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The Nineteenth Amendment and the U.S. "Women's Emancipation Policy" in Post-World War II Occupied Japan: Going Beyond Suffrage

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**THE NINETEENTH AMENDMENT AND THE U.S.
“WOMEN’S EMANCIPATION POLICY” IN POST-WORLD
WAR II OCCUPIED JAPAN: GOING BEYOND SUFFRAGE**

*Cornelia Weiss**

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I. INTRODUCTION

As we celebrate the 100th anniversary of Nineteenth Amendment, I write this paper to explore the influence of the Nineteenth Amendment on U.S. military occupation policy in Post-World War II Japan. A mere 25 years after the ratification of the Nineteenth Amendment, the Nineteenth Amendment had become so ingrained in U.S. identity that the first demand of General MacArthur, the Supreme Commander of the Allied

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Powers (SCAP) to Japan, was the “emancipation of women through their enfranchisement.”¹ However, unlike the U.S., “enfranchisement” under the U.S. headed occupation (Occupation) did not stop at suffrage. Instead, enfranchisement under the Occupation incorporated the definitions of “enfranchise” (“to endow with the rights of citizenship” and “to free, as from bondage”²) to create legal reforms to actualize the “emancipation of women” (women’s emancipation policy). The Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), in paragraph 13 of its General Recommendation 30, recognizes: “Women’s rights in . . . post-conflict processes are affected by various actors, including States.”³ This paper focuses on the impact of an outside power—with its own contradictory history of suppression and agitation for women’s rights—to influence whether discrimination against women is eliminated, decreased, continued, or increased.

I start this paper by examining the orders the Occupation was expected to fulfill and the belief that to fulfill its orders, the Occupation needed to seek the “emancipation of women.” I review the Occupation’s patriarchy analysis. I address women’s suffrage. I examine the Occupation’s proactive efforts to eradicate the “enslavement” of women (enslavement through bondage and licensed prostitution). I explore the Occupation’s drafting of a constitution that included not only women’s suffrage, but that went beyond the U.S. Constitution to provide rights of “dignity and essential equality” for women (yet omitted social guarantees for women). I unravel two disparate election laws enacted under the Occupation and address their differing effect on women’s ability to vote and to be elected, as well as the Occupation’s efforts to counter psychological violence against female candidates and to provide equal opportunity for female candidates. I then turn to the Civil Code drafted under the Occupation to examine its implementation (and failures of implementation) of constitutionally mandated rights of “dignity and essential equality” for women. I address the Labor Law drafted under the Occupation and its effect on women’s economic (in)equality. I conclude

1. DOUGLAS MACARTHUR, REMINISCENCES 294 (1964). As Supreme Commander of the Allied Powers (SCAP), General MacArthur was the head of the “Occupation” in post-WWII Japan. An “occupation,” as defined by the American Heritage Dictionary, is “the military government controlling an occupied nation or territory.” *Occupation*, AM. HERITAGE DICTIONARY (3d ed. 1997).

2. *Enfranchise*, AM. HERITAGE DICTIONARY.

3. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict, and Post-Conflict Situations, ¶ 13, U.N. Doc. CEDAW/C/GC/30 (2013).

by addressing the future through the lens of the 200th anniversary of the Nineteenth Amendment.

I do not address in this paper the criticisms directed against the women's emancipation policy, be they at the time of the Occupation ("experts" expressing the view that "Japanese women were too steeped in the tradition of subservience to their husbands to act with any degree of political independence"⁴) or today's implied charges of "imperial feminism." I further do not speculate whether, "but for" the Occupation, women in Post-World War II Japan would have obtained suffrage, the elimination of "enslavement," and equal rights in their constitution. However, in an interview in 1964, women's rights pioneer Ichikawa Fusae opined that without (1) the defeat of Japan and (2) the Occupation, Japanese women would not have gained constitutional rights as quickly.⁵

I write this paper as a veteran of years of U.S. military service as a military lawyer (JAG), culminating in the rank of colonel. Now retired, my opinions are my own. My education, from women's studies to war college, excluded any mention of General MacArthur's "women's emancipation policy." My experiences, to include military service in FARC-era Colombia (where, had the government of Colombia not discriminated against women, Colombia arguably would not have suffered war to the extent it did⁶), have led me to question why the history of the Post-WWII "women's emancipation policy" in Japan is unknown and untaught in military, peace, legal, history, and gender studies. The absence of this history has impoverished our ability, as stated by a former U.S. president and Nobel Peace Prize winner, to grapple with "the most serious, pervasive, and ignored violation of basic human rights"—discrimination and violence against women and girls.⁷ I write to illuminate our ability to address discrimination and violence against women and girls.

4. MACARTHUR, *supra* note 1, at 305.

5. Dee Ann Vavich, *The Japanese Woman's Movement: Ichikawa Fusae, a Pioneer in Woman's Suffrage*, in WOMEN AND WOMEN'S ISSUES IN POST WORLD WAR II JAPAN 54 (Edward R. Beauchamp ed., 1998).

6. Cornelia Weiss, *Transforming Reality: Employing International Law to End Practices that Exclude Women as Peacemakers, Peacekeepers, and Peacebuilders*, in RESEARCH HANDBOOK ON INT'L LAW AND PEACE 329–50, at 333 (Cecilia Bailliet ed., 2019).

7. *Front inside jacket cover* to JIMMY CARTER, A CALL TO ACTION: WOMEN, RELIGION, VIOLENCE, AND POWER (2014) (regarding discrimination and violence against women and girls).

II. ORDERS

In late August 1945, the night before flying from Bataan to Japan to start the Occupation (before the formal surrender ceremony of September 2, 1945, on the USS Missouri in Tokyo Bay), General MacArthur, on his front porch, “outlined his policy in Japan”; a policy that explicitly included “allow women to vote.”⁸

A little over a month later, on October 3, 1945, General MacArthur “expressed” to Japan’s Prime Minister: “In the achievement of the Potsdam Declaration, the traditional social order under which the Japanese people for centuries have been subjugated will be corrected.”⁹ General MacArthur continued: “In the implementation of these requirements and to accomplish the purposes thereby intended, I expect you to institute the following reforms in the social order of Japan as rapidly as they can be assimilated.”¹⁰ MacArthur’s first demand: “The emancipation of the women of Japan through their enfranchisement—that, being members of the body politic, they may bring to Japan a new concept of government directly subservient to the well being of the home.”¹¹

One potential effect: By January 1, 1946, Emperor Hirohito issued an Imperial Rescript requiring “government by members of all classes of people, equality of opportunity, and equity and justice to be the yardstick of action instead of tradition.”¹²

To understand why a sexagenarian male military leader (General MacArthur 1880–1964) demanded the emancipation of women, we must first understand that military members seek to fulfill the lawful orders they are given. The orders to the Occupation of Post-WWII Japan required the Occupation, in addition to eliminating militarism, to promote democracy.

8. Bonner Fellers, Notebook of General Bonner Fellers, handwritten notes of Aug. 29, 1945, MacArthur Memorial Archives.

9. Press Release [on meeting between Prime Minister Baron Shidehara and General MacArthur], at 1 (Oct. 3, 1945) (MacArthur Memorial Archives) [hereinafter Meeting between Prime Minister Shidehara and General MacArthur].

10. *Id.* See also MACARTHUR, *supra* note 1, at 294.

11. *Id.* See also MACARTHUR, *supra* note 1, at 294; General Headquarters, Supreme Commander for The Allied Powers, Allied Translator and Interpreter Section, *Press Translations*, No. 514, *Political Series: 119, Item 3, Present Day Government Politics - Tokyo Shimbun - 24 Dec 45*. Translator S. Ono, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0514-diplomatic.html [<https://perma.cc/66P6-3BHV>] (“According to Supreme Headquarters’ directive, issued shortly after its formation, the current Cabinet was ordered to accomplish the following . . . (1) liberation of the Japanese women through women’s suffrage.”)

12. U.S. DEPT. OF STATE, OCCUPATION OF JAPAN, POLICY AND PROGRESS 23, App. 26 (U.S. Gov. Print. Off. 1946) [hereinafter POLICY AND PROGRESS].

(In addressing whether a military could impose democracy, General MacArthur stated: “Pure democracy is inherently a spiritual quality which voluntarily must spring from the determined will of the people. It thus, if it is to become firmly rooted, may not be imposed upon a people by force, trickery or coercion.”¹³)

Two instruments comprised the orders: (1) the July 26, 1945 Potsdam Declaration and (2) the September 21, 1945 U.S. Initial Post-Surrender Policy (Policy).

The Potsdam Declaration demanded: “The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people . . . respect for the fundamental human rights shall be established.”¹⁴

The Policy laid out the ultimate objectives for the Occupation stating that “the ultimate objectives of the United States in regard to Japan, to which policies in the initial period must conform are”:

(a) To insure that Japan will not again become a menace to the United States or to the peace and security of the world.

(b) To bring about the eventual establishment of a peaceful and responsible government which will respect the rights of other states and will support the objectives of the United States as reflected in the ideals and principles of the Charter of the United Nations. The United States desires that this government should conform as closely as may be to principles of democratic self-government but it is not the responsibility of the Allied Powers to impose upon Japan any form of government not supported by the freely expressed will of the people.¹⁵

To achieve the ultimate objectives, the Policy required, in addition to disarming and demilitarizing Japan,¹⁶ that the Occupation “encourage” the Japanese people “to develop a desire for individual liberties and respect for fundamental human rights”¹⁷ and “to form democratic and representative organizations.”¹⁸ The Policy charged the Occupation to “reform” and “progressively influence” the legal system “to protect

13. Memo signed by Gen. MacArthur, Alfred Rodman Hussey Papers, at 17-A-2-1 (Apr. 23, 1946), available on microfiche at the U.S. Library of Congress [hereinafter HUSSEY PAPERS].

14. Potsdam Declaration, para 10 (1945).

15. State-War-Navy Coordinating Committee, *Politico-Military Problems in the Far East: United States Initial Post-Defeat Policy Relating to Japan*, SWNCC 150/4/A, at Part I (B) (Sept. 21, 1945), http://www.ndl.go.jp/constitution/e/shiryo/01/022_2/022_2tx.html [https://perma.cc/9XCN-B4SY].

16. *Id.* at Part I.

17. *Id.* at Part I (C).

18. *Id.*

individual liberties and civil rights.”¹⁹ The Policy mandated: “Laws, decrees and regulations which establish discriminations on grounds of race, nationality, creed or political opinion shall be abrogated; those which conflict with the objectives and policies outlined in this document shall be repealed, suspended or amended as required.”²⁰

What the Policy did not mandate was abrogating, repealing, suspending, or amending laws, decrees, and regulations that established discrimination on grounds of sex and gender. Nor did the military regulation of FM 27-5, the United States Army and Navy Manual of Military Government and Civil Affairs (Manual).²¹ Instead, the Manual, in addressing discriminatory laws, stated: “Laws which discriminate on the basis of race, color, creed or political opinions should be annulled as the situation permits. However, the practice of such customs or observance of such traditions as do not outrage civilized concepts may be permitted.”²² Whether and to what extent the Occupation would view discrimination against women as permissible or as an “outrage” is best viewed through the Occupation’s actions and inactions.

III. PATRIARCHY ANALYSIS

Occupationaire Carmen Johnson, a Women’s Affair Officer from 1947 to 1951 in the Shikoku Military Government Region and a member of the Women’s Army Corps during WWII, asked, “What – if anything – was to be done about”:

- subordination of the individual;
- the traditional concept that women are inferior to men;
- hierarchy that put people into positions as inferior, equal or superior in comparison with others;
- filial piety that taught duty and obedience to parents and ancestors, and for wives, to mothers-in-law in particular, the family system;
- the complex categories into which fell in or obligations; and decision-making.²³

19. *Id.* at Part III (3).

20. *Id.*

21. FM 27-5, U.S. ARMY AND NAVY MANUAL OF MIL. GOV’T AND CIVIL AFF. (Dec. 22, 1943).

22. *Id.* at 12, para 9(n).

23. Carmen Johnson, *Women’s Rightful Equality: An Objective of Shikoku Military Government Region*, in OCCUPATION OF JAPAN: THE GRASS ROOTS; THE PROCEEDINGS OF THE EIGHTH SYMPOSIUM 11, 16 (Walter F. Nimmo ed., 7–8 Nov. 1991).

