JAPANESE CONSTITUTIONAL LAW — MARRIAGE — JAPANESE SUPREME COURT HOLDS THAT FORCING COUPLES TO SHARE A SURNAME IS CONSTITUTIONAL. — Saikō Saibansho [Sup. Ct.] June 23, 2021, Reiwa 2 (ku ク) no. 102.

Japan is the only country in the industrialized world that forbids married couples from having different surnames.[1] Though most Japanese people oppose the system, the Supreme Court of Japan (SCJ) recently upheld the laws that make married couples share a surname.[2] The SCJ's reasoning typified weak judicial review, consisting of deference to the legislature and failure to balance constitutionally protected interests against the public welfare, both of which implicate concerns about the legitimacy of the Japanese Constitution. Its reasoning also showed how weak judicial review can lead the SCJ to overlook constitutional rights, like freedom of expression.

In 2018, three couples asked on their marriage registration forms that the husband and wife have different surnames.[3] The Mayor of Kokubunji denied the requests because of Civil Code Article 750[4] (CC-750), which says that "[a] husband and wife shall adopt the surname of the husband or wife . . . at the time of marriage,"[5] and Family Register Act Article 74[6] (FRA-74), which says that couples need to put "the surname that the husband and wife will take" on their applications.[7] The couples appealed, arguing that the laws violated the Japanese Constitution's equal protection and marriage provisions.[8]

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[1] Hiromi Taniguchi & Gayle Kaufman, *Attitudes Toward Married Persons' Surnames in Twenty-First Century Japan*, 37 GENDER ISSUES 205, 206 (2020). These laws made headlines in October 2021 when the formerly surname-less Princess Mako married a commoner and had to take his surname. *See* Mari Yamaguchi, *Japan's Princess Mako Marries Commoner, Loses Royal Status*, AP NEWS (Oct. 26, 2021), https://apnews.com/article/japan-princess-mako-wedding-royal-status-888700204e714145be58e320f1dc0fe0 [https://perma.cc/SJ22-EVEE].

[2] *See* Saikō Saibansho [Sup. Ct.] June 23, 2021, Reiwa 2 (ku ク) no. 102, 1488 HANREI TAIMUZU [HANTA] 94, 99 (Eng. trans. § 4) [hereinafter *Same Surname Case 2021*], https://www.courts.go.jp/app/files/hanrei_jp/412/090412_hanrei.pdf [https://perma.cc/UQS4-76SJ], *translated in Judgments of the Supreme Court*, CTS. OF JAPAN, https://www.courts.go.jp/app/hanrei_en/detail?id=1824 [https://perma.cc/B5HH-3E3P]; *Japan's Top Court Says Forcing Couples to Share Surname Is Constitutional*, JAPAN TIMES (June 23, 2021), https://www.japantimes.co.jp/news/2021/06/23/national/crime-legal/top-court-surname-ruling [https://perma.cc/YFL7-TVQY].

[3] *See Same Surname Case 2021*, 1488 HANTA at 98 (Eng. trans. § 1); *Japan's Top Court Says Forcing Couples to Share Surname Is Constitutional*, *supra* note 2.

[4] MINPŌ [MINPŌ] [CIV. C.] art. 750.

[5] *Id.*

[6] Kosekihō [Family Register Act], Law No. 224 of 1947, art. 74, *translated in* (Japanese Law Translation [JLT DS]), http://www.japaneselawtranslation.go.jp/law/detail/?id=2161&vm=04&re=02 [https://perma.cc/5FYE-3WBS].

[7] *Id.*; *see Same Surname Case 2021*, 1488 HANTA at 98 (Eng. trans. § 1).

