

## Judicial Structures in Japan: Evaluating Approaches to Judicial Independence and Accountability

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### Author:

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**Subject:** Government

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**Time Required:** One 44-minute period

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### Standards:

- **Iowa Core Curriculum SS-Gov.9-12.13**

Evaluate the powers and responsibilities of local, state, tribal, national, and international civic and political institutions, how they interact and the role of government in maintaining order.

- **Iowa Core Curriculum WHST.11-12.1**

Write arguments focused on discipline-specific content.

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### Lesson Context:

This lesson will be completed as part of students' study of the United States Judicial Branch. Students should have already developed an understanding of the United States judiciary from other lessons and this lesson will ask them to make comparisons to and evaluations of the Japanese model of structuring a Supreme Court.

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### Learning Objectives:

- Students will be able to identify key aspects of the Supreme Courts of both the United States and Japan.
  - Using the key differences, students will be able to evaluate advantages and disadvantages for each system.
  - Based on the advantages and disadvantages that students identify and discuss, they will be able to write an argument focused on discipline-specific content in which they advocate in favor of a particular model of supreme court.
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### Materials:

Handout: U.S. and Japan Judicial Systems (see attached)  
Graphic Organizer Sheet: Supreme Court Comparisons (see attached)

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### Instructional Delivery:

#### Anticipatory Set:

Having already learned about the United States Judicial Branch, have students briefly journal about the United States Supreme Court. In their journal entry they should reflect on any criticisms or controversies that they can think of with regard to the United States Supreme Court and its members.

Once students have had the opportunity to briefly journal, have them turn to a partner and compare their answers to this prompt. After discussing with their partner, then brainstorm as a class any common issues that they were able to identify with an emphasis on criticisms of or controversies surrounding the Court (e.g., recent confirmation battles, judicial activism, lifetime appointment, lack of accountability, etc.).

#### Primary Lesson:

1. Distribute the handout and the graphic organizer to the students and provide time for the students to read and mark up the document excerpts included on the handout.
2. Divide the students into small groups to discuss the handout and complete front side of the graphic organizer document. As they are completing this teacher should be circulating and using this time to formatively assess their understanding of the arguments for and against various aspects of each system.

3. Once the small groups have completed the front side of the graphic organizer, the teacher should facilitate a whole-class discussion of the student answers to the questions posed. Encourage the students to continue completing the front side of the graphic organizer as the class discusses the various questions posed.

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**Assessment:**

Students will be assessed on their ability to write an argument in response to the prompt posed at the bottom of the graphic organizer regarding how to best structure a supreme court. This can be assigned as homework following the class or as an in-class writing depending on the length and structure of the class period.

In their response:

- The student should articulate a claim that establishes a line of reasoning.
  - The claim should be supported with concepts from the class discussions/graphic organizer.
  - The student should specifically reference either the U.S. Constitution or the Constitution of Japan.
  - The student should use reasoning to explain why the examples they cite support their claim.
  - The student should identify and respond to a counterargument to the claim they are making.
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**Supreme Court Comparisons**  
**JAPAN and U.S.A.**

**Government**

Name: \_\_\_\_\_

Period: \_\_\_\_\_

	United States Supreme Court	Supreme Court of Japan
Number of Justices:		Grand Bench:  Petty Benches:

There have been both recent and historical discussions of “packing” the U.S. Supreme Court.

- What might be advantages to more Justices?
- What might be valuable in having a smaller number?
- What might be helpful in utilizing Petty Benches?

	United States Supreme Court	Supreme Court of Japan
Qualifications to serve on the Court (e.g., age, experience, etc.):		

- Should we require specific qualifications to serve on a Supreme Court?
- What should they be and why might we want that?
- Why might a Constitution leave this vague?

	United States Supreme Court	Supreme Court of Japan
Term of Office (multiple terms?):		
Options for Removal		

- What might be an argument for judges having longer terms than other governmental officials?
- Should judges be appointed for life?
- Should judges be accountable to voters? Why or why not?

	United States Supreme Court	Supreme Court of Japan
Where is the concept of judicial review articulated?	Case:	

- What is an argument in favor of Japan’s model establishing judicial review in the Constitution?

CONCLUSION: In 1787 and 1947 the framers of these two constitutions had to structure a judicial branch and in particular a Supreme Court. On the back of this sheet, write an argument about how you think a Supreme Court would best be structured and why. Cite concepts and examples from our discussions of Japan and the United States. Use reasoning to explain your evidence supports the claim. Identify and respond to a counterargument.

## Chapter I. Courts and Judges

### 1. Courts

There are five types of courts in Japan: the Supreme Court, High Courts, District Courts, Family Courts and Summary Courts.

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(5) The Supreme Court is the highest and final court that handles appeals (*Jokoku*-appeals and special *Kokoku*-appeals) filed against judgments rendered by the high courts. It is composed of the Chief Justice and 14 Justices with a Grand Bench made up of all 15 Justices and three Petty Benches each made up of 5 Justices. The cases are first assigned to one of the three Petty Benches, and those cases that involve constitutional questions are transferred to the Grand Bench for its inquiry and adjudication.

Source: <https://japan.kantei.go.jp/judiciary/0620system.html>

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### English Translation of the Court Act of 1947

(Qualifications for Appointment of Judges of the Supreme Court)

Article 41 (1) Justices of the Supreme Court shall be appointed from learned persons with extensive knowledge of law, who are not less than forty years old. At least ten of them shall be persons who have held on or two of the positions set forth in item 1 or 2 for not less than ten years, or one or more of the positions set forth in the following items for the total period of twenty years or more.

- (i) President of the High Court
- (ii) Judges
- (iii) Judges of the Summary Court
- (iv) Public Prosecutors
- (v) Attorneys
- (vi) Professors or associate professors of law of universities that shall be determined by law

Source: [http://www.japaneselawtranslation.go.jp/law/detail\\_main?id=7&vm=2&re=](http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re=)

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### Selected Constitutional Provisions from the Constitution of Japan:

#### 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.

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**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.

**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.

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**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.

Source: [https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

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## **Selected Constitutional Provisions of United States Constitution:**

### **Article II.**

#### **Section 2.**

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He [President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, an which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they thing proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

### **Article III.**

#### **Section. 1.**

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Source: <https://www.archives.gov/founding-docs/constitution-transcript>

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