Translated into everyday life, this included being “handicapped by an education inferior to that of men; limited by social pressures to modest behavior; paid inadequate salaries less than to men; ill-equipped or lacking in administrative training and experience; circumscribed by culture and tradition reaching back thousands of years.”²⁴ Over a half-century after the Occupation, the UN Security Council, in UNSCR 1325, advocated for post-conflict “measures that ensure the protection and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police, and the judiciary.”²⁵ Whether the Occupation of Post-World War II Japan in 1945, not the Swedish government in 2014, had the world’s first “feminist foreign policy,” I leave for others to re-evaluate.

For the first years of the Occupation, SCAP issued monthly reports on the Occupation. These SCAP reports reflected the Occupation’s understanding of Japan as well as provided insight into what SCAP found to be important. Important included women. SCAP reports had a section titled “Women.”

The first SCAP report, the report of September–October 1945 (the beginning of the Occupation), addressed the Occupation’s understanding of the historical status of women in Japan, stating: “From time immemorial the great mass of Japanese women has been restricted both by custom and legislation from any form of activity which would make them appear as equal of men.”²⁶ At least one member of the Occupation contended: “There is no reason to believe that the cake of custom is so hard that it cannot be broken.”²⁷ Whether the Occupation could, and would, break the restrictions by legislation would remain to be seen.

The report of September–October 1945 asserted that the Occupation had taken the steps of compiling “a list of laws restricting the rights of women”; giving “nationally known women leaders” the opportunity to appear on the radio; and advising officers of women’s organizations “on methods of organization.”²⁸ Barbara Molony maintains that “soon after MacArthur arrived in Japan, Kato Ishimoto Shidzue was summoned to the Occupation Headquarters to advise the Americans about policies on

24. *Id.*

25. S.C. Res. 1325, para 8(c) (Oct. 31, 2000).

26. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN AND KOREA, SEPTEMBER–OCTOBER 1945 at 169–70 para. 100 [hereinafter SUMMATION SEPTEMBER–OCTOBER 1945].

27. W. I. Ladejinsky, *Trial Balance in Japan*, 27 FOREIGN AFF. 104, 116 (1948).

28. SUMMATION SEPTEMBER–OCTOBER 1945, *supra* note 26, at para 103.

women and family reform.”²⁹ Helen Hopper explains that, in the first month of the Occupation (September 1945), the Occupation asked Shidzue what Japanese women wanted.³⁰ Hopper then reports that Shidzue replied “broadly that they would want to see their rights as human beings assured.”³¹ Molony also maintains “as early as 1945,” Occupationaire Lieutenant Ethel Weed “had called together a number of leading feminists, including Kato, Ichikawa Fusae, Miyamoto Yuriko, and Yamakawa Kikue.”³² Lieutenant Weed was the Women’s Information Officer in the Women’s Affair Branch of the Civil Information and Education Section (CIE) of General MacArthur’s Headquarters.³³ Her job: “To formulate policy in areas affecting Japanese women and to develop ‘programs for the dissemination of information pertinent to the reorientation and democratization of Japanese women in political, economic and social fields.’”³⁴

By December 1945, the SCAP report stated: “Women are beginning to discuss the feudalistic family system and the need for removal of legal discrimination against them.”³⁵ The Occupation recognized the relationship between Japan’s “house” system and the emancipation of women. (It is unclear the detail of knowledge of the “house” system that General MacArthur had when he stated that the emancipation of women was to bring to Japan a “government directly subservient to the well being of the home.”³⁶) The “house” system was a system in which immediate and extended family members, regardless of whether they lived together or not, pledged unconditional allegiance to the “head of house” in exchange for protection and financial support³⁷:

- The “head” had “absolute authority over family members.”³⁸

29. Barbara Molony, *Introduction* to BARONESS SHIDZUÉ ISHIMOTO, *FACING TWO WAYS: THE STORY OF MY LIFE*, at xiv (1984).

30. HELEN HOPPER, *A NEW WOMAN OF JAPAN: A POLITICAL BIOGRAPHY OF KATŌ SHIDZUÉ* 158 (1995).

31. *Id.*

32. Barbara Molony, *Afterword* to BARONESS SHIDZUÉ ISHIMOTO, *FACING TWO WAYS: THE STORY OF MY LIFE*, at xxv (1984).

33. HOPPER, *supra* note 30, at 161.

34. *Id.*

35. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, *SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN AND KOREA, DECEMBER 1945* at 174, para 30 [hereinafter *SUMMATION DECEMBER 1945*].

36. MACARTHUR, *supra* note 1, at 294; Meeting between Prime Minister Shidehara and General MacArthur, *supra* note 9.

37. NAOKO TAKEMARU, *WOMEN IN THE LANGUAGE AND SOCIETY OF JAPAN: THE LINGUISTIC ROOTS OF BIAS* 27 (2010).

38. *Id.*

- The “head” owned the “family property” (with the concurrent duty to “support needy members” of the house, as long as they were members of the house).³⁹
- If a family member did not submit to the “head,” the “head” had the power to expel the non-submitting member from the house.⁴⁰
- The duty of support extinguished as soon as an individual was no longer a member of the house—be it by divorce, death, or expulsion—with dire results, to include homelessness and starvation.⁴¹

The Civil Code of 1898 may have created the “house” system for all of Japan.⁴² Alfred Oppler, the Occupationaire in charge of the Legal Affairs Section during the drafting of the Civil Code, acknowledged: “Closely connected with this hierarchal set-up was the inferior role of women in Japanese society.”⁴³

It appears during the Occupation, belief existed in the need to eradicate patriarchy:

- “SCAP seeks to eradicate a patriarchal system which has served to stifle liberalism and democracy, locally and nationally.”⁴⁴ (Occupationaire W.I. Ladejinsky)
- “[T]he failure to achieve true democracy in Japan can be traced to this old feudalistic family system. Democracy will never become a reality, under a family system in which the rights and freedom of every member are not fully recognized.”⁴⁵ (Sunday Mainichi Magazine)
- “It is hardly necessary to say that the family is the unit and basis of all social relations. Unless it is democratized . . . one

39. Alfred C. Oppler, *The Reform of Japan’s Legal and Judicial System under Allied Occupation*, 24 WASH. L. REV. & ST. B.J. 290, 318 (1949).

40. *Id.* at 317.

41. *Id.* at 317–18.

42. TAKEMARU, *supra* note 37, at 27.

43. Oppler, *supra* note 39, at 317.

44. William M. Gilmartin & W. I. Ladejinsky, *The Promise of Agrarian Reform in Japan*, 26 FOREIGN AFF. 312, 319 (1948).

45. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 1395, Political Series: 349, Item 1, The General Election by ABE, Shinnosuke - Magazine: Sunday Mainichi (Weekly) - 20 Jan 46 Issue. Translator: T/E Ikemura & Sugasona*, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-1395-diplomatic.html [https://perma.cc/RXU4-DJQN].

can never hope for the democratization of any social relationships, whatsoever, be it the educational system, labor relations, economics or government.”⁴⁶ (Japanese Legal Scholar Sakae Wagatsuma)⁴⁷

IV. SUFFRAGE

Women’s suffrage, and demand for women’s suffrage, existed in Japan before the Occupation. Marnie Anderson and Nancy Diggs Brown contend that, in 1880, some Japanese women did hold the right to vote at the local level, and others fought for women’s suffrage.⁴⁸ Sally Ann Hastings, writing about the suffrage movement in Japan, states: “Even before the order from SCAP arrived, the Shidehara cabinet had already approved a decision to enfranchise women.”⁴⁹ Hastings asserts that, on August 25, 1945, “Ichikawa Fusae, Yamataka Shigeri, and other women leaders of the pre-war suffrage movement formed a Women’s Committee on Postwar Policy.”⁵⁰ According to Dee Ann Vavich, in the last days of August 1945, after “a very cool reception” from the Prime Minister, Ichikawa Fusae appealed to the newly forming Liberal party and returned with a promise that it would include women’s suffrage in its platform.⁵¹ Hastings further asserts that at a meeting on September 24, 1945, “members of the Women’s Committee passed a resolution addressed to the political parties demanding voting rights and political equality before the law.”⁵² According to Helen Hopper, during the September 1945 meeting at the Occupation Headquarters with Shidzue about women’s rights, the Occupationaires “expressed astonishment over the extent to which Japanese women had already made democratic demands and the fact that these women were not ‘in the dark’ about civil rights.”⁵³

46. Sakae Wagatsuma, *Democratization of the Family Relation in Japan*, 25 WASH. L. REV. & ST. B.J. 405, 426 (1950).

47. *Japan May Need a Sakae Wagatsuma-like Scholar to Help Hold Abe to Account*, MAINCHI (Jun. 29, 2019), <https://mainichi.jp/english/articles/20170629/p2a/00m/0na/008000c> [<https://perma.cc/X4FC-FH3L>].

48. MARNIE ANDERSON, *PLACE IN PUBLIC: WOMEN’S RIGHTS IN MEIJI JAPAN* 28, 32 (2010); NANCY DIGGS BROWN, *STEEL BUTTERFLIES: JAPANESE WOMEN AND THE AMERICAN EXPERIENCE* 98–99 (1998).

49. Sally Ann Hastings, *Women’s Professional Expertise and Women’s Suffrage in Japan, 1868-1952*, in *GENDER, NATION AND STATE IN MODERN JAPAN* 191 (Andrea Germer, Vera Mackie & Ulrike Wöhr eds., 2014).

50. *Id.*

51. Vavich, *supra* note 5, at 53.

52. Hastings, *supra* note 49, at 191.

53. HOPPER, *supra* note 30, at 158.

While General MacArthur issued his expectation on October 3, 1945, for women not to be denied suffrage, it was not until November 26, 1945, that the Diet convened for 18 days, principally to address the passage of a bill revising the law for the election of members to the House of Representatives⁵⁴ (the Ministry of Home Affairs “Bill for Revision of Law for the Election of the Members of the House of Representatives”).⁵⁵ However, as late as November 30, 1945, at least one [male] member of the House of Peers asked: “I understand that the Women’s Suffrage Law is ordered by the Supreme Commander, and if so, the Diet cannot disapprove of it on the ground it is premature?”⁵⁶ One of his fellow [male] Peers responded: “The Women’s Suffrage Law is not demanded formally by the Supreme Commander, but is only a wish expressed by him. The Government, with the point of view that it would be right for the Government itself to bring about such a desired matter, has proposed the bill.”⁵⁷ The proposed bill became the Election Law of December 17, 1945, which, *inter alia*, introduced a new voting system and no longer excluded women’s suffrage.⁵⁸

Within days after ending the exclusion against women, women’s political power increased. By December 29, 1945, a newspaper reported a push for a women’s cabinet to govern Japan, with the author stating: “There are many women who are amply qualified for cabinet members.”⁵⁹ The article addressed how, when a family becomes bankrupt, that “it is not rare in Japan that . . . the master retires to be replaced by the mistress, who, by virtue of her efforts, restores the family to its former prosperity.”⁶⁰ After providing ten names of women qualified to be cabinet members, the author questioned, given that Japanese men were no longer subject to military conscription due to Japan’s loss of the war, whether it

54. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMARY OF NON-MILITARY ACTIVITIES IN JAPAN AND KOREA, NOVEMBER 1945 at para 10.

55. *Id.* at 26.

56. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 204, Political Series: 50, Item 5, Deliberative Right of the Diet and the Allied Forces - Asahi Shimbun - 1 Dec 45. Translator T. Okamura*, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0204-diplomatic.html [<https://perma.cc/UA4T-7N4H>].

57. *Id.*

58. SUMMARY DECEMBER 1945, *supra* note 35, at 4.

59. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 572, Pol. Series: 132, Item 5 Possibility of a Women’s Cabinet - Tokyo Shimbun - 29 Dec 45. Translator: T. Kitayama*, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0572-diplomatic.html [<https://perma.cc/P5SW-P455>].

