

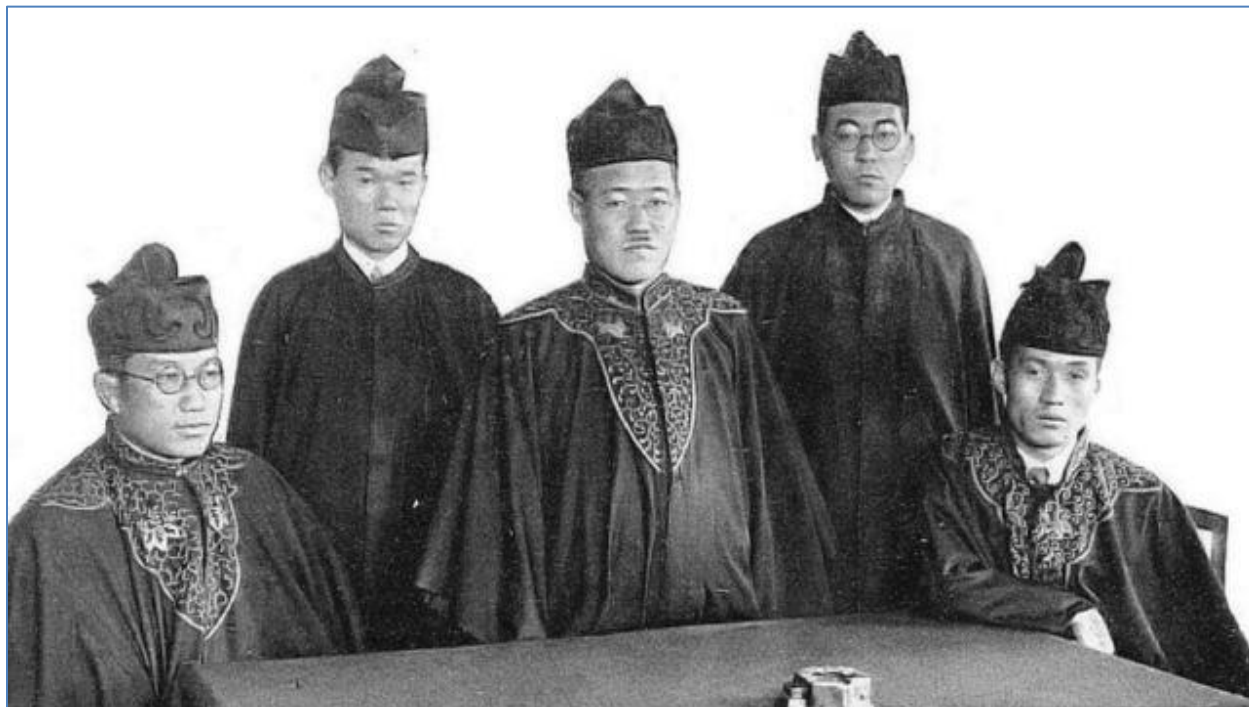
## Does Japan Have an Independent Judiciary? Implications for the Unification Church Dissolution Case

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### BITTER WINTER

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Scholars have noted that, while proclaimed by the Constitution, the independence of the Japanese judiciary is in fact limited by the government's role in appointing and promoting judges.



*Japanese judges in 1931. Obviously, progress has been made with respect to these times toward the independence of the judiciary, but problems remain.*

The Constitution of Japan guarantees that "all judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws" (Article 76). Japan's judges have adequate compensation, regular promotion, and protections against removal. In practice, they are regarded as being honest and professionally competent. They enjoy high levels of public trust.

However, questions persist as to the judiciary's independence, particularly in its restraint toward actions of Japan's executive and legislative branches. Even in accounts extolling its virtues, Japan's judiciary is recognized as being "cautiously conservative."

