sokatsu status by 2003 -- effectively, whether they were in the top half of their cohort. With school background and LRTI failures held constitute, women were just as likely as their male counterparts to reach sokatsu status. By this visible measure of pay, women no longer did worse than men.

Women in these classes were also as likely as men to be named to the Tokyo District Court at the outset of their careers. They accepted inter-city transfers as readily as men. They did not, however, take on administrative responsibilities as often as men.²⁹ Obviously, this might reflect sex bias on the part of the judges in the Supreme Court secretariat. Alternatively, it might reflect a greater reluctance among women to accept responsibilities that might entail a greater time commitment.

4. Political complications.³⁰

4.1. Punishment. -- During the 1950s and 1960s, leftist graduates of the LRTI routinely joined the courts. When they tried to implement their personal political preferences, however, the Secretariat began in the 1960s to punish them. In time, it would come to punish them brutally.

Most obviously, consider cases raising the constitutionality of the Japanese self-defense forces or of American military bases. On this question, Ramseyer & Rasmusen identified 25 district court opinions involving 47 judges. They take as dependent variable the quality of a judge's postings during the decade after his opinion. They then regress this quality measure on a dummy variable equal to 1 if a judge held the military unconstitutional, together with a variety of controls. They find that the judges who held the military forces unconstitutional received significantly fewer prestigious administrative assignments during the decade after the opinion.³¹

Or consider the electoral apportionment disputes. On this question, Ramseyer & Rasmusen locate 69 lower court opinions involving 97 judges. They ask whether the judges who held the apportionment schemes unconstitutional during the period that the LDP leadership relied on the agricultural vote received worse job postings over the ensuing decade. They find that the judges did indeed receive worse postings: more branch office time and fewer administrative positions.³²

Ramseyer & Rasmusen (2003) identify a similar dynamic in several other high-profile partisan disputes. Judges who enjoined the national government, for example, suffered in their careers.³³ So too did judges who struck down the LDP-favored ban on door-to-door canvassing.³⁴

²⁸ J. Mark Ramseyer *Sex Bias in the Japanese Courts*, in Kuo-Chang Huang, ed., **Empirical Studies of Judicial Systems** (Taipei: Academia Sinica, 2008).

²⁹ See also J. Mark Ramseyer & Eric B. Rasmusen, *The Case for Managed Judges: Learning from Japan after the Political Upheaval of 1993*, 154 **Univ. Penn. L. Rev.** 1879 (2006).

³⁰ See generally Ramseyer & Rasmusen, *supra* note; Haley, *supra* note; Frank K. Upham, Political Lackeys or Faithful Public Servants? Two Views of the Japanese Judiciary, 30 *L. & Soc. Inquiry* 421-455 (2005); David S. Law, The Anatomy of a Conservative Court: Judicial Review in Japan, 87 *Tex. L. Rev.* 1545 (2009).

³¹ Ramseyer & Rasmusen, *supra* note book, at 64-68; J. Mark Ramseyer & Eric B. Rasmusen, Why Are Japanese Judges so Conservadtive in Politically Charged Cases?, 95 *Am. Pol. Sci. Rev.* 331 (2001).

³² Ramseyer & Rasmusen, *supra* note book, at 68-73; Ramseyer & Rasmusen, *APSR*, *supra* note.

³³ Ramseyer & Rasmusen, *supra* note book, at 73-76; Ramseyer & Rasmusen, *APSR*, *supra* note

³⁴ Ramseyer & Rasmusen, *supra* note book, at 58-60; J. Mark Ramseyer & Eric B. Rasmusen, Judicial Independence in a Civil Law Regime: The Evidence from Japan, 13 *J.L. Econ. & Org.* 259-86 (1997).

On less salient disputes, Ramseyer & Rasmusen (2003) find less (if any) evidence of punishment. For the most part, the Secretariat does not punish judges simply for being overturned on appeal. It seldom punishes them for opposing the government on less sensitive questions. It does not punish them for ruling against the government in routine tax cases.³⁵ Neither does it punish them for acquitting defendants in routine criminal cases.³⁶

4.2. The Young Jurists League. -- Of the judges who joined the courts from 1960 to 1969, over a quarter were members of the far-left (by some accounts the Communist Party (JCP)-affiliated) Young Jurists League (Seinen horitsuka kyokai; YJL). These judges would not do well in their careers. University and LRTI exam failures held constant, they reached sokatsu status a year later than their colleagues.³⁷ They less often found themselves posted to attractive cities. They less often received the high-status administrative jobs.

This political bias against those who had joined the YJL haunted them in their careers. Even as late as the 1990s, they had less successful careers. They still found themselves less often assigned to administrative work, and more often found assigned to branch offices.³⁸

4.3. The resulting selection bias. -- Over time, this demonstrated capacity to punish will drive selection into the courts. As of the late 1950s and early 1960s, Japanese intellectuals entertained a wide variety of visions of the post-war world. After all, the LDP itself dated only from 1955. Intellectuals working as bureaucrats at the Ministry of Finance joked about voting Communist. Those graduating from the LRTI could rationally hope that Japan would soon transform itself into a democratic socialist regime in the western European mold. They could join the courts and rationally hope to play a part in the coming socialist transformation.