[8] *Same Surname Case 2021*, 1488 HANTA at 98 (Eng. trans. § 1); *see* NIHONKOKU KENPŌ [KENPŌ] [Constitution], art. 14, para. 1 ("[T]here shall be no discrimination in political, economic

The Tōkyō High Court upheld the Mayor's dismissal.[9] In a twelve-to-three decision, the Supreme Court affirmed, holding that CC-750 and FRA-74 were constitutional.[10] The majority relied on a case from 2015 (the "2015 case"), where the SCJ, on similar facts, held that surnames are part of the legal system, so harms stemming from changing surnames affect personal *interests*, not constitutional *rights*.[11] Although the Constitution requires the Japanese Legislature, the Diet, to account for personal interests, CC-750 was constitutional and reasonable.[12] The 2021 majority agreed and held that, under the 2015 case's reasoning, FRA-74 was "obvious[ly]" constitutional as well.[13] The majority acknowledged a shift in some important social factors, like a higher percentage of women in the workforce and lower percentage of people who agreed with the system, but held that the 2015 case still controlled.[14] Last, the majority argued that since the same-surname system was constitutional, it was up to the Diet to decide what kind of system to use.[15]

Justices Miyama, Okamura, and Nagamine wrote a concurring opinion.[16] They argued that the system is an indirect constraint on marriage because it does not limit the act of marriage itself, but rather is one *effect* of marriage that does not hinder the free and equal decisionmaking of the couples.[17] Next, the Justices looked at whether the system was unreasonable "in light of . . . individual dignity and the essential equality of the sexes" and therefore unconstitutional.[18] The Justices thought

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or social relations because of . . . sex . . . ."); *id.* art. 24 ("Marriage shall be based only on the mutual consent of both sexes and . . . maintained . . . with the equal rights of husband and wife as a basis. With regard to choice of spouse . . . 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."); *id.* art. 98 ("This Constitution shall be the supreme law of the nation and no law . . . contrary to the provisions hereof, shall have legal force or validity. The treaties concluded by Japan and established laws of nations shall be faithfully observed.").

[9] *See Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2); Tōkyō Kōtō Saibansho [Tōkyō High Ct.] Nov. 25, 2019, Reiwa 1 (ra ラ) no. 884.

[10] *See Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2).

[11] Saikō Saibansho [Sup. Ct.] Dec. 16, 2015, Heisei 26 (o オ) no. 1023, 1421 HANREI TAIMUZU [HANTA] 84, 90 (Eng. trans. § II.2(2)) [hereinafter *Same Surname Case 2015*], *translated in Judgments of the Supreme Court*, CTS. OF JAPAN, https://www.courts.go.jp/app/hanrei_en/detail?id=1435 [https://perma.cc/6475-WGYJ]; *see Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2).

[12] *Same Surname Case 2015*, 1421 HANTA at 90–92 (Eng. trans. §§ II.2(2)–(5), IV.2(2)).

[13] *Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2).

[14] *See id.*

[15] *Id.*

[16] *Id.* at 99 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. intro.). Japanese court opinions do not have exact analogues in the U.S. legal tradition, and in this case, the concurring opinion is more technically a "supplementary opinion," and the concurrence in the judgment only a bare "opinion." Hiroshi Itoh, *The Role of Precedent at Japan's Supreme Court*, 88 WASH. U. L. REV. 1631, 1633 (2011).

[17] *Same Surname Case 2021*, 1488 HANTA at 99 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. § 1).

[18] *Id.* at 99–100 (Eng. trans. § 2(1)).

changed circumstances could make the system unconstitutional[19] but argued that none of the changes since 2015 — like increased female employment, less popular support, or the disapproval of the Committee formed by the Convention on the Elimination of All Forms of Discrimination Against Women[20] (CEDAW) — made it unconstitutional.[21] The Justices acknowledged that forcing someone to change their surname can harm personal interests through, for example, feelings of identity loss, and that, to avoid this harm, some people have chosen not to marry; however, they asserted that addressing these consequences was the Diet's job.[22]