60. *Id.*

was “unreasonable to think the loss of responsibility means the loss of governing power?”⁶¹ The article’s author contended: “Unfortunately I have not heard of one instance in which men apologized to women, expressing their sorrow for having caused them great hardships.”⁶² The author further opined: “Men should reflect on their own failure . . . and should retire from leadership. They should help organize a women’s cabinet and endeavour to co-operate with women.”⁶³

The question raged whether women were prepared to vote. In December 1945, the SCAP report stated: “The Progressive and Liberal Parties contend that the majority of women are not yet prepared to use the ballot and they predict a light vote. The Socialist and Communist Parties have taken a more encouraging view and have inaugurated extensive educational programs.”⁶⁴

The announcement of women’s suffrage changed the political landscape. Most of the major Japanese political parties had female candidates.⁶⁵ The Japan Women’s Party formed “the first such political organization in Japan’s history.”⁶⁶ Two thousand women attended “[a] rally of all women’s organizations . . . in Tokyo [where] [a]ll political parties explained their platforms.”⁶⁷ These platforms called for the “emancipation and equality of women.”⁶⁸

On January 12, 1946, SCAP directed the Japanese government, via SCAPIN 584, to hold its first general elections no earlier than March 15, 1946.⁶⁹ The election was then “postponed” from March 31, 1946, to April 10, 1946, “to give the reorganized Japanese Home Ministry more time to ‘screen’ prospective candidates [running for office—candidates who may have been ineligible for various reasons under purge rules].”⁷⁰ As early as December 1945, the SCAP report opined that “[p]ostponement of the election will give women more time to develop their plans.”⁷¹ Thus a reason for the postponement might have also been to provide a greater opportunity for women to run for office, to empower women to vote, and for women to be elected. Historian Mary Beard recommended, in a 13-

61. *Id.*

62. *Id.*

63. *Id.*

64. SUMMATION DECEMBER 1945, *supra* note 35, at 176, para 46.

65. POLICY AND PROGRESS, *supra* note 12, at 22.

66. *Id.*

67. *Encouragement of Women’s and Youth’s Organizations*, in SUMMATION DECEMBER 1945, *supra* note 35, at 176, para 43.

68. POLICY AND PROGRESS, *supra* note 12, at 22.

69. *Id.* at App. 27.

70. *Id.* at 20.

71. SUMMATION DECEMBER 1945, *supra* note 35, at 176, para 46.

page letter to Lieutenant Ethel Weed, to work with Japanese women to engage in actions such as “door to door canvas[ing],” “mass meetings with stirring speakers,” “use of press,” “polling people on streets,” and “street corner meetings.”⁷²

The election occurred “only seven months and seven days after the surrender.”⁷³ General Whitney, the head of SCAP’s Government Section, observed: “There was wide criticism in Allied capitals of MacArthur’s decision to hold a general election so soon. But these critics obviously did not realize that most of the legislators with whom MacArthur would have to deal had been practically hand-picked at the height of . . . powers in 1942.”⁷⁴ And thus, “[t]he earliest possible date for a general election was therefore all-important.”⁷⁵

A concern was whether women would be able to have time to vote.⁷⁶ The war had devastated Japan. Jesse Steiner noted, in addition to “the scarcity of food and the widespread lack of employment,” that “[e]xtensive areas of the large cities were in ruins, many people still lived in air raid shelters, railway stations, and makeshift houses lacking even the elementary facilities for family life.”⁷⁷ In addition to time constraints due to lack of food, employment, and housing; other issues also were feared to prevent women from voting. One writer to a Japanese newspaper stated: “The woman who is busy with the everyday affairs of life, despite the fact that she is interested in the election, will be inclined to abstain from voting because of the distance of the polling place or the complicated formalities of voting.”⁷⁸ The writer’s proposed solution: “To prevent this, I want to advocate a new measure. That is, a voting box, which is locked like a money savings box, [which] would be taken from house to house by a member of the Neighborhood Association and every woman could

72. Letter from Mary Beard to Lt. Ethel B Weed, pg. 3 (Sept. 30, 1946) (Smith College Special Collections).

73. COURTNEY WHITNEY, *MACARTHUR: HIS RENDEZVOUS WITH HISTORY* 243 (1956).

74. *Id.* at 244.

75. *Id.*

76. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 1123, Political Series: 276, Item 3, The Importance of the Coming: General Election - Mainichi Shimbun - 3 Feb 46*. Translator: K. Murakami, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-1123-diplomatic.html [https://perma.cc/S76K-JRXU].

77. Jesse F. Steiner, *Japan’s Post-War Population Problems*, 31 *SOC. F.* 245, 247 (1953).

78. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 808, Pol. Series: 196, Item 2, A Woman’s Voice on Enabling Women to Vote - Provincial Newspaper Shinano Mainichi Shimbun (Nagano) - 14 Jan 46*. Translator: S. Sano, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0808-diplomatic.html [https://perma.cc/WD6C-XFH8].

put her vote into the box.”⁷⁹ It does not appear that Japan instituted the idea.

Female candidates came from all backgrounds and ideologies. A sampling of candidates and their platforms included:

- Nishimoro Moto, a principal of the Makibi Girls’ High School, who contended: “Female education is vital in order to improve women’s status . . . I think it is owing to American women’s fairness that measures for improving Japanese women’s status after defeat has been taken by the United States.”⁸⁰
- Miyai Asaka, a leader of the Kagawa Local Committee of the Communist Party with prior employment as a maid, who advocated: “The extreme corruption of Japan is due to the existence of capitalists and landowners, who are sabotaging production. In order to establish the liberty of a new Japan, it is urgent to solve our problems rapidly by promoting labor unions, and overthrowing the local agricultural administration.”⁸¹
- Tsuchiya Naraye, an official on the regular staff of the Osaka Boys’ Court and the Osaka Local Court, who opined: “Since we have been given suffrage, it is the only way to solve our problem and to discharge our duty, isn’t it? It is time for Japanese women to test their capacity by entering current politics. I will try to use women’s power to maintain peace.”⁸²

The platforms of women candidates included: “connect[ing] daily life directly with policies”; “birth control”; “making rural women free”; “doing away with the system and tradition whereby women are treated only as trifles”; “stamp[ing] out tuberculosis”; “better conditions for women teachers”; “improv[ing] the deplorable conditions of Japanese wives and mothers”; “improvements in women’s education, the raising of

79. *Id.*

80. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 479, Pol. Series: 112, Item 1, A Series of Biographies of Female Candidates - Provincial Newspaper Shinane Mainichi (Nagano) - 19 Dec 45. Translator: N. Tachibana*, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0479-diplomatic.html [https://perma.cc/DF8C-L4GY] [hereinafter *Press Translations, No. 479*].

81. *Id.*

82. *Id.*

the standard of culture and assistance for families of deceased soldiers”;⁸³ and “appeal[ing] on behalf of women’s difficulties in daily life.”⁸³

Between the time that the suffrage bill passed and the first election in which women voted, two other changes occurred—the abolition of lawful enslavement of women and the drafting of the Constitution.

V. ENSLAVEMENT

In January 1946, General MacArthur, via directive SCAPIN 642, “Abolition of Licensed Prostitution in Japan,” directed “the Japanese Government to abrogate all laws or ordinances permitting licensed prostitution and nullify all contracts that have the object of committing women to prostitution”;⁸⁴ that is, the “annulment of laws which permitted the enslavement for legal prostitution of thousands of Japanese women.”⁸⁵ La Cerda, a U.S. journalist, reported that General MacArthur “acted . . . under that part of the Potsdam Declaration guaranteeing respect for fundamental rights.”⁸⁶ Oppler explained that “licensed prostitution, with its Japanese by-product of involuntary servitude by women who bound themselves to serve for a fixed period, was abolished as inconsistent with the principle of equality of the sexes and individual liberty and dignity.”⁸⁷ Such enslavement, as described by the February 18, 1946, SCAP press release, was the “‘sale’ of daughters, frequently against the girls’ wishes.”⁸⁸ Licensed prostitution was considered “a relic of a feudalistic system of slavery, unsuitable for a new democratic Japan.”⁸⁹ It was anticipated that “more than 10,000 licensed prostitutes throughout the country will be set free.”⁹⁰

83. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 866, Pol. Series: 210, Item 4, The Whole World is Watching the Women’s Suffrage in JAPAN - Mainichi Shimbun - 20 Jan 46*. Translator: R. Ochiai, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0866-diplomatic.html [<https://perma.cc/Q3T5-JBVT>].

84. SUPREME COMMANDER OF THE ALLIED POWERS, GENERAL HEADQUARTERS, CATALOG OF SCAP DIRECTIVES Vol 1, 90 (1952) [hereinafter SCAP DIRECTIVES CATALOG].

85. Press Release, Gen. Headquarters, U.S. Army Forces, Ending of Legalized Prostitution to be Commemorated, (Feb. 18, 1946) (MacArthur Memorial Archives) [hereinafter Ending of Legalized Prostitution Commemorated].

86. JOHN LA CERDA, CONQUEROR COMES TO TEA: JAPAN UNDER MACARTHUR 61 (1946).

87. Oppler, *supra* note 39, at 296.

88. Ending of Legalized Prostitution Commemorated, *supra* note 85.

89. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 1177 Soc. Series: 233, Item 4 Abolition of Licensed Prostitution - Yomiuri Hoshi - 6 Feb 46*. Translator; T. Ogawa, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/social-1177-diplomatic.html [<https://perma.cc/X7SZ-SRGV>] [hereinafter *Press Translations, No. 1177*].

90. *Id.*

The Women's Christian Temperance Union (W.C.T.U.) of Japan had been working to abolish the practice of selling women and girls into prostitution since 1886.⁹¹ Mrs. Shimada Kiyo, Chief of the Women's Department of the Labor Union, in addressing licensed prostitution, opined: "I think the existing fact, that the men are treating the women as mere playthings by having licensed quarters as social establishments proves that they should naturally be abolished without the directive of MacArthur's Headquarters."⁹²

In Japan, according to one Japanese lawyer, "licensed prostitution . . . was a prime source of revenue for local governments."⁹³ One Japanese newspaper stated: "The existence of [licensed prostitution] houses supported by the Government and protected by the police . . . is the reason . . . for the slave-like position of Japanese women."⁹⁴ (The newspaper further opined that licensed prostitution "seems degrading to the Americans."⁹⁵ Licensed prostitution exists today in the U.S. Nevada law states, "It is unlawful for any person to engage in prostitution . . . except in a licensed house of prostitution").⁹⁶

While licensed prostitution enriched the government, involuntary servitude, be it in or outside of prostitution, appeared to enrich fathers. Occupation lawyer, Justin Williams Sr., recounts being informed that "sometimes a young girl was sold to a 'guardian' but that it was more common for her to become security for a loan made to her father."⁹⁷ Mrs. Shimada Kiyo, Chief of the Women's Department of the Labor Union, asked: "Are the women guilty? They are not, I dare say. Did women willingly enter into such a life? They fell into the miserable situation on account of this system which was created by men."⁹⁸ The Chief of the Women's Department of the Labor Union urged: "[W]e must call for grave reflection by the families which want to make a living at the price of their dear daughters and to reed out such evils committed by the

91. Ending of Legalized Prostitution Commemorated, *supra* note 85.

92. *Press Translations, No. 1177, supra* note 89.

93. JUSTIN WILLIAMS, SR., JAPAN'S POLITICAL REVOLUTION UNDER MACARTHUR: A PARTICIPANT'S ACCOUNT 10 (1979).

94. General Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 706, Soc. Series: 189, Item 1, The American Army Officers Attitude Toward Women by R. MASUMAN - Provincial Paper Hyuga Nichi-Nichi Shimbun (MIYAZAKI-SHI) - 4 Jan 46. Translator: H. Nishihara, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/social-0706-diplomatic.html [https://perma.cc/8V8L-BYNZ]*.