By the 1980s, young LRTI graduates could no longer realistically entertain these hopes. Japanese voters had made it clear that they wanted a center-right capitalist regime. The LDP fit their bill. And the Secretariat in the 1970s had made it clear that it demanded that its judges adjudicate in that center-right mold.

To a young Marxist graduate of the LRTI, the courts no longer offer an attractive career. To be sure, he can hide his political preferences during the hiring interviews and obtain a job. But once a judge, he can no longer implement those preferences. By contrast, the private bar offers a far more rewarding life. There, he can safely indulge his Marxism. Note the result -- judicial administration since the 1970s has shown far less partisanship for a simple reason: fewer far-left LRTI graduates join the courts.

4.4. Political interference. -- By basic principal-agent theory, what matters is that the Prime Minister and cabinet have the power to intervene in judicial personnel matters. They can pick the

³⁵ Ramseyer & Rasmusen, *supra* note book, at ch. 5; J. Mark Ramseyer & Eric B. Rasmusen, Why the Japanese Taxpayer Always Loses, 72 S. Cal. L. Rev. 571-96 (1999).

³⁶ Ramseyer & Rasmusen, *supra* note book, at ch. 6; J. Mark Ramseyer & Eric B. Rasmusen, Why Is the Japanese Conviction Rate so High, 30 J. Legal Stud. 53-88 (2001).

³⁷ Kentaro Fukumoto & Mikitaka Masuyama, Measuring Judicial Independence Reconsidered: Survival Analysis, Matching, and Average Treatment Effects, 16 Japanese J. Political Sci. 33-51 (2015) use survival analysis rather than OLS, correct several miscoded entries, and find that the phenomenon disappears.

³⁸ Ramseyer & Rasmusen, *penn.*

Supreme Court justices that they want. And they can pick justices who will decide cases the way they want, and manage the lower courts in ways that induce lower court judges to do so as well.

Whether the Prime Minister ever observably intervenes in personnel is beside the point. If the Secretariat knows that he can, it will administer the courts in ways that gives the Prime Minister no reason to intervene. It will anticipate the possibility of intervention, and administer the courts in ways that forestall that intervention.

This result of this logic appears in the lawyers and law professors appointed to the Supreme Court. For the most part (for reasons given in Sec. 4.3, above), modern prosecutors and judges will probably share the conservative biases of the LDP. Yet both the private bar and the legal professoriate have consistently tilted left. Were the Secretariat simply to nominate the most prominent lawyers and law professors, it would regularly nominate men and women far to the left of the LDP. That it has not done. Instead, it has consistently named people within the center-right mainstream.

John Haley finds this logic unrealistic. He writes that Ramseyer & Rasmusen "do not offer any evidence of direct or indirect intervention by any politician in any decision made by senior judges assigned to the General Secretariat in appointing, assigning or promoting any judge"³⁹ In fact, however, the Prime Minister did directly -- shockingly -- intervene in 1960.

The incident involved Sakae Wagatsuma, and constitutes part of the oral history among University of Tokyo faculty. Civil Code professor at the university, Wagatsuma was probably the single most influential law professor of the mid-20th century. He had also known Nobusuke Kishi. During their years together at the First Higher School and the Tokyo Imperial University, they had been friends, rivals, and even roommates.

By 1960, Kishi was Prime Minister. Over vehement public protests, he pushed for the renewal of Japan's security treaty with the U.S. Wagatsuma believed his friend was making the wrong choice, and on June 5 published an open letter in the Asahi shimbun. "You have only one path left to you," wrote Wagatsuma. "That is to leave the political world, and go fishing."⁴⁰

In fact, the Secretariat had just (privately) nominated Wagatsuma as the next Supreme Court Chief Justice. It was not to be, not after the go-fishing letter. Kishi refused to appoint Wagatsuma, and so did his successor Hayato Ikeda. Ikeda picked University of Tokyo professor Kisaburo Yokota instead. Wagatsuma never joined the court.

5. Research.

Scholars inclined to undertake projects related to the courts should understand the following. The official versions of statutes and regulations are those published in the Horei zensho -- a monthly government publication. For most purposes, however, this is an entirely unusable source. Generally, a researcher wants to know the statutory framework in place at any given time. He needs the statute with all amendments as of a given date directly incorporated into it. The Horei zensho, however, will instead provide each amendment to a statute, sorted by the month in which the Diet passed it.

Fortunately, several publishers (e.g., Yuhikaku, Sanseido, Iwanami) offer annual compilations of the major statutes in place. Typically, the publishers hire committees of law

³⁹ John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, in Daniel J. Foote, *Law in Japan: A Turning Point* (Seattle: University of Washington Press, 2007).

⁴⁰ Sakae Wagatsuma, *Kishi Nobusuke kun ni tsutaeru* [Message to Nobusuke Kishi], *Asahi shimbun*, June 5, 1960, at 2.

professors to edit existing versions of statutes and incorporate all the amendments. Most of these volumes go by some variation on the generic title "roppo zensho" (the Complete Six Laws). If there is an industry standard, it would be the two-volume Yuhikaku version. But there is no reason to rely on that particular compilation. Scholars can choose the one with the statutes, formats, size that they prefer.

