GENDER EQUITY IN JAPAN AND THE UNITED STATES
IN THE POST-WAR PERIOD: THE RELEVANCE OF STRUCTURE
Joyce Gelb, City University of New York
New York, New York, USA

This paper addresses the issue of political system structure and feminist policy outcomes. Does centralization or decentralization matter for feminist mobilization and impact on gender equity policy? The paper will contend that while federal systems may create some more opportunities for policy intervention by advocacy groups, all democratic systems devolve administrative responsibility to some degree, making the differences less absolute and more nuanced. This paper will suggest that federal and unitary systems do not present clear dichotomies with regard to gender mobilization and outcomes; rather as all systems regardless of structure rely on some system of local administration, they may best be understood as providing differences of degree rather than absolutes.

The concept of gender equity in Japan and the United States may be analyzed from several different perspectives. While the term gender equity is open to interpretation, agreed upon definitions include the following: equal access to education and educational attainment; equal participation in the work force including hiring, promotion and salary; and access to political and governmental positions involving policy decision making, including ministerial/executive, legislative and possibly judicial roles. Additional meanings may challenge biased treatment of women in school texts and other relevant publications, extend the reach of equality to local and prefectural (state) as well as national government levels, and seek to redefine relations between men and women in other significant ways. This analysis seeks to compare gender equality policy in both countries, assessing policy successes and obstacles to success, viewed in part through the framework of federal and unitary systems.

The paper focuses on selected policies related to gender equity; specifically education, gender equality, employment and domestic violence policy. At the outset, and to provide a context for the analysis, it should be noted that on international indices which compare gender equality such as the Gender Empowerment Index compiled to evaluate women’s international standing related to educational attainment and participation in economic and political life and decision making (elected and administrative), Japan ranks #56 of 100 nations (in a survey compiled by a consortium of 60 international NGOs committed to ending gender discrimination and poverty, Social Watch, 2009); the United States ranks #31. The Global Gender Gap index finds women in Japan at #94 of 134 in 2010, reflecting disparities in economic, political, educational and health fields. (World Economic Forum; Nikkei Online, 1 January 2011). In contrast, the United States ranks 19, up 12 points from the last survey, entering the top twenty for the first time. Women in Japan hold only a small percentage of managerial posts {10% in 2005, up from 8.9% in 1995} (Gender Equality Report 2006). They occupy only 1.7% of senior public management positions; as of 2009, they were just 4.1% of managers in private companies. (Reuters, 25 October 2010). Over 2/3 of women retire from the labor force after having children (Gender Equality Bureau,
2009). Just 46% of women are regular labor force employees, a huge decline from the 1980s when they were over 68% (Women and Men in Japan, 2007), though they comprise the bulk of part time workers. However, recent data shows that younger single women below 30 earn more than men, though this may reflect the serious decline in male earning power rather than real increases for women. (Reuters, 19 October 2010). In the economic sphere, as of 2009, women earned 30% lower salaries than men; one of the widest disparities in the developed world. (“Gender Gap Around the World,” New York Times, 9 March 2010). Women’s equity options are still constrained by traditional values upholding the male breadwinner model; that women should stay home while men work outside the home. (Gender Equality in Japan, 2007).

Glass ceilings are operative in both nations, blocking women’s aspirations though more progress has clearly been made in the United States in combating discrimination. Women are poorly represented in elected positions as well. In elected positions, in the more powerful lower House women comprised 9.4% of representatives in 2005, and 18% of the Upper House (a considerable improvement over recent years); this places Japan as #105 of 187 nations included in the survey. (International Parliamentary Union {IPU} 2009). Women have achieved greater equality as members of government advisory committees; now with numbers approaching 30%, a goal of gender equality policy. In the United States, women occupy about 17% of congressional seats, with a decline in recent years in representation, also manifest at the state and local level. In the United States, women also comprise about 46% of the labor force, but they earn about 78% of male salaries; much of the continued wage gap is due to occupational segregation with women holding more jobs in lower paying clerical, retail and other positions. While just 60% of major firms have women in top management, 59.1% of women hold managerial positions (Catalyst, February 2010). One reason for greater employment success in the United States is attributable to legislation such as the Civil Rights Act of 1964, which outlawed discrimination. Though Japan also has passed anti-discrimination legislation, to be discussed below, such laws have been weak and difficult to implement, though they have produced some changes.

This article demonstrates considerable progress in educational attainment in terms of increased gender equity; however, there have been far fewer positive gains in employment opportunities in Japan. The record on gender equality policy is a mixed one. In the United States, a federal system, major gains have come about and been sustained through a combination of grass roots efforts by women’s movements at the local level and national action, further reinforced by local level implementation.