95. *Id.*

96. See NEV. REV. STAT. § 201.354 (2019).

97. WILLIAMS, *supra* note 93, at 10.

98. *Press Translations, No. 1177, supra* note 89.

woman's weakness to sacrifice herself."⁹⁹ A result of the end of involuntary servitude would be, as journalist La Cerda maintained, that "[n]o longer need the girls spend their lifetimes trying to repay that debt."¹⁰⁰

One by-product of the end of selling girls and women into slavery, according to Occupation lawyer Oppler, was the rise of the 1948 Habeas Corpus Act.¹⁰¹ Oppler contended: "In a country where involuntary servitude of women and children had been almost customary, the need for protection from physical restraint was undeniable."¹⁰² Occupationaire Williams observed: "When a girl saw fit to rebel against what some regarded as a form of slavery, the court always held in her favor." However, for an individual held in bondage to be able to access the courts would have required the ability to access the courts. As Williams acknowledged, "Such cases were rare."¹⁰³

The next question was what was next for freed women. Miss Yamamuro Tamiko, the Director of the Welfare Bureau of the Japan Christian Brotherhood, addressed the need to "establish . . . a women's home, where these girls can rest their exhausted bodies and souls as a shelter until they start a new life, an inquiry office for giving these girls a chance to find a decent job, and an organization to give them vocational guidance."¹⁰⁴ Mrs. Shimada Kiyō, Chief of the Women's Department of the Labor Union, urged: "We women want eagerly to emancipate these pitiful girls into a free world as soon as possible. We must give a warm welcome to those girls who have regained their freedom, give them a decent job, and lead them into a home-life upon their recovery from both mental and physical exhaustion or give them a stabilized livelihood."¹⁰⁵ To ensure employment of "freed" former licensed prostitutes, the Labor Division of one prefectural government recommended transforming

99. Gen. Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translations, No. 1071, Soc. Series: 216, ITEM 1 Abolition of Licensed Prostitution – Provincial Newspaper Hokkoku Mainichi (Kanazawa) – 28 Jan 46. Translator: T. Ogawa, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/social-1071-diplomatic.html [<https://perma.cc/ANW7-C2L9>].*

100. LA CERDA, *supra* note 86, at 61.

101. Oppler, *supra* note 39, at 319–20 n.91 (1949) (citing Habeas Corpus Act, Law No. 199 of 1948 (Japan)).

102. *Id.* at 319–20.

103. WILLIAMS, *supra* note 93, at 10.

104. *Press Translations, No. 1177, supra* note 89, at 2–3.

105. *Id.*

brothels into hotels, with hotel jobs.¹⁰⁶ In contrast, the Metropolitan Police maintained that “so long as the present social situation remains unimproved,” licensed prostitution would simply convert itself into private prostitution.¹⁰⁷ Miss Yamamuro Tamiko, the Director of the Welfare Bureau of the Japan Christian Brotherhood, opined: “As for the problems of private prostitutes it depends more on the self-respect of men than on that of women.”¹⁰⁸

The Metropolitan Police planned to address the conversion through “limit[ing] the place of business for these private prostitutes to 5 districts . . . so as to put them under control.”¹⁰⁹ The Director of the Welfare Bureau of the Japan Christian Brotherhood decried that the “men who transmit the diseases from woman to woman are not the objects of control.”¹¹⁰ That is, police did not “control” men who were guilty of “spreading of venereal diseases.”¹¹¹ Police used the power to “control” women through charges of prostitution to harass, shame, and detain women. The U.S. military police (with Japanese police) would arrest women on the pretense of being “streetwalkers” (prostitutes), take them to police stations, and then test them for VD (venereal disease). Christopher Aldous and Akihito Suzuki provide an example of “650–750 innocent girls and women subjected to the humiliation of being displayed to the public as prostitutes, while being taken to the police station in the MP open jeep” and “further humiliated by being subjected to an exam for VD.”¹¹² These women-harassing police sweeps went so far as to detain a female Diet member.¹¹³

The outlawing of selling women and girls into prostitution did not make prostitution itself illegal. Japan did not make prostitution illegal until 1956, five years after the end of the Occupation. A film, Kenji Mizoguchi’s *Street of Shame* (“the heartbreaking tale of a brothel full of women whose dreams are constantly shattered by their socioeconomic

106. General Headquarters, Supreme Commander for the Allied Powers Allied Translator and Interpreter Section, *Press Translations, No. 1419, Social Series, Item 2, Abolition of Licensed Prostitution in MIYAZAKI – Provincial Newspaper Hyuga Nichi-Nichi Shimbun (MIYAZAKI-SHI) – 12 Feb 1946, Translator: S. Sakata, DARTMOUTH C. LIBR.*, https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/social-1419-diplomatic.html [https://perma.cc/6H3C-NS2E].

107. *Press Translations, No. 1177, supra* note 89, at 2.

108. *Id.* at 3.

109. *Id.* at 2.

110. *Id.* at 3.

111. *Id.*

112. CHRISTOPHER ALDOUS & AKIHITO SUZUKI, REFORMING PUBLIC HEALTH IN OCCUPIED JAPAN, 1945-52: ALIEN PRESCRIPTIONS? 156 (2012).

113. *Id.* at 155.

realities”¹¹⁴), may have brought the change. One recent description of the film contends, “[W]hen an anti-prostitution law was passed in Japan a few months after its release, some said the film had been a catalyst.”¹¹⁵

VI. CONSTITUTION

During the Occupation, a revised Constitution for Japan was drafted and adopted.¹¹⁶ As a result, Japan’s Constitution not only guarantees women’s suffrage (“Universal adult suffrage is guaranteed with regard to the election of public officials”—Article 15 of the Constitution of Japan), but, unlike the U.S., Japan’s Constitution provides women’s rights beyond suffrage. Going beyond the Nineteenth Amendment of the U.S. Constitution, the Japanese constitutional reform resulted in articles of equal rights:

- Article 14 of the Constitution of Japan states: “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.”¹¹⁷
- Article 24 of the Constitution of Japan states: “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.”¹¹⁸

In addition, the Constitution of Japan provides:

- “All of the people shall be respected as individuals.” (Article 13)
- “Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation

114. National Museum of Asian Art, *Street of Shame*, SMITHSONIAN, <https://asia.si.edu/events-overview/films/?trumbaEmbed=view%3Devent%26eventid%3D131675307> [<https://perma.cc/LS8J-XS7D>].

115. *Id.*

116. For a human rights historical perspective, see Sylvia Brown Hamano, *Incomplete Revolutions and Not So Alien Transplants: The Japanese Constitution and Human Rights*, 1 U. PA. J. CONST. L. 415 (1999).

117. CONST. OF JAPAN, art. 14, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html [<https://perma.cc/DTB2-X4W7>].

118. *Id.* art. 24.

with the equal rights of husband and wife as a basis.” (Article 24)

- “All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.” (Article 26)

On October 4, 1945, General MacArthur ordered Prince Knoye to:

- liberalize [the] Constitution;
- extend suffrage to women;
- have an election; and
- clear militarists out of control.¹¹⁹

When the prince protested that he did not have authority to do enact the changes ordered by General MacArthur, General MacArthur replied: “The entire government lives by my sufferance. I shall authorize all these changes—get busy.”¹²⁰

To reinforce his demand for a liberalized constitution for Japan, on October 11, 1945, General MacArthur, in his meeting with Prime Minister Shidehara, “pointedly advised that the reforms which Japan must take ‘will unquestionably involve a liberalization of the Constitution.’”¹²¹ General MacArthur also “pointedly advised” the Japanese Minister that “[t]hese reforms are so fundamental in character that they cannot be effected by statutory legislation alone but necessitate inclusion in the Constitution in order to ensure their permanency.”¹²²

When the Japanese government in January 1946, in response to General MacArthur’s demand for a liberalized constitution, produced a “rewording of the old Meiji constitution,”¹²³ the press ridiculed it.¹²⁴ One of the female Occupationaires maintained that “ordinary, everyday people – even as they were struggling for survival – were more willing than political and academic elites to discard the Meiji constitution and start

119. Bonner Fellers, Notebook of General Bonner Fellers, Oct. 4, 1945, MacArthur Memorial Archives.

120. *Id.*

121. SUMMATION SEPTEMBER–OCTOBER 1945, *supra* note 26, at 8.

122. *Id.*

123. MACARTHUR, *supra* note 1, at 300.

124. NASSRINE AZIMI & MICHEL WASSERMAN, LAST BOAT TO YOKOHAMA: THE LIFE AND LEGACY OF BEATE SIROTA GORDON 59 (2015).

afresh.”¹²⁵ As a result of the inability of the Japanese government to draft a constitution that met General MacArthur’s expectations, MacArthur decided to have the Government Section of SCAP draft a constitution.¹²⁶ On February 3, 1946, General MacArthur ordered General Whitney, the head of the Government Section, to have the Government Section draft a model constitution.¹²⁷ The deadline: February 12, 1946.¹²⁸ General MacArthur’s need for speed may be explained by the desire to have a constitution drafted before the Far East Commission had its meeting the end of February,¹²⁹ to protect the emperor from being declared a war criminal.¹³⁰ The content of the notes that MacArthur provided for guidance included:

- 1) safeguard of a dynastic but symbolic emperor representative of the people;
- 2) renunciation of war; and
- 3) dismantling of the feudal system.¹³¹

On February 4, 1946, General Whitney sat down with his team to begin the process of drafting a new constitution.¹³² The team had nine days.¹³³ The writing of the Constitution was in secret.

The sole woman on the Government Section charged with writing the Constitution was Beate Sirota. A 22-year-old graduate of Mills College, Sirota had grown up in Japan and did not become a U.S. citizen until 1945.¹³⁴ Sirota, to aid her in drafting her sections, raced around a decimated Tokyo to find and examine constitutions from around the world.¹³⁵

One of Sirota’s constitutional drafting responsibilities was drafting a section on women’s rights. Sirota sought to draft the “changes that would

125. *Id.*

126. *Id.* at 60.

127. RAY A. MOORE, *SOLDIER OF GOD: MACARTHUR’S ATTEMPT TO CHRISTIANIZE JAPAN* 75 (2011).

128. AZIMI & WASSERMAN, *supra* note 124, at 60.

129. *Id.* at 101.

130. *Id.*

131. *Id.* at 61.

132. *Id.* at 101.

133. *Id.* at 60.

134. DALE M. HELLEGERS, *WE, THE JAPANESE PEOPLE: WORLD WAR II AND THE ORIGINS OF THE JAPANESE CONSTITUTION* 581 (2002).

135. AZIMI & WASSERMAN, *supra* note 124, at 60, 102.

most benefit Japanese women.”¹³⁶ She drafted provisions that included “equality in regard to property rights, inheritance, education, and employment; suffrage; public assistance for expectant and nursing mothers as needed (whether married or not); free hospital care; and marriage with a man of her choice.”¹³⁷ Sirota’s draft provisions included the “rights of expecting and nursing mothers and full medical, dental, and optical treatment for school-age children.”¹³⁸ For example, a first draft stated: “Expectant and nursing mothers shall have the protection of the State, and such public assistance as they may need, whether married or not.”¹³⁹ A first draft also stated: “Women shall have the right of access to all professions and occupations, including the right to hold office, and shall receive the same compensation as men for equal work.”¹⁴⁰

Sirota’s draft women’s rights provisions engendered fierce exchanges regarding the goals of the Constitution. Sirota’s two immediate [male] co-workers, Lieutenant Colonel Roest and Dr. Wildes, fiercely defended her provisions. Lieutenant Colonel Roest claimed: “[It is] peculiarly necessary to include them [women’s rights social guarantees] here that since state responsibility for the welfare of its people is a new concept for Japan and demands constitutional approval to encourage its widespread acceptance, at present women are chattel here . . . and any peasant can sell his daughter if the rice crop is bad.”¹⁴¹ Dr. Wildes went even further arguing: “We have the responsibility to effect a social revolution in Japan, and the most expedient way of doing that is to force through a reversal of social patterns by means of the constitution.”¹⁴²

Yet, in overriding these concerns and in justifying excluding women’s social guarantees, other males pushed back. Lieutenant Colonel Rowell maintained: “It isn’t the Government Section’s job to establish a perfect system of guarantees. If we push hard for things like this, we could well encounter strong opposition. In fact, I think there is a danger the Japanese government might well reject our draft entirely.”¹⁴³

136. BEATE SIROTA GORDON, *THE ONLY WOMAN IN THE ROOM: A MEMOIR OF JAPAN, HUMAN RIGHTS, AND THE ARTS* 108 (2014).

137. *Id.*

138. AZIMI & WASSERMAN, *supra* note 124, at 62 n.5.

139. HELLEGERS, *supra* note 134, at 590 (art. 19 of the first draft).

140. *Id.* at 591 (art. 26 of the first draft).

141. *Id.* at 603–04 n.64 (citing Ellerman Notebook D in HUSSEY PAPERS). Colonel Roest’s spouse, Jean-Marie Roest, was a Stanford graduate who was in Japan as a WAC working for Radio Tokyo on getting out the women’s vote, HELLEGERS, *supra* note 134, at 580.