Note that a scholar can find many of the principal statutes with amendments incorporated on the Japanese government website.⁴¹ The government also provides English translations of the most basic statutes.⁴² These translations are of course non-binding. Note, however, that for historical reasons there is separate, official English translation of the constitution.

Judges do not write opinions if the parties settle a case, of course, but they do write opinions in all cases they decide. Most of these opinions are never published. Those that are published will typically appear in either a private or a public "reporter."

Published three times a month since 1953, Hanrei jiho remains the best known and most complete of the private reporters. Presumably, it simply selects the cases that it thinks will best help it sell subscriptions. Scholars will find helpful the case summary that the magazine provides for each opinion. The summaries are unsigned, though scholars sometimes suggest that the judge who wrote the opinion often also writes the summary. The typical summary will not just explain what the writer (whoever he might be) finds most important about the case. It will also put the opinion in the context of prior opinions and commentary (something most opinions do not do).

Hanrei Taimuzu (Times) is the Hanrei jiho's closest competitor. Since 2013, it has appeared monthly. Prior to that, it appeared twice a month. From time to time, some journals in various legal fields will also publish opinions they think noteworthy for practitioners in the field.

The courts publish several official court reporters. Some cover particular courts; some cover particular fields. Apparently, most courts maintain a committee to decide which opinions to publish. Judges can (and sometimes do) nominate their own cases for publication. This process obviously introduces a bias.

Scholars can search all published cases (including searching by a judge's name) through both the Westlaw and the Daiichi hoki (also known as Hanrei taiki or Lex DB) databases. Both include roughly the same populations of cases -- all of the principal private reporters, together with the official reporters. Both also include roughly the same search functions. Note of course that a scholar can search in either database only if he (or a library to which he has access) maintains a subscription to the service.

Scholars will find some of the principal cases available through the Supreme Court website. They should understand, however, that the court posts only a subset of that which is available through the Westlaw and Daiichi hoki services. They should also realize that one cannot search this database by a judge's name.

The Supreme Court also posts English-language translations of selected cases. Scholars should realize that these are most decidedly not a random sample of published cases. They are also translated into only haphazardly fluent English. Forewarned is forewarned.

Research into the workings of the courts turns crucially on the availability of information about judicial postings. The group known as the Nihon minshu horitsuka kyokai (NMHK; the Japanese Democratic Jurists Association) made this research possible in 1987 when it published

⁴¹ http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0100/

⁴² <http://www.japaneselawtranslation.go.jp/?re=2>

the first edition of the Zen saibankan keireki soran (ZSKS; Career History of All Judges). The ZSKS provides complete posting information for every judge who joined the court after the war.

The NMHK compiled the book because it believed that the Secretariat had discriminated against leftist judges. It hoped that scholars would use the book to demonstrate that political bias in judicial administration. The NMHK itself has always been a left-leaning group. Anti-communist sites on the internet list it as JCP-affiliated,⁴³ though when a Komeito politician described it as JCP-affiliated the group protested and demanded an apology.⁴⁴

In any event, the ZSKS has done what the NMHK hoped. It has facilitated empirical work showing the political bias in the courts. Since 1987, the NMHK has published several editions. The most recent -- the 5th edition -- appeared in 2010.

⁴³ Omona kyosanto kei dantai oyobi kanren dantai [Principal JCP-Affiliated Groups], available at: <http://www2.odn.ne.jp/~caq10260/kyosantoukei.htm>.

⁴⁴ Kogi to shazai no yokyu [A Protest and Demand for an Apology], Nov. 13, 2002, available at: <https://web.archive.org/web/20070312204100/http://homepage3.nifty.com/n-heimoto/nichiminnkyou.html>.

Table 1: Judicial Non-Renewals

	Recommended		Exit
	Renew	Not renew	
2008	202	3	4
2009	162	4	5
2010	261	3	4
2011	208	4	6
2012	187	4	3
2013	206	5	2
2014	221	3	4
2015	225	2	2
2016	223	2	2
2017	251	2	4

Note: Exit refers to judges who left upon end of a ten-year term, who had joined the court at least 35 years earlier.

Sources: Yuka Kobayashji, Goshitsumon kara [From Your Questions], Libra Sept. 2018, at 18; Masashi Yamanaka, Heisei 20 nendo iko, ninki shuryo ni yori taikan shita saibankan no ichiran [List of Judges who Left Upon Expiration of Their Term Since 2008, April 19, 2019, available at: <http://yamanaka-bengoshi.jp/saibankan/2019/04/19/ninkishuuryou/>].

Table 2: Percentage Women Among Those Graduating from Legal Training, and Those Joining the Judiciary

	Percentage of Women Among Those	
	Graduating	Becoming Judges
2010	26.3	31.4
2011	27.7	33.3
2012	23.0	30.4
2013	26.0	39.6
2014	22.5	28.7

Source: Bengoshi hakusho [Lawyer White Paper], 2016, p. 48, available at:
https://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2015/1-3-3_shinro_2015.pdf