EDUCATION

For most of the postwar period higher education was overwhelmingly gender-segregated. One of the major causes of this inequality was the two-tiered system of higher education consisting of two-year junior colleges and four-year universities. These distinctive educational institutions segregated largely along gender lines; women going to the former and men to the latter. Many junior colleges were only for women and considered inferior to four-year universities. Even in the 1990s, females still made up the
bulk of the students at two-year junior colleges, while males remained in the ascendancy at four-year universities. Thus, even though men and women had almost equal rates of participation in higher education, gender inequality remained a distinctive feature of the system, with adverse consequences for women in the labor market. (Curtin, 2002, #42).

The junior college system was generally associated with a second class type of education primarily for women. In the nineties, some aspects of the gender imbalance in higher education finally began to recede. From the mid-1990s onwards, record numbers of women started to enter four-year universities, while the numbers going to two-year junior colleges began to drop drastically. By 2002 there were less than half the numbers at junior colleges than a decade earlier while women more than doubled their numbers in universities. The data clearly illustrate that the two-year junior college system is in a state of serious decline and may be extinct within a few decades. The divide between male and female education has clearly narrowed significantly in the last decade and the trend has continued until the present period. However, actual equity in four year institutions has not been achieved. As of 2009, 38% of undergraduates were women, while over 50% of men were enrolled at this level. Only half the number of women attended graduate school as did men. (Gender Equality Bureau, 2009). American women and men have achieved approximate parity in higher education in recent years; women receive some 57% of bachelors degree, about 60% of MA’s and just about half of doctorates. (center for Educational Statistics, 2010).

GENDER EQUALITY POLICY

This section will focus on Japan, as the United States does not have policy directed specifically at “gender equality”. Rather, there are numerous policies which address issues of gender equality which will be evaluated below, including Title IX of the Educational Equity Act of 1972, the Violence Against Women Act, and various equal employment policies. The Japanese government was motivated in part by external pressure in adopting and implementing a gender equality law in 1999. Measures to create formal structural change were undertaken partially in response to the UN Platform for Action recommendations, and also because Japanese progress measured by annual reports to the United Nations Commission on the Status of Women has always fallen short of stated goals. Among the recommendations was to strengthen the national machinery for the advancement of women.

The Basic Law for a Gender-Equal Society went into effect in June 1999 to clarify basic concepts pertaining to formation of a gender-equal society and indicate the direction these should take, and to comprehensively and systematically promote the state’s, local governments’ and citizens’ measures pertaining to formation of a gender-equal society. A further revision of the Basic Law for Gender Equal Society was passed in 2005. At that time, 74% of men and women polled by the Cabinet Office (2004) indicated that they felt that men were still treated more favorably in all aspects of Japanese society.
The preamble to the Basic Law (Law #78, 1999) stresses “human rights” and calls for genuine equality between men and women, emphasizing the ability of each citizen to exercise individuality and ability regardless of gender, in language reminiscent of international documents. Among the law’s provisions are efforts to secure “non discriminatory treatment” of women including positive action, to harmonize work and family life as well as sharing of home related activities, secure equal employment, and eliminate violence against women (the latter two were added in a Basic Plan for Gender Equality, subsequent to passage of the law). (Women in Japan Today, January 2001, 3-4; Basic Law for Gender Equal Society approved by the Cabinet, 12 December 2000). The Basic Law does not contain any responsibilities for companies and lacks provisions for a monitoring system, such as an ombudsperson, as initially recommended. (Working Women’s International Network, letter to the Committee on the Elimination of Discrimination against Women, 2003). It was generally agreed that this legislation was vague and would require active enforcement to become meaningful.

The Basic Law was a government initiative, driven by bureaucrats primarily from the Prime Minister’s office, although non-governmental organizations (NGOs) played a role in the deliberations, as has now become more common practice in Japan with regard to gender based legislation. Women’s voices influenced the preamble and gained recognition of women’s rights as human rights, but they were not able to influence the bill’s content to the same extent. Observers note a disjunction between the more progressive language embodied in the initial Vision Statement and the far weaker language of the actual legislation, with regard to issues of indirect discrimination, surname change and the like. (Yamashita Yasuko interview). There was much controversy over the naming of the law; whether it should be called the “Danjo Kyodo Sankaku Shakai Kihon-Ho” (gender equal society) or “Danjo Byodo” (gender equality). The first title was adopted (modifying the original) and calls for “Gender Equal Society” (meaning joint participation by men and women) rather than the second, more controversial term, “Gender Equality” favored by most feminists. The revised name as a frame for the policy may have been more appealing to conservative politicians, who feared the idea of equality of outcomes rather than equality of opportunity, as the law presently suggests, given their opposition to affirmative action, feminism, positive discrimination, etc. (Osawa, 2000, 6). Nonetheless, the law proved to be highly controversial as discussed below