Justice Miura concurred only in the judgment, arguing that the same-surname system was unconstitutional but still agreeing that the SCJ should uphold the dismissal of the applications.[23] He noted that since the reasonableness of a restriction involving constitutional rights was in question, the SCJ needed to examine the constitutionality of the laws "according to the nature of the relevant right[s]."[24] He argued that surnames and given names had value as symbols of one's individuality even if surnames traditionally showed relationship status.[25] He noted that the law makes one spouse give up those personal interests, *directly* constraining the marriage.[26] He thought that not allowing exceptions was unconstitutional because of how today's family structures differ from traditional family structures.[27] Justice Miura also said that two factors lessened the system's rationality: first, the law affects only some families, which weakens the "public announcement" rationale; and second, more people are informally using maiden names after marriage, which weakens the "family unity" rationale.[28] Then he argued that even though the statutes' texts were gender-neutral, that did not mean the system's effects were also gender-neutral.[29] He voted to uphold the system, however, as he contended that the SCJ could not strike it down without the Diet first making changes to the broader legislative framework; to do otherwise would cause "confusion in society."[30]

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19 *Id.* at 100 (Eng. trans. § 2(2)).

20 United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, 1249 U.N.T.S. 13.

21 *Same Surname Case 2021*, 1488 HANTA at 99–100 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. § 2).

22 *Id.* at 100–01 (Eng. trans. § 3).

23 *Id.* at 101 (Miura, J., concurring in the judgment) (Eng. trans. intro.).

24 *Id.* at 102 (Eng. trans. § 3(1)).

25 *See id.* at 101 (Eng. trans. § 1).

26 *Id.* at 102 (Eng. trans. § 3(1)).

27 *See id.* at 103 (Eng. trans. § 4(1)).

28 *Id.* He noted possible discrimination against children "born out of wedlock." *Id.*

29 *Id.* at 103–04 (Eng. trans. § 4(2)(B)).

30 *Id.* at 105 (Eng. trans. § 5).

Justices Miyazaki and Uga dissented.[31] They agreed with Justice Miura that the same-surname system is unreasonable and unconstitutional but argued that the SCJ should have ordered the applications' acceptance because the Mayor did not have discretion to deny them.[32] The Justices asserted that marriage is a natural human activity and not simply a state service.[33] They also noted that, in modern society, the *full* name carries import and identifies the individual.[34] Some requirements, like notifying the government of a marriage, were reasonable because they were necessary to provide services, but the Justices argued that the same-surname system went too far.[35] They stressed the different outcomes for men and women, noting it is almost always women who change their surnames,[36] and cited societal changes like the increasing popularity of maiden names as evidence of the system's irrationality.[37] They also argued that marriage is private, so any "public announcement" justification could not be sustained,[38] and that the CEDAW committee's recommendations against the system signaled the same-surname system was unconstitutional.[39]

Justice Kusano also dissented, arguing that the system went against a constitutionally required welfare analysis.[40] He argued that Article 13 of the Constitution requires grounding laws in individual dignity, and if it is obvious the Diet is "ignor[ing] individual dignity" in its weighing of values, the SCJ should step in.[41] He asserted that allowing exceptions would not harm people who want to change their names, but that not allowing exceptions harms people who do not, including by making people share their relationship statuses with employers.[42] He also considered children's and third parties' welfare, concluding that the welfare gained from allowing exceptions far outweighed the welfare lost.[43]

The opinions in favor of upholding the system epitomized a weak form of judicial review that is deferential to the legislature and that does not weigh rights and interests, ignoring some altogether. In the abstract,

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[31] *Id.* (Miyazaki & Uga, JJ., dissenting) (Eng. trans. intro.).

[32] *See id.* at 116–17 (Eng. trans. § 3). They also argued that even if the Diet needed to make broader changes to the legislative framework, that did not make the dismissal valid and merely meant the Diet needed to make prompt changes. *Id.*

[33] *Id.* at 106 (Eng. trans. § 1(1)(F)).

[34] *Id.* at 107–08 (Eng. trans. § 1(3)(B)).

[35] *Id.* at 107 (Eng. trans. § 1(1)(G), 1(2)).

[36] *Id.* at 112 (Eng. trans. § 2(2)(A)) (noting that ninety-six percent of the time the woman changes her surname).