142. SIROTA GORDON, *supra* note 136, at 116.

143. *Id.*

While individuals with more power in the drafting of the Constitution feared pushing for women's rights, they had no hesitancy to use their power to force the Japanese government to accept the Constitution written by the Occupationaires. General Whitney, when he ordered the drafting of the Constitution by the Government Section on February 4, 1946, told the drafters that if the Japanese government "hope to protect the Emperor and to maintain political power, they have no choice but to accept a constitution with a progressive approach, namely the fruits of our current efforts."¹⁴⁴ He continued: "I expect we'll manage to persuade them. But if it looks as though it might prove impossible, General MacArthur has already authorized both the threat of force and the actual use of force."¹⁴⁵

Sirota's male bosses, before submitting the draft constitution to the Japanese government on February 13, 1946,¹⁴⁶ stripped the draft Constitution of many of the rights for women that Sirota had written into the draft Constitution. In her testimony to the U.S. Congress decades later, she testified: "Col[onel] Kades (head of the Steering Committee) said: 'Beate, you have given women more rights than there are in the U.S. Constitution!'"¹⁴⁷ Her response? "I said: 'That's not difficult, since the U.S. Constitution does not even mention the word woman.'"¹⁴⁸

Some of the U.S. males involved in the drafting of the Constitution believed that women's rights social guarantees "were not appropriate for a constitution, but belonged in the Civil Code which the Japanese would write later."¹⁴⁹ Such beliefs ignored the reality that "social guarantees [were] common in the constitutions of many European countries."¹⁵⁰ The holders of these beliefs further ignored and failed to pay heed to Sirota's insight and forecast that "the bureaucrats who would be assigned to write those statutes for the Civil Code would . . . be so conservative that they could not be relied upon to extend adequate rights to women" and that the "only safeguard was to specify these rights in the Constitution."¹⁵¹

The Occupation then forwarded its draft Constitution to the Japanese government. On March 4–5, 1946, the MacArthur and the Japanese teams

144. *Id.*

145. *Id.* at 105.

146. RAY A. MOORE & DONALD L. ROBINSON, PARTNERS FOR DEMOCRACY: CRAFTING THE NEW JAPANESE STATE UNDER MACARTHUR 104 (2002).

147. *Winning the Peace: Coalition Efforts to Restore Iraq: Hearing Before the H. Committee on Government Reform*, 108th Congr. 162 (2003) (Testimony of Beate Sirota Gordon, Drafter of the Article on Women's Rights in the New Japanese Constitution).

148. *Id.*

149. *Id.*

150. SIROTA GORDON, *supra* note 136, at 115.

151. *Id.*

engaged in a marathon negotiating session.¹⁵² The negotiations started at 10 a.m. on March 4, 1946.¹⁵³ During the negotiations, Sirota appeared in the role of interpreter as the negotiators went “over the draft word by word.”¹⁵⁴

Sirota recounts, after 16 hours, it was “2 a.m. the next morning [and] everybody was hungry and tired.”¹⁵⁵ She further recounts that “Col[onel] Kades . . . noticed that the Japanese officials were very kindly inclined toward me . . . because I was a very fast interpreter.”¹⁵⁶ At 2 a.m. on March 5, 1946, the negotiations on women’s rights began. The negotiators were all men, not women. Sirota states: “What I remember about the discussion on women’s rights is that the Japanese didn’t want any of them.”¹⁵⁷ Sirota recalls that “it became an unbelievable fight about women’s rights—they felt that none of it should be in the Constitution; that it was against Japanese culture, against Japanese history, against Japanese customs.”¹⁵⁸ Sirota further recalls that “when they said all this, Col[onel] Kades said: ‘Gentlemen, Miss Sirota has been in Japan a long time, she knows the Japanese women very well, and she has her heart set on the women’s rights. Why don’t we pass them?’ And they did.”¹⁵⁹ What Colonel Kades did not disclose to the Japanese negotiators was that Beate Sirota was the author of the women’s rights provisions. Thus, to the Japanese it appeared Sirota was “merely an interpreter, since her U.S. counterpart had kept secret [her] involvement in the writing of the draft.”¹⁶⁰

The draft Constitution, after the negotiations, then went to the Japanese Diet for debate. When the Japanese government’s draft, based on MacArthur’s draft (the draft finalized by the Government Section on February 13, 1946), was presented to the National Diet, Japanese female legislators of the lower house offered an amendment that was almost the same as the original draft written by Sirota.¹⁶¹ Koseki Shōichi writes that just like “on the American side, their amendment was ignored by their

152. HELLEGERS, *supra* note 134, at 673.

153. Kyoko Sato, *A Half-Century Secret: U.S. had woman help draft Constitution*, JAPAN TIMES, July 4, 1995, at 3.

154. *Id.*

155. Hugh Levinson, *The Unsung Heroine of Women’s Rights*, JAPAN TIMES, Apr. 28, 2002, at 10.

156. *Id.*

157. Sato, *supra* note 153, at 3.

158. Levinson, *supra* note 155, at 10.

159. *Id.*

160. Sato, *supra* note 153, at 3.

161. KOSEKI SHŌICHI, *THE BIRTH OF JAPAN’S POSTWAR CONSTITUTION* 3 (Ray Moore ed. & trans., 1997).

male colleagues in the Diet.”¹⁶² However, Koseki Shōichi maintains that free elementary education (Article 26) was made stronger through the Diet debates than it had been in either the U.S. or the Japanese government drafts.¹⁶³

One example to examine is the draft section on the family. Dale Hellegers contends that the MacArthur Draft states, with regard to the family:

The family is the basis of human society and its traditions for good or evil permeate the nation. Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion, and maintained through cooperation instead of male domination. Laws contrary to these principles shall be abolished and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce, and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.¹⁶⁴

The Japanese draft countered with a section on the family system worded as: “Marriage shall be based only on the mutual consent of both sexes. Moreover, it shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis.”¹⁶⁵ Today’s Article 24 of the Constitution of Japan states: “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.” And today’s Article 24 states: “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.”

Once written, the Constitution came into effect in less than two years after the beginning of the Occupation. The sequence for the Constitution to come into existence was:

- August 24, 1946; House of Representatives adopts Constitution by a vote of 422:8.¹⁶⁶

162. *Id.*

163. *Id.* at 183.

164. HELLEGERS, *supra* note 134, at 673 (Article 23 of the draft, as finalized by the Government Section on February 13, 1946 (“MacArthur Draft”).

165. *Id.* (Article 37 of the Japanese draft of March, 2 1946).

166. HARRY EMERSON WILDES, *TYPHOON IN TOKYO; THE OCCUPATION AND ITS AFTERMATH* 46 (1954).

- September 6, 1946; House of Peers adopts Constitution with “minor amendments” by a vote of 298:2.¹⁶⁷
- October 7, 1946; House of Representatives approves amended version of the Constitution.¹⁶⁸
- October 29, 1946; Privy Council approves Constitution.¹⁶⁹
- November 3, 1946 (Emperor Meiji’s Birthday); Constitution is promulgated.¹⁷⁰
- May 3, 1947; Constitution comes into effect.¹⁷¹

The question remains what role a constitution performs in the structuring of national identity, beliefs, and actions. General MacArthur acknowledged that “the drafting of an acceptable constitution does not of itself establish democracy, which is a thing largely of the spirit,” but maintained that “it does provide the design for both structural and spiritual changes in the national life, without which so fundamental a reform would be utterly impossible.”¹⁷² Not all of General MacArthur’s subordinates understood what General MacArthur was trying to accomplish with an “acceptable constitution.” Lieutenant Colonel Rowell is quoted as stating: “You cannot impose a new mode of social thought on a country by law.”¹⁷³

VII.ELECTIONS

While the Japanese government, during the Occupation, ended a political system that prohibited women the rights to vote and to be elected, the political system sought to maintain power. The 1946 and 1947 elections provided for different balloting systems. These different systems provided different outcomes. Electing women is a potentially economically smarter vote. In the U.S., evidence suggests that electing women to office is more financially rewarding for the voter than electing men to office. A 2015 CRS report finds, “while controlling for numerous other factors including district-level characteristics, an empirical model

167. *Id.*

168. KURT STEINER, LOCAL GOVERNMENT IN JAPAN 86 (1965).

169. *Id.*

170. CONST. OF JAPAN, *supra* note 117.

171. *Id.*

172. LA CERDA, *supra* note 86, at 220.

173. SIROTA GORDON, *supra* note 136, at 116.

demonstrates that women deliver approximately 9% more federal spending to their districts than men.”¹⁷⁴

A. 7.1 Balloting System of 1946

The 1946 balloting system allowed the voter to vote for at least two individuals.¹⁷⁵ As explained by a Japanese newspaper, the 1946 system “aims at . . . (1) prevention of a local man of influence from being elected, and election of a nationally known man by enlarging spheres of choice of electors” and “(2) prevention of monopolization of seats by the majority, and the opportunity for minority representation.”¹⁷⁶ Or as another newspaper explained: “As the result of the adoption of a major electorate system, traditional constituencies have been broken up, increasing the possibilities of new men’s success.”¹⁷⁷ A SCAP election analysis opined that the 1946 voting system “contributed largely to the success of independents and small party candidates,” preventing the larger parties from “captur[ing] more than their fair share of seats,” with at least one independent candidate elected in 43 of the 46 prefectures, “a phenomenon that has never before appeared in Japan’s political history.”¹⁷⁸

The 1946 balloting system was positive for women. On April 10, 1946 (the first election with women’s suffrage), voters elected 38 women to the House of Representatives, a body of 466 members.¹⁷⁹ At this time, the U.S. had 11 women in the House of Representatives, out of a body of 435.¹⁸⁰

General Whitney reported that “nearly 50% of all women candidates were elected” as opposed to “only 15% of all men candidates.”¹⁸¹ A SCAP

174. Jennifer E. Manning, Ida A. Brudnick & Colleen J. Shogan, *Women in Congress: Historical Overview, Tables, and Discussion*, CONG. RES. SERV. 13 (April 29, 2015), <https://fas.org/sgp/crs/misc/R43244.pdf> [<https://perma.cc/4MV9-XQ78>].

175. HUSSEY PAPERS, *supra* note 13, at 17-A-1-1.

176. Gen. Headquarters, Supreme Commander for the Allied Powers, Allied Translator and Interpreter Section, *Press Translation, No. 82, Political Series: 19, ITEM 3, Various Aspects of the Election System - Tokyo Shimbun - 14 Nov 45*. Translator: T. Kitayama, at 2–4, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0082-diplomatic.html [<https://perma.cc/A2HP-2G2X>].

177. Gen. Headquarters Supreme Commander for the Allied Powers Allied Translator and Interpreter Sec. Press Translations, *Press Translations No. 446, Political Series: 102, Item 2, Viewing the Election - Asahi Shimbun - 19 Dec 45*. Translator: T. Kitayama, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/political-0446-diplomatic.html [<https://perma.cc/TD3U-64PK>].

178. 22 April 1946, *Memo for the Supreme Commander, Election Report*, HUSSEY PAPERS, *supra* note 13, at 17-A-3-22.

179. HUSSEY PAPERS, *supra* note 13, at 17-A-3-19.

180. Manning, *supra* note 174.

181. WHITNEY, *supra* note 73, at 290.

analysis found “striking testimony of the independence with which the women went to the polls.”¹⁸² Of the women elected, six were Progressives, five were Liberals, eight were Socialists, one was Communist, eight were from small parties, and ten were independents.¹⁸³

Over 13 million Japanese women voted.¹⁸⁴ On April 25, 1946, General MacArthur stated: “The uncertainty as to the trend of attitude of women to their new found freedom which characterized the Japanese press prior to election was dissipated when 66 percent of the eligible women cast their ballot.”¹⁸⁵ In contrast, in the U.S., women made up 35–40 percent of the U.S. electorate on November 2, 1920.¹⁸⁶

Beate Sirota, when questioned whether she remembered the first general election in April 1946, replied: “I had never seen so many women in one place. I saw old women in their 80s, carrying their grandchildren on their backs, come in. I saw women very well-dressed, who were younger, who were coming to this with sort of awe.”¹⁸⁷ U.S. journalist John La Cerda reported: “They carried their babies with them to the polls. In one Tokyo ward, five aged women were carried to the ballot stalls in stretchers.”¹⁸⁸

Japan adopted the balloting system for the 1946 elections at the urging of SCAP’s POLAD (political advisor), George Atcheson.¹⁸⁹ Then, on March 27, 1947, Japan’s Election Law Committee, in a 16-14 decision after a brawl between members, eliminated the 1946 system.¹⁹⁰

182. HUSSEY PAPERS, *supra* note 13, at 17-A-3-22.

183. *Id.* at 17-A-4-1 (The independent women who won were Wazaki Haru, Sakakibara Chiyo, Yamashita Harue, Nomura Misu, Oishie Yoshie, Kimura Chiyo, Nakayama Tama, Tanaka Tatsu, Kondo Tsuruyo, and Yamashita Tsune, *List of Successful Candidates*).