The bill has had at least two significant results. One result was the strengthening of the Bureau (which replaced the former Office) of Gender Equality, and Council for Gender Equality, established in the newly created Cabinet Office in January 2001 in the aftermath of national administrative reorganization, aimed at enhancing the functions of the Cabinet and Prime Minister’s Office. Among its four consultative organs is the Council for Gender Equality. Headed by the Chief Cabinet Secretary, the Council is intended to serve as a force for “mainstreaming” gender policy, in line with efforts to institutionalize such policy systemically in other nations. Its goal was to provide this agency with more power than individual ministries, to act as policy coordinator by providing opinions to other ministries and agencies through review and advisement,
monitoring and investigation, in addition to disseminating surveys to assess effectiveness of specific policies. (Osawa, 2000, 13). A Liaison Conference for the Promotion of Gender Equality links the work of these bodies with NGOs and local governments. (Osawa, 2000, 7). Nonetheless, since its creation, the role of the Bureau as policy advocate has been relatively weak. (Yamashita Yasuko interview).

A second outcome of the Basic Law is that it be operationalized by prefectural and local governments, in order to become more than a symbolic document (promotion of gender equality or shorei suru). This is stated as an expectation, not an obligation; (doryoko gimu) which involves prefectural and local governments developing basic plans for gender equality and then passing appropriate ordinances to follow them up. (Osawa and Ueno in Ueno, 2001). Ultimately, the Basic Law requires prefectural and local, rather than national, implementation. Articles 8 and 9 state that prefectural and local governments are responsible for taking positive steps to implement the law.¹ (Hashimoto, 1).

Local enforcement Although Japan is a unitary system of government, perhaps the most significant impact of the Basic Law to date has been at the local level. Here the policy was implemented and interpreted, and ultimately became a source of major controversy and conflict, leading to an end to further policy change after 2002. Articles 8 and 9 of the Basic Law specify that prefectural and local governments are responsible for making efforts to take positive measures to promote a gender equal society (doryoku gimu). As of April 2008, all prefectures and close to a thousand municipalities had considered gender policy; most have also established liaison conferences to coordinate departmental policies. (Women in Japan Today, 2009). Proposals for policies related to gender equal society emanated from administrative leadership, citizen groups or assemblies and assembly members, and the presence of women in government can make a difference in the outcomes. Feminists have brought back the lessons learned at international conferences to create local networks and continued pressure for policy change. (Yamashita Yasuko interview). They have built upon an infrastructure of local women’s centers and female assembly members to create structures of support.

Many governments have utilized public hearings, although they were not mandated, in order to develop equality plans and then ordinances to implement them. While the policies adopted are not binding, but rather require a good faith effort, numerous towns and prefectures have taken these initiatives seriously. Some local governments have developed local ordinances which involve ombuds systems (including particularly Saitama Prefecture and Kawasaki City), in order to resolve human rights complaints. In Okayama and Hiroshima, private companies were asked to submit records

¹ See especially Hashimoto, Danjo Kyodo, 2002.
(joetsu) related to gender equality measures. (Hashimoto, 2002). Other governments have established an independent compliance system to monitor compliance efforts and mediate complaints. Although quotas per se are prohibited by the Japanese Constitution, ratios have been employed in some localities and prefectures - either a 50/50 or a 60/40 ratio of female to male representation on local advisory committees (Tottori, Saitama). In some cases (Fukuoka) a 30% target for women in office has already been achieved. (Hashimoto, 2002). Ordinances have also addressed other gender related issues including sex segregated public high schools and the Japanese custom of calling boys’ names first when the daily school register is read. Policies adopted vary with each locality: Saitama and Hokkaido prohibit indirect discrimination. In Tottori, Okayama, and Fukuoka prefectures and elsewhere, Councils for Gender Equality handle complaints, while the Governor may have a dispute resolution role as well. In Tokyo, the governor may ask companies to report to the metropolitan assembly regarding their revised practices, with the possibility of publicizing the names of companies who do not comply (the latter sanction has not been invoked to date). No ordinances stipulate punishment for violation of these new initiatives at any level.