[37] *Id.* (Eng. trans. § 2(2)(B)).

[38] *Id.*

[39] *See id.* at 114–16 (Eng. trans. § 2(2)(C)).

[40] *Id.* at 117 (Kusano, J., dissenting) (Eng. trans. intro.).

[41] *Id.* (Eng. trans. § 1).

[42] *Id.* at 117–18 (Eng. trans. § 2(1)(A), 2(2)).

[43] *Id.* at 118–19 (Eng. trans. § 2(2)(B)–(E)).

this decision says little about the status of individual rights, but, in the Japanese context, there might be cause for concern. Scholars question whether Japan's current Constitution, which enshrines individual rights and gives the SCJ judicial review,[44] emerged democratically and is therefore legitimate.[45] General Douglas MacArthur had U.S. officials draft a constitution for Japan in eight days after he rejected the Japanese government's attempt at a draft.[46] None of the writers were experts in constitutional law, and the first draft was in English.[47] After its debate in the Diet and translation into Japanese, the Constitution became law in 1947, and it remains the oldest unamended constitution in the world.[48] Worries about the Constitution's legitimacy could make the SCJ reluctant to scrutinize the legislature's decisions with a strong form of judicial review.[49]

As of 2021, the SCJ has used judicial review to strike down laws only ten times.[50] As a result, scholars have called the SCJ "the most conservative constitutional court in the world"[51] and decried it as "so subdued as to deprive judicial review of all its significance."[52]

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[44] HIROSHI ODA, JAPANESE LAW 21 (3d ed. 2009). This Constitution replaced the Meiji Constitution of 1889, which allowed the legislature to limit rights by statute. *Id.* at 26, 86.

[45] *See, e.g.*, Satoshi Yokodaido, *Constitutional Stability in Japan Not Due to Popular Approval*, 20 GERMAN L.J. 263, 264 n.7 (2019).

[46] Nobuhisa Ishizuka, *Constitutional Reform in Japan*, 33 COLUM. J. ASIAN L. 5, 8 (2019); *see Case Study: Creating the Japanese Constitution*, 15 INSIGHTS ON L. & SOC'Y 8, 8–9 (Am. Bar Ass'n ed., 2015).

[47] *Case Study: Creating the Japanese Constitution*, *supra* note 46, at 9.

[48] *Id.*; Kenneth Mori McElwain, *The Anomalous Life of the Japanese Constitution*, NIPPON.COM (Aug. 15, 2017), https://www.nippon.com/en/in-depth/a05602/the-anomalous-life-of-the-japanese-constitution.html [https://perma.cc/9CNK-KSXR]. Some scholars see the Meiji Constitution as proof of a "communitarian" culture. *E.g.*, John O. Haley, *Constitutional Adjudication in Japan: Context, Structures, and Values*, 88 WASH. U. L. REV. 1467, 1471 (2011) ("Community norms, not transcendental norms, are what matters."). Others say Japan had no concept of individual rights until the 1850s. *See, e.g.*, ODA, *supra* note 44, at 86.

[49] *See* Yokodaido, *supra* note 45, at 264 n.7 ("If the constitution has not been democratically enacted, there will always be doubts about its legitimacy, which will prevent it from becoming rooted firmly.").

[50] Keigo Obayashi, *Free Speech Jurisprudence in Japan: The Influence of Comparative Constitutional Law*, *in* HATE SPEECH IN JAPAN: THE POSSIBILITY OF A NON-REGULATORY APPROACH 341, 341 & n.1 (Shinji Higaki & Yuji Nasu eds., 2021) (collecting cases from 1947 to 2019 that held statutes unconstitutional). For comparison, between 1958 and 2019, the U.S. Supreme Court, which has a comparably sized docket, see David S. Law, *The Anatomy of a Conservative Court: Judicial Review in Japan*, 87 TEX. L. REV. 1545, 1577 (2009), struck down nearly 500 laws on constitutional grounds, *Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court*, CONST. ANNOTATED, https://constitution.congress.gov/resources/unconstitutional-laws [https://perma.cc/HFD6-KM8T]. From its creation in 1951 to 2009, Germany's Federal Court of Justice struck down over 600 laws. Law, *supra*, at 1547 & n.5.