There are several reasons for this. Keiichi Muraoka, in "Independence on the Bench: Political and Bureaucratic Constraints on the Japanese Judiciary," lists Japan's judicial appointment process and hierarchical career system as factors. Notably, the Japanese Constitution gives the ruling party's cabinet the authority to appoint judges to the Supreme Court and lower courts. According to Muraoka, "This diminishes judicial autonomy to a considerable degree by enabling the ruling parties at the time to leverage their power of appointment to 'reward' with promotion ... judges who show deference toward government policies and 'punish' those who are less permissive of executive authority."

Japan's hierarchical career system further contributes to "judicial conformity and conservative-minded benches." Most judges begin their careers upon graduation from the court-administered Legal Training and Research Institute (LTRI). Muraoka notes that new judges come to the bench with next to no practical legal experience" and a "powerful judicial administration keeps a close watch over their performance." Moreover, "Transfers are routine, resulting in significant discrepancies in positions and in salaries." According to Muraoka, "'homogenizing' of the Japanese courts casts a dark shadow over judicial independence."

Harvard Law School Professor J. Mark Ramseyer in a number of articles later published as "Measuring Judicial Independence: The Political Economy of Judging in Japan," argued similarly. He highlighted the "urgent need for reforms that align with the actualities of judiciary independence."

Apart from political and bureaucratic constraints, several anomalies in Japanese judicial practice inhibit

transparency. For example, Japan does not utilize juries and proceedings are private. In fact, disclosure of deliberations can result in severe penalties. In addition, as widely reported, government prosecutors win 99.9% of criminal cases and 98% of appeals. As a consequence, a presumption of guilt culture is prevalent.

All of this has implications for the Unification Church dissolution case.

Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT), an organ of the executive branch with jurisdiction over registered religious organization, brought the case against the Unification Church, requesting the Tokyo District Court to issue an order of dissolution under Japan's religious corporation law. In addition, Prime Minister Fumio Kishida, head of the ruling Liberal Democratic Party (LDP), announced the investigation into the Unification Church and in a departure from precedent, stated that an order to dissolve the Unification Church could be based on civil rather than criminal violations.



*The building hosting the Tokyo District Court*

Outrage against the Unification Church exploded following the assassination of former PM Shinzo Abe on July 8, 2022. The assassin, 41-year-old Tetsuya Yamagami, told investigators that he shot Abe in retaliation for Abe's support of the Unification Church and that he held a grudge against the church over his mother's donations more than twenty years previously. Japanese media subsequently exposed ties between the Unification Church and the LDP, causing the ruling party to disavow any further relationship.

Various human rights activists vigorously opposed treatment of the Unification Church in public statements, press conferences, petitions, lawsuits and multiple articles, including extensive coverage in "Bitter Winter," but as yet to little effect. An attorney for the Unification Church provided data showing that not a single case for refund of Unification Church donations has been filed in the last seven years and that other Japanese religious groups that had committed malicious crimes, including group assaults and murder, were not pursued by the government by seeking orders to dissolve. Suzan Johnson Cook, former U.S. Ambassador at Large for International Religious Freedom and Katrina Lantos Swett, former chair of the U.S. Commission for International Religious Freedom, likewise expressed concern that "Dissolving a religious organization that has not been found guilty of any crime would taint the image of Japan as a country committed to democratic principles."

The Tokyo District Court's judicial independence will be put to the test in separating legal arguments from political pressure and public opinion.

The judges may find a way forward by exercising a feature emphasized in Japanese courts known as *wakai*, i.e., settlements by mutual agreement of the parties, with no loser or winner. On November 7, 2023, Unification Church President Tomihiro Tanaka announced plans to allocate up to 10 billion yen (\$67 million) to the Japanese government to cover possible compensation for former believers and their families for damage they claim to have suffered. He apologized for "circumstances that led to the situation" but clarified that "the apology did not equate to an acknowledgment of wrongdoing by the church toward former believers." What impact, if any, the offer will have on the government's dissolution request, which Tanaka termed "impossible to accept," is an open question.



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