Despite these initially positive efforts, in other instances, local and prefectural governments have opposed the adoption of gender policies. In Tokyo, for example, under the conservative leadership of Governor Ishihara, the Tokyo Jyosei Women’s Foundation was abolished; it ceased to exist at the end of 2002 and prefectural leadership was put in control of the remaining services. Budgets for many women’s centers have been cut. In Osaka, Japan’s other major urban center, right wing assembly members who alleged that gender equality efforts would destroy the family, as well as Japanese culture and society, prevailed in the policy process. Consequently, Osaka passed a weak ordinance recognizing differences between men and women, due to conservative pressure. In both of Japan’s leading urban areas, Tokyo and Osaka, the policy outcomes have been disappointing to feminists. In Okayama City, the final version of the ordinance enacted excluded a specific quota for women in managerial positions.

Many in Japan speak of a “backlash” against even those modest policies adopted to date; in Chiba prefecture Governor Domoto Akiko’s efforts to adopt a more proactive policy involving affirmative action in order for companies to bid for contracts, have thus far been ineffective. Right wingers, including housewives led by a male former Diet member (Murakami) who maintains that gender equality is as radical as “communism”, appear to be winning the struggle to develop prefectural policy. (Hashimoto Hiroko interview; e-mail 30 December 2002). A group called the Nihon Kaigi (Japan conference) and its women’s branch, Nihon Josei Kaigi, attacks the concept of “gender equal society” as denying the differences between men and women, and demands that such differences (e.g., respect for women’s role as traditional homemakers) be acknowledged in provisions of the regulations being drafted. (Working Women’s International Network, letter to the Committee on the Elimination of Discrimination against Women, February 2003; Yamashita Yasuko interview). In Yamagata prefecture a vice-governor who sought progressive policies and had good connections to women’s groups was ousted by the more conservative governor. (Hashimoto, 2002). Women
intellectuals who have served on the Council of Gender Equality have been vilified in the conservative press (e.g., Nihon Jiji Hyoron - Japan Current Events Critique) as radical feminists who are challenging “family values” and introducing Communist ideas in the guise of “gender equality”. (8-15 March 2002). This newspaper has also attacked the notion of gender free education proposed by Ministry of Education bureaucrats. Other national newspapers, including the Yomiuri Shinbun and Sankei Shinbun, have engaged in unremitting, front page publicity for these anti-gender equality interests. The hostility has spilled over to other policy issues, including education reform, adoption of local ordinances on gender equality and the proposal for civil code reform relating to women’s surnames. There has been limited positive change affecting the role and status of women in Japan, now ten years after the Law’s passage (personal communication, Hashimoto, e-mail June 2009). Nonetheless, the implementation of some policies at the local level before the backlash set in indicates that there is some vigor in devolution even in a unitary system in the Japanese state. However, the halting of further policy change given the controversy and conflict reminds us that in a unitary state policy does emanate from the national level and can be altered there at will. Factors affecting change include which party is dominant, the role of female representatives, and the impact of public opinion.

D. SPECIFIC POLICY OUTCOMES

While it is difficult to document a precise relationship between the Basic Law for Gender Equal Society and specific policy outcomes, several new policy initiatives which may be linked in part to the passage of the Basic Law include the Domestic Violence law, efforts to amend the Civil Code to permit retention of the wife’s surname (selective surnames), and analysis and revision of gender related inequities in taxation, retirement and pensions, and insurance and corporate allowances. (Osawa, 2000). A special committee for balance between work and life, chaired by well known academic feminist Higuchi Keiko proposed elimination of waiting lists for day care centers, and amended childcare and long term care leave policies, to which the national policy making process has paid some heed. The latter two policies have been enacted into law via the Revised Childcare and Nursing Care Leave, 9 November 2001. However, local residents still complain about long waiting lists and inadequate hours of opening in day care centers.

Equal Employment Policy A key policy area to be examined relates to gender equality in the workplace, specifically the Equal Employment Opportunity Law (EEOL), initially passed in 1985.

Among developed nations, Japan is an outlier regarding women’s labor force participation. Despite women’s high levels of education and experience, Japan has the highest gender wage gap in the developed world. According to the International Labor Organization, women in Japan earned, on average, 65.3% of men’s salaries in 2001, up from 63.1% in 1997. (Kinetz, 2004). Japan effectively has a two-tiered labor market. Over 85% of male workers in Japan are so-called regular employees, who have a long-term relationship with their employer; in contrast, so-called casual or non regular
employees, the vast majority of whom are female, frequently work part-time, receive less pay, lack benefits and have few, if any, opportunities for training and promotion.