184. WHITNEY, *supra* note 73, at 290.

185. POLICY AND PROGRESS, *supra* note 12, at App. 30, 140, 141 (April 25, 1945, statement by General MacArthur).

186. REBECCA BOGGS ROBERTS, SUFFRAGIST IN WASHINGTON DC: THE 1913 PARADE AND THE FIGHT FOR THE VOTE 135 (2017).

187. Levinson, *supra* note 155, at 10.

188. LA CERDA, *supra* note 86, at 89.

189. WILLIAMS, *supra* note 93, at 176. More research is required to ascertain Atcheson’s subsequent influence, he was killed on August 17, 1947 in an aircraft accident off Hawaii. RICHARD B. FINN, WINNERS IN PEACE: MACARTHUR, YOSHIDA, AND POSTWAR JAPAN 147 (1992).

190. WILLIAMS, *supra* note 93, at 177 (addressing May 2, 1947 “Diet report—”Filibuster on the Election Law Amendment).

B. 7.2 *Balloting System of 1947*

The 1947 balloting system reduced the voter to being allowed to vote for only one candidate,¹⁹¹ even though the number of candidates to be elected in each electoral district varied from three to five,¹⁹² “making it impossible for voters to choose both a man and a woman.”¹⁹³ The 1947 balloting system, in contrast to the 1946 balloting system, aimed to “attract to the House of Councillors men, prominent in various professions, who can contribute their technical experience to the legislative process and would be essentially non-partisan in outlook.”¹⁹⁴ It also appeared to eliminate those without financial means. The 1947 House of Councillors Election Law required a deposit of 5,000 yen, to be forfeited to the Japanese government, should the candidate not have received at least one-tenth of total votes.¹⁹⁵ The stated purpose: “[T]o eliminate candidates who have no hope of being elected, in this way the voters should be less confused by a great number of candidates and the government’s expenses for the campaign will be smaller.”¹⁹⁶ Instead of reducing confusion, the ensuing confusion by the changes resulted in 10.37% of the ballots rejected in the 1947 House of Councillors election.¹⁹⁷

In 1947, under the new balloting system, the result was a more than 50% drop in women elected to the House of Representatives (from over 30 in 1946 to 15 in 1947).¹⁹⁸ Further, under the new balloting system—in the first elections for women for the House of Councillors; prefectural assemblies; city assemblies; and town and village assemblies—women won only 10; 22; 94 (including 16 in Tokyo); and 677 seats, respectively.¹⁹⁹ Women comprised 818 of the 232,864 officials elected to

191. HUSSEY PAPERS, *supra* note 13, at 17-B-2-8, 17-B-2-45 (Article 19 of Law for Election of Members of House of Representatives (for 1947 elections)).

192. *Id.* at 17-B-2-8.

193. Sally Ann Hastings, *Women Legislators in the Postwar Diet*, in RE-IMAGING JAPANESE WOMEN 275 (Anne E. Imamura ed., 1996).

194. U.S. DEPT. OF ST., DIVISION OF RESEARCH FOR FAR EAST, 1947 JAPANESE HOUSE OF COUNCILLORS ELECTION: AN ANALYSIS OF THE CONDUCT AND RESULTS OF THE HOUSE OF COUNCILLORS ELECTION, INCLUDING A DISCUSSION OF SIGNIFICANT DEVELOPMENTS IN THE OPERATION OF THE UPPER HOUSE IN THE POST-ELECTION PERIOD vi (1948) [hereinafter COUNCILLORS ELECTION].

195. HUSSEY PAPERS, *supra* note 13, at 17-B-2-23, Article 55.

196. *Id.* at 17-B-2-24, “NOTE.”

197. COUNCILLORS ELECTION, *supra* note 194, at 12 n.1.

198. JACOB VAN STAVEREN, AN AMERICAN IN JAPAN, 1945-1948: A CIVILIAN VIEW OF THE OCCUPATION 151 (1994).

199. *Id.*

public office in April 1947;²⁰⁰ that is, 0.35% of all seats went to women while men garnered 99.65% of elected seats.

In addition to an altered balloting system, the 1947 elections also introduced another burden for potential voters—four elections within the space of one month:

- April 5 (elections for the local executives, mayors, and governors);
- April 20 (the first House of Councillors election);
- April 25 (elections for the House of Representatives); and
- April 30 (elections for members of prefectural and municipal assemblies).²⁰¹

The stated rationale for not holding the elections for the House of Representatives and the House of Councillors on the same day: the “heavy work involved in screening the purge questionnaire of the two Houses.”²⁰² Given that the House of Councillors election was not postponed for a mere five days (which would have resulted in the elections for the House of Councillors and the elections for the House of Representatives being held on the same day), the question arises whether the election machinery was interested in facilitating voting. The U.S. State Department opined that the lower turn-out of voters was due to: (1) calling voters to the polls four times in April 1947; (2) “lack of understanding of balloting system”; and (3) “belief that the upper house was not as important as the lower house.”²⁰³

The U.S. State Department failed to address whether the “handicaps of the transportation difficulties”²⁰⁴ still existed. The U.S. State Department, in evaluating the 1947 elections, failed to conduct any analysis of whether the changed election law and multiple elections had a disparate effect on women. The lack of analysis by the U.S. State Department included failing to identify the number of women voting and the number of women elected.²⁰⁵

200. *Id.*

201. COUNCILLORS ELECTION, *supra* note 194, at vi, 18.

202. HUSSEY PAPERS, *supra* note 13, at 17-B-2-8.

203. COUNCILLORS ELECTION, *supra* note 194, at 47.

204. HUSSEY PAPERS, *supra* note 13, at 17-A-3-25.

205. COUNCILLORS ELECTION, *supra* note 194, App. B.

C. 7.3 *Anti-Women Politician Smear Campaigns*

The evaluation by the U.S. State Department of the elections in Japan also failed to address the use of political psychological violence against female politicians through smear campaigns. Campaigns to smear female politicians extended to at least one in-person campaign to General MacArthur. General MacArthur recounts a call from “an extremely dignified . . . Japanese legislative leader”; a male graduate of Harvard Law School²⁰⁶:

- Male Legislative Leader: “I regret to say that something terrible has happened. A prostitute, Your Excellency, has been elected to the House of Representatives.”
- General MacArthur: “How many votes did she receive?”
- Male Legislative Leader: “256,000.”
- General MacArthur: “Then I should say there must have been more than her dubious occupation involved.”²⁰⁷

The April 1946 election resulted in “hundreds of unknowns . . . elected to replace the old order of the Diet, 80% of which had been handpicked by Tojo during World War II.”²⁰⁸ Whether the Harvard Law School graduate male legislative leader making the personal appeal to General MacArthur was among those handpicked is unknown.

The campaigns to smear female politicians were not limited to personal appeals to General MacArthur. The media also conducted public smear campaigns against female politicians. La Cerda noted: “Shortly after the election of April 10, 1946 . . . a Tokyo suburban newspaper proclaimed to its readers that 30 of those women [elected] were former prostitutes and mistresses.”²⁰⁹ The response from the Occupation: “The WAC [Women’s Army Corps] censorship officer who saw the startling announcement after publication called in the editor and made him publish an apology and print extensive biographies of the women to prove he had lied!”²¹⁰

206. MACARTHUR, *supra* note 1, at 305.

207. *Id.* The SCAP election analysis indicates that the woman receiving the highest number of votes was Michiko Yamazaki, a Social Democrat, with an aggregate of 191,293 votes. The male receiving the highest number of votes received 211,146 votes. HUSSEY PAPERS, *supra* note 13, at 17-A-3-23, Election Report, “The Women’s Vote.”

208. *Id.* at 17-A-2-1, 22 April 1946, Memo for the Supreme Commander, “Election Report”; WHITNEY, *supra* note 73, at 263.

209. LA CERDA, *supra* note 86, at 142.

210. *Id.*

VIII. CIVIL CODE

The drafter of the women's rights provisions of the Constitution, Beate Sirota, in arguing that the "only safeguard" for women's rights "was to specify these rights in the constitution," believed that "the bureaucrats who would be assigned to write those statutes for the Civil Code would . . . be so conservative that they could not be relied upon to extend adequate rights to women."²¹¹

The bureaucrats who could not be relied upon included the U.S. Occupation lawyer who oversaw the revision of the Civil Code, Alfred Oppler. Despite recognizing that the "new constitutional principles" regarding equal rights necessitated implementing legislation and that "[i]t was clear that the authoritative feature of the 'house' system were doomed to disappear," Oppler determined that "the Occupation was extremely reluctant to take initiative with regard to this legislation (the Civil Code)."²¹² His reasoning: "[H]ow far the system as such could be continued in a modified form was a subtle and controversial question, the decision which appeared wise to leave to the Japanese themselves."²¹³ Oppler opined: "This was one of the most important instances where the Occupation exercised self-restraint."²¹⁴

With an influential Occupation male "restraining" himself (arguably fulfilling Sirota's fear that those drafting women's rights legislation "could not be relied upon to extend adequate rights to women"), Japanese women exercised their power. After discussions "among the Japanese in planning committees, in the press, and in public hearings of the Diet,"²¹⁵ "the final decision reached was a complete abolition of the house system."²¹⁶ Oppler conceded: "This outcome was considerably influenced by the vigorous arguments of leading women."²¹⁷ He then explained, "It should be understood that the women are the largest group to benefit from such a radical change in the sphere of domestic life"²¹⁸; an explanation that highlights the consequences of having the ability to exercise power, or not. This included Representative Mrs. Sakakibara, who won while running as an independent.²¹⁹ According to historian Mary Beard, "so

211. SIROTA GORDON, *supra* note 136, at 115.

212. Oppler, *supra* note 39, at 318.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. The independent women who won were Wazaki Haru, Sakakibara Chiyo, Yamashita Harue, Nomura Misu, Oishie Yoshie, Kimura Chiyo, Nakayama Tama, Tanaka Tatsu, Kondo

persuasive” were the speeches of female politicians, “relative to the sufferings of women and children under the inherited aggregation of families with its headship by men,” that not only was the system “abolished,” but that “[i]t was not to be retained even as a symbol of tradition.”²²⁰ The Joint Press Conference of Civil Information and Education Section and Government Section, of August 1, 1947, proclaimed:

Certainly of all the legislation which has been prepared to implement the guarantees of the New Constitution, this revision of the Civil Code has had the most penetrating and far reaching results. It has uprooted the legal “house” system under which for centuries junior members of families had been subjected to grave limitations of fundamental personal rights, and it has also recognized, as never before had been the case in Japanese law, the equality of husband and wife in all family matters, including inheritance.²²¹

The road to the Civil Code involved two codes. One was the “Bill for the Temporary Adjustments of the Civil Code Pursuant to the Enforcement of the Constitution of Japan” and the second was the “Civil Code.” The “temporary measures” were to “come into force as from the day of the enforcement of the Constitution of Japan.”²²² The Constitution of Japan was not promulgated until November 3, 1946, and did not come into effect until May 3, 1947. The “temporary measures” were so temporary that the Bill stated: “This statute shall lose its effect on and after the 1st day of January 1948.”²²³ According to a Joint Press Conference on August 1, 1947, “In terms of the direct effect worked upon the lives and everyday activities of the people of Japan, the enforcement on May 3d, 1947, of the brief ten-article Law for the Temporary Adjustments of the Civil Code pursuant to the enforcement of the Constitution of Japan, was an event comparable to the promulgation of

Tsuruyo, and Yamashita Tsune, *List of Successful Candidates*, HUSSEY PAPERS, *supra* note 13, at 17-A-4-1.

220. MARY RITTER BEARD, *THE FORCE OF WOMEN IN JAPANESE HISTORY* 181 (1953).

221. SUPREME COMMANDER FOR THE ALLIED POWERS, PREPARATORY MATERIAL FOR THE REVISION OF THE JAPANESE CIVIL LAW: PREPARED IN THE HEADQUARTERS OF THE AMERICAN MILITARY GOVERNMENT FOR JAPAN, *Law for the Temporary Adjustments of the Civil Code—Joint Press Conference of Civil Information and Education Section and Government Section* (Aug. 1, 1947) [hereinafter *Joint Press Conference of Aug. 1, 1947*].