[51] Law, *supra* note 50, at 1546.

[52] Kazuyuki Takahashi, *Why Do We Study Constitutional Laws of Foreign Countries, and How?*, *in* DEFINING THE FIELD OF COMPARATIVE CONSTITUTIONAL LAW 35, 47 (Vicki C. Jackson & Mark Tushnet eds., 2002). The contextual meaning of "conservative" is debated. Professor John Haley accepts that the Justices are conservative, *see* Haley, *supra* note 48, at 1468, but dislikes using raw numbers to call them "exceptionally" conservative, *see id.* at 1468, 1483. Haley's

The reasons for this wariness are still unclear.[53] But, as Professor Nobuhisa Ishizuka explains, the *result* of this wariness is crystal: the constitutional text has not changed, but the Diet passes laws in line with traditional values and not the Constitution, "adapting the democratic principles of the constitution to the conservative social and political conventions of the country."[54] And today's effective one-party rule in Japan might facilitate this adaptation.[55]

This is the milieu in which the SCJ decided this case, plainly deferred to the legislature, did not balance the rights at stake, and as a result, overlooked the free expression implications of its logic. The majority opinion, concurring opinion, and 2015 case showed their deference by suggesting that "[h]ow this type of system should be designed is a matter that needs to be discussed and determined by the Diet."[56] That the SCJ deferred in one more case does not evince weak judicial review. This case is an example of weak judicial review, however, because none of the opinions that deferred to the legislature *compared* the public interest to private, personal interests. They minimized the private interests, pointing to the use of premarriage surnames postmarriage as a way of alleviating social disadvantages, but never balanced the *significance* of any interests against each other.[57]

Article 13 of the Japanese Constitution says "[a]ll 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," which implies a balancing test with individual rights

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argument rests on the assumption that fewer unconstitutional laws reach the SCJ than reach other constitutional courts. One plausible reason for that could be the Cabinet Legislation Bureau's (CLB) role in reviewing laws before they reach the Diet, *see id.* at 1477, but Professor David Law suggests such explanations fall short, *see* David S. Law, *Why Has Judicial Review Failed in Japan?*, 88 WASH. U. L. REV. 1425, 1455 (2011) ("It is unduly optimistic to think that pre-enactment review by the CLB has been so thorough and effective that the SCJ is left with practically nothing to do.").

53 The Justices might doubt that their role really includes judicial review or doubt their power to force the Diet to do what they say. *See* Law, *supra* note 52, at 1427–28, 1452 (recognizing various explanations and noting the SCJ's "impotence," *id.* at 1452); Shigenori Matsui, *Why Is the Japanese Supreme Court So Conservative?*, 88 WASH. U. L. REV. 1375, 1376 (2011) (arguing that the Justices' "reluctance . . . to view the Constitution as a source of positive law to be enforced by the judiciary" explains the SCJ's conservatism).

54 Ishizuka, *supra* note 46, at 15.

55 *See id.* at 25 & n.123. This one-party rule might also add to the SCJ's impotence because it might make it easier for the Diet to ignore the SCJ. *See id.* at 27 n.131 ("[T]he Supreme Court has been willing to review voting power imbalances . . . . [It found] the apportionment schemes of two [redistricting] laws unconstitutional. However, the Diet has failed to act[,] . . . and the Court has not enforced its holdings nor has it invalidated the results of any elections.").

56 *See Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2).