222. SUPREME COMMANDER FOR THE ALLIED POWERS, PREPARATORY MATERIAL FOR THE REVISION OF THE JAPANESE CIVIL LAW: PREPARED IN THE HEADQUARTERS OF THE AMERICAN MILITARY GOVERNMENT FOR JAPAN, *Bill for the Temporary Adjustments of the Civil Code Pursuant to the Enforcement of the Constitution of Japan, Supplementary Provisions* (1947) [hereinafter *Temporary Adjustments Bill*].

223. *Id.*

the Constitution itself.”²²⁴ On the first Anniversary of the Constitution, General MacArthur issued a message providing a summary of achievements of the first year under the Constitution. On the list of achievements, he listed as number nine “important revisions of the Civil Code,” which he proclaimed “emphasized individual dignity and the essential equality of the sexes.”²²⁵

The Bill for the Temporary Adjustments of the Civil Code Pursuant to the Enforcement of the Constitution of Japan was a two-page document with ten articles.²²⁶ Its stated purpose: “[T]o provide temporary measures with regard to the Civil Code which are founded upon individual dignity and the essential equality of the sexes, pursuant to the enforcement of the Constitution of Japan.”²²⁷

Article 3 explicitly eliminated the “house” system stating: “Provisions relating to the head of the house and members of a house and all other regulations of houses shall not apply.”

The dismantling of the house included eliminating the applicability of “provisions which, on the ground of the individual being a wife or mother, restrict legal capacity, etc” (Article 2); that “[p]rovisions relating to the succession to the Headship of a house shall not be applied” (Article 7); and that “provisions of other statutes which are contrary to the provisions of this statute shall not apply” (Article 10).

The dismantling of the house further included:

- An adult shall not be required to obtain parental consent for his or her marriage, divorce, adoption, or dissolution of adoption. (Article 4)
- A husband and a wife shall live together at a place determined by their mutual agreement. The application of provisions concerning the regulation of the property of the husband and the wife which are contrary to the essential equality of the sexes shall be excluded. In cases where there are extremely unchaste acts on the part of either spouse, the other may bring an action for divorce on that ground. (Article 5)
- Parental power shall be exercised jointly by the father and the mother. If a father and a mother are divorced or if a father

224. *Joint Press Conference of Aug. 1, 1947*, *supra* note 221.

225. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN, MAY 1948, at 29 (Tokyo: SCAP 1945–1948).

226. *Temporary Adjustments Bill*, *supra* note 222.

227. *Id.* at Art. 1.

has acknowledged a child, the person who exercises parental power must be determined by the mutual agreement of the father and the mother. When mutual agreement is not reached or when it cannot be reached, the court shall make the determination. The court may change the person who exercises parental power in the interest of the child. (Article 6)

The Temporary Bill also addressed inheritance (Article 8 and 9).

The Joint Press Conference raised issues needing to be addressed in the post-temporary Civil Code. Issues raised included, but were not limited to:

- The existence and degree of obligations and duties to “render mutual assistance and support” among relatives, to include non-blood relatives such as a widowed wife.²²⁸
- The “Capacity of an Illegitimate Child to Inherit.”²²⁹ (Disputes raged as to whether “an illegitimate child is entitled to one-half of the share in his [sic] father’s estate which would go to a legitimate off-spring,” or “an illegitimate child should have no rights of inheritance,” or “he [sic] should be subject to no discrimination and should inherit a full share in his ancestor’s estate.”²³⁰)
- The “Effects of Marriage on Property,” given that “the wife who normally does not hold in her own name the property acquired as a result of her participation in the family business.”²³¹

On January 1, 1948, the new Civil Code came into effect,²³² replacing the interim temporary Code. Book I of Civil Code of Japan addresses “General Provisions.” Article 1-2 states: “This Code shall be construed from the standpoint of the dignity of individuals and the essential equality of the sexes.” Howard Meyers, the former SCAP Chief of the Criminal Affairs Branch, contended: “The Civil Code revision made such important changes in the ‘Family System’ as depriving the head of a house of his

228. *Joint Press Conference of Aug. 1, 1947, supra note 221.*

229. *Id.*

230. *Id.*

231. *Id.*

232. Kurt Steiner, *Post War Changes in the Japanese Civil Code*, 25 WASH. L. REV. & ST. B.J. 286, 297 (1950).

power to prevent a marriage if the member of the family is of age; cancelling his right to determine where members of the house should reside, allowing his wife to hold property in her own name.”²³³ The Civil Code revision also failed to make important changes. Kurt Steiner, the Chief of the Civil Affairs and Civil Liberties Branch of the Legislative Justice Division of the SCAP Headquarters, in 1950, wrote about silences in the Civil Code. Examples of the silences surrounding unaddressed practices included “voluntary” forfeiture of inheritance, “adoption” child trafficking, and “marriages on probation.”²³⁴

When preparing the post-interim Civil Code, one issue was whether there should exist a “Procedure for Obtaining a Consensual [sic] Divorce” to “ensure that a genuine desire for divorce is present in the minds of both parties, and that no undue or improper pressure has been applied.”²³⁵ Consensual divorce (“most of the cases . . . the husband wanted a divorce”) were the result of “strong persuasion bordering on coercion.”²³⁶ Oppler was “aware of the danger that [divorce by consent] would continue to work to the disadvantage of the wife due to her *de facto* subordinate position.”²³⁷

Steiner explained that “divorce by agreement” was “frequently a disguise for an actual ‘expulsion of the wife’ who had, for instance, failed to win the good will of her parents-in-law.”²³⁸ La Cerda observed: “Divorce is easy for the man. He and his wife go to the local public registrar’s office and sign a statement of willingness to go their separate ways.”²³⁹ Mrs. Oku Muneo, a member of the House of Councillors, in arguing for an amendment requiring the attestation of the court of domestic relations that the divorce sought to be granted was not a result of coercion, maintained an attestation by the court that the divorce was not a result of coercion was necessary given the equality of the sexes had not yet been achieved.²⁴⁰ The House of Councillors passed the amendment by a vote of 102–75, then, under the argument that “freedom of divorce should be as complete as freedom of marriage,” the House of

233. Howard Meyers, *Revisions of the Criminal Code of Japan during the Occupation*, 25 WASH. L. REV. & ST. B. J. 104, 124 n.34 (1950) (Law for Partial Amendments to the Civil Code, No. 222 of 1947).

234. Steiner, *supra* note 232, at 307, 309.

235. *Joint Press Conference of Aug. 1, 1947*, *supra* note 221.

236. Hideo Tanaka, *Legal Equality among Family Members in Japan—The Impact of the Japanese Constitution of 1946 on the Traditional Family System*, 53 S. CAL. L. REV. 611, 625 (1980).

237. ALFRED OPPLER, *LEGAL REFORM IN OCCUPIED JAPAN: A PARTICIPANT LOOKS BACK* 118 (1976).

238. Steiner, *supra* note 232, at 302.

239. LA CERDA, *supra* note 86, at 57.

240. Steiner, *supra* note 232, at 302.

Representatives defeated the amendment by more than a two-thirds majority.²⁴¹ La Cerda opined: “In bringing democracy to Japan’s womanhood, consideration should be given to a change in their divorce customs.”²⁴² Following his policy of “self-restraint,” Oppler refused to “object to the retention of the traditional system of divorce by consent” although he understood it harmed women.²⁴³

A review of the 2016 CEDAW Committee’s Observations on Japan highlights the gaps that harm women. For example, the 2016 CEDAW Committee decried the issues resulting from the absence of legislation that govern the distribution of property upon dissolution of marriage in the State party. The CEDAW Committee found that, as a result of this absence of legislation:

- Women are placed at a disadvantage because negotiations and agreements on property distribution happen outside legal regulation where power imbalances between women and men exist.²⁴⁴
- Most divorcing women lack the necessary information and means to demand disclosure of their husbands’ financial situation, including business and career assets, as the law does not provide any procedural tools and guidelines.²⁴⁵
- Cases where no agreement is reached for paying child support, in which cases children are left destitute.²⁴⁶

If the gaps identified by CEDAW Committee are a result of Japanese and Occupation “bureaucrats . . . so conservative that they could not be relied upon to extend adequate rights to women,”²⁴⁷ the question for future research is how to recruit, employ, and retain bureaucrats who can be relied upon to extend adequate rights to women. The answer may be as easy as asking, during the hiring interview, the question: “How can you be relied upon to extend adequate rights for women?”

241. *Id.*

242. LA CERDA, *supra* note 86, at 57.

243. Hideo Tanaka, *Alfred C. Oppler, Legal Reform in Occupied Japan: A Participant Looks Back*, 9 L. JAPAN 144, 223 (1976).

244. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan, ¶ 48(a), CEDAW/C/JPN/CO/7-8 (2016).

245. *Id.* at ¶ 48(b).

246. *Id.* at ¶ 48(c).

247. SIROTA GORDON, *supra* note 136, at 115.

IX. LABOR LAW

In late November 1945, the Occupation issued SCAPIN 360, “Employment Policies” of November 28, 1945. SCAPIN 360 “[d]irects Japanese Government to insure that no discrimination be exercised or permitted for or against any worker either in private or government work, in wages, hours, or working conditions by reasons of nationality, creed, or social status.”²⁴⁸ The November 1945 SCAPIN did not prohibit discrimination based on sex and gender. Instead, SCAPIN 360 ignored the reality of discrimination in the workplace against Japanese women.

Sirota did not. Her draft of the Constitution stated: “Women shall have the right of access to all professions and occupations, including the right to hold office, and shall receive the same compensation as men for equal work.”²⁴⁹ Yet by June 25, 1946, when the Diet received the draft Constitution, provisions providing right of access to all professions and occupations, the right to hold office, and the right to equal pay were eliminated. The only vestiges of this language were, “Every person shall have the freedom to . . . choose his occupation to the extent that it does not interfere with the public welfare.”²⁵⁰

In February 1946, a U.S. Advisory Committee on Labor, composed of U.S. government officials “who were labor experts in all phases of labor problems” and a representative of the AFL (the CIO representative “was unable to make the trip”) visited Japan.²⁵¹ The Committee was composed of 12 individuals, who spent an average of three months each in Japan, each with different arrival and departure dates.²⁵² The U.S. sent only one woman as an expert, Helen Mears. The report described Helen Mears as an expert in labor legislation and “women’s problems” as well as a lecturer on Japan at a Civil Affairs Training School.²⁵³

The U.S. Advisory Committee on Labor found that “[t]raditionally Japanese women have taken part in the economic life of Japan in very great numbers.”²⁵⁴ The Committee stated: “It has been estimated that more than 80 percent of all Japanese women between the ages of 15 and

248. SCAP DIRECTIVES CATALOG, *supra* note 84, at 48.

249. HELLEGERS, *supra* note 134, at 591 (Art. 26 of the first draft).

250. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMARY OF NON-MILITARY ACTIVITIES IN JAPAN, JUNE 1946 at 34, Art. XX of Ch. 3 (Tokyo: SCAP 1945–1948).

251. POLICY AND PROGRESS, *supra* note 12, at 44.

252. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS. ADVISORY COMMITTEE ON LABOR. FINAL REPORT. LABOR POLICIES AND PROGRAMS IN JAPAN ii (Tokyo: SCAP 1946) [hereinafter ADVISORY COMMITTEE ON LABOR].

253. *Id.*

254. *Id.* at 93.

59 work for wages or in family employment.”²⁵⁵ The Committee further found that women:

- have taken their place beside men in the farms, having dominated sericulture;
- have even worked at such heavy manual jobs as mining and road building; and
- in the immediate pre-war period—they made up almost half of the total industrial workers in factories employing ten or more.²⁵⁶

The Committee determined that “[o]ne of the worst features of Japan’s traditional wage structure is the general practice of paying lower wages to women than to men, even when the duties of the job are identical.”²⁵⁷ (One U.S. journalist noted: “The disparity between female and male wages is astonishing. In most plants, men are paid 200% more than women.”²⁵⁸) The Committee found that the “custom” of unequal pay was “not only inconsistent with sound labor policy, but also contradicts a general objective of the Occupation—the removal of legal or institutional discrimination, which tends to the subordination of women.”²⁵⁹ The Committee opined: “Wage differences based solely on sex should be expressly forbidden by law.”²⁶⁰ The Committee, echoing the language of the U.S. National War Labor Board’s General Order No. 16 of November 1943 requiring “equal pay for comparable quantity and quality of work on comparable operations,”²⁶¹ recommended “that the principle of equal pay for male and female employees who perform work of same or comparable quality and quantity be established as a principle in wage and salary structures in Japan.”²⁶² The resulting legislation mandated “Equal Wages for Both Sexes: The employer may not discriminate . . . in wages by reason of sex.”²⁶³

255. *Id.*

256. *Id.*

257. *Id.* at 12.