57 *See id.* at 100 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. § 2(2)); *Same Surname Case 2015*, Dec. 16, 2015, Heisei 26 (o オ) no. 1023, 1421 HANREI TAIMUZU [HANTA] 84, 92–93 (Eng. trans. § IV.4(1)(B)), *translated in Judgments of the Supreme Court*, CTS. OF JAPAN, https://www.courts.go.jp/app/hanrei_en/detail?id=1435 [https://perma.cc/6475-WGYJ].

on one side and the public interest on the other.[58] But the majority opinion, concurring opinion, and 2015 case did not weigh interests. Instead, they just said that the personal interests were not enough. The 2015 case majority gave three public welfare interests in forcing couples to share a surname: showing the legitimacy of children, providing ease for the child in sharing a surname with both parents, and having feelings of unity for all family members with that surname.[59] These public interests, the 2021 concurring opinion explained, conflict with the personal interests of avoiding feeling a "loss of identity and . . . disadvantages in social life" that come with changing one's official surname.[60] However, instead of weighing the interests as Justice Kusano did in dissent[61] and despite acknowledging societal changes since the 2015 case, the 2021 majority and concurring opinions deferred entirely to the legislature on the question of the proper surname system.[62]

So, rather than analyze the significance of competing interests to see if the system was unreasonable and therefore unconstitutional, the majority and concurring opinions acknowledged the interests and deferred to the Diet. Notably, Justice Miura's opinion did weigh the interests but still deferred for broader societal reasons.[63] For such an opinion to be possible calls into question whether the SCJ's role as interpreter of the Constitution is about enforcing individual rights, and it reveals how reluctant Justices might be to strike down laws.

Last, the SCJ's failure to weigh the free expression rights implicated by its reasoning shows how weak judicial review might lead the SCJ to overlook some rights altogether. Surnames involve more personal interests than any of the opinions acknowledged.[64] And forced changes of a

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[58] NIHONKOKU KENPŌ [KENPŌ], art. 13; *see Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2); *id.* at 100 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. § 2(2)) ("[W]e consider that the Provisions can come to be considered [unconstitutional and beyond the Diet's discretion], depending on changes in circumstances concerning the [law's] reasonableness . . . ."); *Same Surname Case 2015*, 1421 HANTA, at 90–91 (Eng. trans. § II.3) ("[Personal] interest[s] may be a matter that should be taken into consideration when examining whether or not [a law violates] Article 24 of the Constitution."). While in theory the SCJ could have made a formalist rights-interests distinction to decide the case, the majority foreclosed this by saying interests have nonzero weight. *See Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2).

[59] *Same Surname Case 2015*, 1421 HANTA at 92–93 (Eng. trans. § IV.4(1)).

[60] *Same Surname Case 2021*, 1488 HANTA at 99–100 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. § 2(1)).

[61] *Id.* at 117–19 (Kusano, J., dissenting) (Eng. trans. § 2). His opinion included *more* public interests than do other opinions. *Id.*

[62] *Id.* at 98–99 (majority opinion) (Eng. trans. § 2). Neither the 2021 concurring opinion nor the 2015 majority opinion did much better. *See id.* at 100 (Miyama, Okamura & Nagamine, JJ., concurring) (Eng. trans. § 2(2)); *Same Surname Case 2015*, 1421 HANTA at 93 (Eng. trans. § IV.4(2)).

[63] *Same Surname Case 2021*, 1488 HANTA at 105 (Miura, J., concurring in the judgment) (Eng. trans. § 5).

[64] For example, onomancy — a form of divination based on a full name — is popular in Japan. *See* Laura Miller, *The Divination Arts in Girl Culture*, *in* CAPTURING CONTEMPORARY JAPAN:

surname implicate political speech for both spouses.[65] Previously, the SCJ said free expression is "a fundamental human right . . . that underpins democratic society,"[66] but, in this case, the holding recycled problematic reasoning from the 2015 case.[67] Not all couples want to "publicly indicate to others that they are members of one unit."[68] In fact, they might want to indicate something to the contrary. So, forcing couples to share a surname is both a privacy concern, as the dissents noted,[69] and a concern of compelled political expression. Whether the public interests outweigh those concerns in this case is for the SCJ to decide. But that scholars have a difficult time pinning down the Court's free expression doctrine[70] evinces the SCJ's failure to weigh interests in this case and others. This vagueness and the fact that the SCJ has yet to strike down a single law on free expression grounds is likely why scholars describe the free expression jurisprudence as "highly deferential to the government and . . . not underpinned by any serious analysis."[71]

Weak judicial review does not necessarily mean individual rights are on the chopping block.[72] But in modern Japan, if both the Japanese public and Supreme Court question the legitimacy of the Constitution and a single party dominates politics, leaving scant room for competing voices in constitutional adaptation, there might be a reason to worry.

DIFFERENTIATION AND UNCERTAINTY 247, 255 (Kuwano et al. eds., 2014) (discussing quasi-religious onomancy, "*seimei handan*" (姓名判断)). A Japanese onomancy website regularly exceeds 900,000 monthly hits. *See Enamae.net Traffic Overview*, SIMILARWEB, https://www.similarweb.com/website/enamae.net [https://perma.cc/8U5T-ADMG]. Names also have value for family cohesion through indicating birth order (for example, Ichirō (一郎), roughly meaning "first born son") or by being full sentences (for example, the full name "Tsutomu Hata," roughly means "work for the country").

[65] Such political speech often occurs in protest of gender inequality à la Lucy Stoners. *See* United States v. Walker, 719 F. Supp. 2d 586, 601 & n.13 (W.D. Pa. 2010) (explaining how Lucy Stone refused to change her surname in the mid-nineteenth century). The United States is of interest since Japanese courts have adopted much of its free expression doctrine. *See* Obayashi, *supra* note 50, at 347. But other countries recognize a prohibition against compelled speech too. *See, e.g.*, Lee v. Ashers Baking Co. [2018] UKSC 49, [52] (appeal taken from N. Ir.) (U.K.); RJR-MacDonald Inc. v. Canada (Att'y Gen.), [1995] 3 S.C.R. 199, 320 (Can.).

[66] Saikō Saibansho [Sup. Ct.] Dec. 7, 2012, Heisei 22 (a あ) no. 957, 1385 HANREI TAIMUZU [HANTA] 94, 98–99 (Eng. trans. § 1(3)(A)), *translated in Judgments of the Supreme Court*, CTS. OF JAPAN, https://www.courts.go.jp/app/hanrei_en/detail?id=1180 [https://perma.cc/LVR4-S4GL].

[67] *See Same Surname Case 2021*, 1488 HANTA at 98–99 (Eng. trans. § 2).

[68] *Same Surname Case 2015*, Dec. 16, 2015, Heisei 26 (o オ) no. 1023, 1421 HANREI TAIMUZU [HANTA] 84, 92 (Eng. trans. § IV.4(1)(A)), *translated in Judgments of the Supreme Court*, CTS. OF JAPAN, https://www.courts.go.jp/app/hanrei_en/detail?id=1435 [https://perma.cc/6475-WGYJ].

[69] *See Same Surname Case 2021*, 1488 HANTA at 111 (Miyazaki & Uga, JJ., dissenting) (Eng. trans. § 1(5)(G)–(H)); *id.* at 117–18 (Kusano, J., dissenting) (Eng. trans. § 2(1)).

[70] *See, e.g.*, Obayashi, *supra* note 50, at 343–44 (arguing that the jurisprudence seems to be categorical but is in fact not). Scholars locate Japan's legal doctrines as somewhere between German and U.S. approaches. *See id.* (describing how scholars debate whether Japan follows the U.S. categorical approach or the German proportionality approach).

[71] Shinegori Matsui, *Freedom of Expression in Japan: The Constitutional Framework of Protection*, *in* HATE SPEECH IN JAPAN, *supra* note 50, at 35, 35.

[72] Some countries that scholars consider rights protective forbid judicial review. *See* Douglas J. Amy, *The Immense and Disturbing Power of Judicial Review*, SECOND-RATE DEMOCRACY, https://www.secondratedemocracy.com/the-problem-of-judicial-review [https://perma.cc/XUY4-U3GC].