258. LA CERDA, *supra* note 86, at 131–32.

259. ADVISORY COMMITTEE ON LABOR, *supra* note 252, at 12.

260. *Id.*

261. Carrie N. Baker, *Sexual Harassment: Law for Women, By Women in Feminist Legal History: Essays on Women and Law* 234 (Tracy A. Thomas and Tracey Jean Boisseau eds., 2011) (The U.S. Equal Pay Act did not become a reality until 1963) Pub. L. 88-39, 77 Stat. 56 (June 10, 1963).

262. ADVISORY COMMITTEE ON LABOR, *supra* note 252, at 60.

263. JAPAN LAWS, STATUTES, ETC. RŌDŌ KIJUN HŌ. LABOUR STANDARDS LAW, art. 4 (1969) [hereinafter LABOR STANDARDS LAW].

Whether the equal pay legislation resulted in equal pay is debatable. For example, the May 1948 SCAP report acknowledged that, when teachers realized that the government was not going to honor its legal obligation to pay women and men equally, “[t]eachers of Hyogo and Kyoto Prefectures, including university and college professors, went on strikes when prefectural authorities rejected their demands for . . . elimination of pay differential by sex.”²⁶⁴ Yet, according to a July 1948 SCAP report, inspections by 45 labor standards offices found only nine cases “dealing with equal wages to men and women for equal work.”²⁶⁵

In contrast to Sirota, the Committee did not believe that “[w]omen shall have the right of access to all professions and occupations.”²⁶⁶ Instead, the 1946 Committee recommended that “restrictions on the use of women in heavy work [should be] extended”;²⁶⁷ “the exceptions which permit women to work underground in certain mines should be eliminated”;²⁶⁸ “further restrictions should be placed on the use of women for heavy work during pregnancy”;²⁶⁹ and “an absolute limit of nine hours work per day, six days per week should be prescribed for women.”²⁷⁰ In the same report, the Committee acknowledged that “provisions proposed elsewhere would permit adult males to work longer hours . . . with premium pay.”²⁷¹ A result of the Committee’s recommendations was the Labor Standards Law (Law No. 49 of April 7, 1947). The Labor Standards Law prohibited women (not men) from “dangerous” work,²⁷² night work,²⁷³ overtime work,²⁷⁴ and working in underground coalmines.²⁷⁵ As a result, the Occupation eliminated the ability of unions to negotiate for overtime work and pay for female union members.²⁷⁶ The work of the Committee resulted not only in reducing the earnings of women, but also

264. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN, MAY 1948 at 278 (Tokyo: SCAP 1945–1948).

265. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN, JULY 1948 at 224 (Tokyo: SCAP 1945–1948) [hereinafter SUMMATION JULY 1948].

266. HELLEGERS, *supra* note 134, at 591 (Article 26 of the first draft).

267. ADVISORY COMMITTEE ON LABOR, *supra* note 252, at 17.

268. *Id.* at 94.

269. *Id.*

270. *Id.* at 95.

271. *Id.*

272. LABOR STANDARDS LAW, *supra* note 263, arts. 63, 49.

273. *Id.* at art. 62; *see also* Night Work (Women) Convention (Revised), 1948 (No. 89), INT’L LAB. OFF., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312234:NO [<https://perma.cc/RJ2G-5T49>].

274. LABOR STANDARDS LAW, *supra* note 263, art. 32.

275. *Id.* art. 64.

276. *Id.* art. 61.

resulted in women losing their livelihoods; thereby endangering women and their families.

The “protective legislation” harmed women who had worked as underground coal miners. As a result of the legislation, female coal miners lost jobs as underground coal miners. The government then froze women out of re-employment as surface coal miners. As SCAP reports, “Since April 1947 there has been a surplus of surface workers in the coal mines, necessitating a cabinet order freezing coal mine employment as of 30 April 1948.”²⁷⁷

Japanese women tried to fight back. In April 1948, SCAP Summation No. 31 of Non-Military Activities in Japan, reported on the “Niigata women stevedores, who must be released from their jobs 1 May as a result of the enforcement of the Labor Standards Law.”²⁷⁸ The female stevedores protested the loss of their jobs and sent delegates to the Minister of Labor and the Women’s and Minors’ Bureau to request “revision of the provisions on weight lifting.”²⁷⁹ Instead of protecting women by fighting for women to keep their jobs rather than losing them in the name of “protecting women,” the Bureau stated that “the law must be upheld and that adjustments had been made in other ports.”²⁸⁰

The government then instituted circumventions and exceptions to the “protective” legislation. The circumventions and exemptions granted employers the legal ability to pay women even less. The June 1948 SCAP report revealed that the prohibition against women engaging in hazardous occupations and night work resulted in 15,000 vacancies.²⁸¹ To circumvent the prohibition, by June 1948, the government amended the Labor Standards Law Apprenticeship Ordinance of October 1947 to permit employers to employ “women subject to provisions of certain hazardous occupation regulations” if employers hired women in the grade of “apprentices.”²⁸² It is unknown how many women that employers rehired in the reduced grade of “apprentice.” Another exception created a loophole for employers to have the ability to engage women to work overtime in office work, when that office work involved the creation of

277. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN, APRIL 1948 at 328 (Tokyo: SCAP, 1945–1948).

278. *Id.* at 218.

279. *Id.*

280. *Id.*

281. SUPREME COMMANDER FOR THE ALLIED POWERS, GENERAL HEADQUARTERS, SUMMATION OF NON-MILITARY ACTIVITIES IN JAPAN, JUNE 1948 at 223 (Tokyo, SCAP, 1945–1948).

282. SUMMATION JULY 1948, *supra* note 265, at 225.

“business documents.”²⁸³ (The extent to which office work did not involve the creation of “business documents” is unclear.)

Women recognized that the exclusion of women from political power negatively influenced the laws addressing women. For example, when the minimum wage law was drafted to provide men triple the amount of minimum wage as women,²⁸⁴ women addressed the consequences of excluding women from decision-making:

- “[W]omen’s committees must be recognized in all the labor problems including the wage problem. . . I firmly oppose men’s feudalistic way of handling matters which ignores women’s opinions. Hitherto, women have been shut out from expressing opinions, but hereafter rightful demands are welcome.”²⁸⁵
- “The absence of women in the Wage Committee is the main reason for a bill being written against women’s interests. The proposal does not recognize any rights of working women. It is nothing but a reactionary plan to confine women to the family system as members to be supported, receiving discriminatory treatment as before for the benefit of the capitalists.”²⁸⁶

By 1951, even the Japanese Management Association recognized that “protective” measures served to harm women and to advantage men. The Japanese Management Association opined that “protective measures in the law are desirable and necessary”; however, the “current application of these provisions without due consideration of prevailing work conditions” as well as “the complicated procedures required by regulation in employing women have made it more advantageous to employ men in many cases even when the nature of the work is best suited for women.”²⁸⁷ The Japanese Management Association found: “In countries with a large

283. LABOR STANDARDS LAW, *supra* note 263, art 61.

284. Gen. Headquarters Supreme Commander for the Allied Powers Allied Translator and Interpreter Section, *Press Translations, No. 1129, Economic Series: 259, Item 1, Women’s Voices Against Government Wage Draft - Yomiuri Hochi Shimbun - 3 Feb 46. Translator: R. Shibata, 2*, DARTMOUTH C. LIBR., https://collections.dartmouth.edu/teitexts/Press_Translations_Japanese/diplomatic/economic-1129-diplomatic.html [<https://perma.cc/K7RQ-FFFK>].

285. *Id.*

286. *Id.*

287. KENZAI DOYU KAI (THE JAPAN MANAGEMENT ASSOCIATION), *POSTWAR ECONOMY OF JAPAN UNDER THE ANTI-MONOPOLY LAW, TRADE ASSOCIATION LAW, AND LABOR STANDARDS LAW 18* (1951).

labor population, cumbersome though well-meant intentions of protecting the weaker sex are apt to result in increasing difficulty for women to find employment, as is now the tendency in Japan.”²⁸⁸ The Japan Management Association in 1951 found that “with the exception of a limited few cases, it is found generally impossible for Japanese industry to pay sufficiently high hourly wages enabling workers to earn a living within the restricted work day.”²⁸⁹ That is, given that the Labor Standards Law prohibited women from working “overtime,” the Labor Standards Law “protected” women from being able to earn a living. More research is required to identify the number of women who died or who were forced into male-servicing occupations (such as prostitution) as a result of the inability imposed by law on women to earn a living.

In addition to the “protective measures” harming women, the wage structure exacerbated the harm. The wage structure included “bonuses and payments for holiday work” as well as “allowances for dependents, seniority, and other factors not related to the job.”²⁹⁰ The government’s prohibitions against women resulted in women losing a bonus of 25% of base wages.²⁹¹ Alice Shurcliff, in 1952, addressed how, given that “allowances can total more than the basic wage in the case of older male workers with many dependents,” the “wage structure results in far lower payments to women.”²⁹²

Continued employment discrimination against women may be the reason that Japan is facing a brain drain today; that is, “a relatively high proportion of women researchers [are] leaving the country.”²⁹³ Japanese women are finding that they are “doing better outside of Japan than inside Japan in terms of the proportion of female specialist and managers” and the expectation is that more women will leave Japan as “the Japanese workplace is not as welcoming to women.”²⁹⁴

288. *Id.*

289. *Id.* at 15.

290. Alice W. Shurcliff, *Wage Developments In Japan During The Occupation*, 75 MONTHLY LAB. REV. 395, 397 (1952).

291. LABOR STANDARDS LAW, *supra* note 263, art. 37.

292. Shurcliff, *supra* note 290, at 397.

293. *Gender in the Global Research Landscape: Analysis of Research Performance Through a Gender Lens Across 20 Years, 12 Geographies, and 27 Subject Areas*, ELSEVIER 59 (2017), https://www.elsevier.com/_data/assets/pdf_file/0008/265661/ElsevierGenderReport_final_for-web.pdf. [<https://perma.cc/5BXZ-VE2Q>].

294. *Id.* at 38, 40 (Interview of Miyoko O. Watanabe, Deputy Executive Director, Office for Diversity and Inclusion, Japan Science and Technology Office (JST)).

X. CONCLUSION

In 1964, General MacArthur maintained: “Of all the reforms accomplished by the occupation in Japan, none was more heartwarming to me than this change in the status of women.”²⁹⁵

As we look towards the 200th anniversary of the Nineteenth Amendment, the questions are many.

- Will the history of the women’s emancipation policy remain unknown?
- Will the contention of feminist international relations scholar J. Ann Tickner, that “[g]overnments are generally reluctant to make women’s human rights part of their foreign policies . . . in supporting their empowerment,”²⁹⁶ remain true?
- Will the U.S. Occupation experience of “female personnel, to the extent that they became too closely associated with their external constituency and with women’s rights issues, ran the risk of criticism and censure from their SCAP superiors and of psychological harassment, in the form of malevolent joking behavior, from their male colleagues”²⁹⁷ remain the norm?
- Will opposition to women serving in the military continue to blind and deafen the ability of academia and militaries to see and hear and learn from military women?
- Will discrimination and violence against women continue to be normalized or will all States (including the U.S.) have not only ratified, but also implemented, the Convention on the Elimination Against All Forms of Discrimination Against Women, as well as its Optional Protocol?

It is my hope that in 2119, at the 100th anniversary of the historic 2019 Center for Constitutional Law at Akron School of Law conference on “The 19th Amendment at 100: From the Vote to Gender Equality,” that all discrimination against women will seem as shocking a concept as the preclusion of women as notaries was perceived at the 2019 conference.

295. MACARTHUR, *supra* note 1, at 305.

296. J. ANN TICKNER, *A FEMINIST VOYAGE THROUGH INTERNATIONAL RELATIONS* 145 (Oxford University Press ed., 2014).

297. *The Occupation of Japan: Education and Social Reform*, the Proceedings of a Symposium sponsored by the MacArthur Memorial [and] Old Dominion University [and] the MacArthur Memorial Foundation held on October 16–18, 1980 at 418 (Thomas W. Burkman ed., 1980).