The Japanese government ratified the International Labour Organization Convention on Equal Remuneration for Men and Women Workers for Equal Value (#100) in 1967 and the Convention on the Elimination of Discrimination against Women in 1985. The Japanese government began to review its statutes in terms of the Convention to reconcile its demands for gender equality, seeking a balance with national customs and law. After protracted negotiations in the consultative committee, the tripartite group essentially accepted the views of employers, who insisted on a weak law, with provisions merely to “endeavor” to attain gender equality, as the price for acquiescing to any law. The Equal Employment Opportunity Law, passed in 1985, became effective the following year, meeting the UN deadline.

Nonetheless, signing on to the treaty and the subsequent passage of the Equal Employment Opportunity Law did produce some changes in Japanese society including some that were unforeseen. Among these was an increase in women attending four year colleges noted above, and an increase in hiring of female college graduates during the period of the “bubble economy”, in the late 1980s. The law has certainly helped to increase the number of qualified women who can fulfill managerial and professional responsibilities. Some women, albeit few, were able to gain access to the managerial or career track (sogo shoku), which involves transfers and more responsibility as well as higher wages, promotion and benefits. However, many large companies introduced a “two-track system” after the law’s adoption, to essentially limit women to clerical tasks (ippan shoku) as opposed to managerial roles. The combination of increased education and aspirations that resulted from the law’s passage, led to more women applying for full time employment. However, an “M” shaped curve still characterizes the labor force participation of women in Japan; work after graduation from college or other school, then “retirement” after marriage and/or children; once having left the lifetime employment, seniority system, it is not possible to go back to prior jobs or careers. According to 2006 data, 90.8% of disputes related retirement and dismissal under the Equal Employment Opportunity Law pertained to pregnancy and childbirth. (Nakakubo, 2003).

It is clear that in large measure the non-coercive weak law that was adopted essentially left unchallenged the male dominated, seniority-based system, replete with gender distinctions. The law relied on an ineffective prefectural system of resolving complaint which required the consent of both parties to proceed. Ambitious women are forced to seek employment in foreign companies or outside of the Japanese corporate structure and its norms. As of 2004, women earned only 57.7% of men and women held only 9% of managerial positions, many of which may be only token titles at that (Women in Japan Today, 2005), suggesting that the concept of equal pay for work of equal value, although accepted through treaty ratification, is a long way off in reality.) By 2008, the number had risen only to 10%. (New York Times, 17 July 2008); and the percent of women in highest directorial positions remained a dismal 2.7% of bucho (directors) in 2004 (Weathers, 2005). It has been suggested that the wage gap is widening rather than
decreasing: 32.9% in 2006. (Asahi Shinbun, 12 May 2008). Although a large percentage of women are employed, a disproportionately large percentage of women work “part time” (90%), a matter of definition since their hours may be longer than those of so called regular employees. Their average annual wage is 44% of their male counterparts’ salaries. (Ibid.; Washington Post, 2 March 2007). Such workers, who are non-regular, often contract based paato (part-timers), also lack secure wages and access to benefits. The percent of part time workers has almost doubled from 1994 to 2007 (now 34%). (Asahi Shinbun, 21 May 2008; Washington Post, 5 August 2007). They are not protected by the Equal Employment Opportunity Law. In contrast in the US, in 2000, 61% of women were in the labor force, compared with 74% of men; the income of full time workers was $10,000 less for women. (US Census Bureau, Population Profile of the US)

Increased attention to such data, as well as concern about the declining birth rate in Japan with the possibility of labor shortages (Weathers, 2005), may have helped pressure the Japanese government into revising the Equal Employment Opportunity Law through amendments, effective April 1999, that mandated equal opportunity in recruitment, hiring, assignments, training and promotion (excluding on the job training). The 1997 amendments also introduced new provisions concerning employers’ obligation to devote due care to prevent sexual harassment as well as positive action for the promotion of equal opportunity between men and women.

The new amendments changed the scope of the Equal Employment Opportunity Law from discrimination against women to gender-based discrimination, thus prohibiting discrimination against men as well. In addition, the areas where discriminatory treatment is prohibited are now provided in more detail, including assignment of tasks, provision of powers, kinds of occupation, change of employment status and renewal of labor contracts. A special provision on sexual harassment was also addressed in the Equal Employment Opportunity Law, barring “quid pro quo” and “hostile environment” practices.

In June 2006, twenty years after the enactment of the Equal Employment Opportunity Law, further revisions were made to the law. They moved from prohibiting discrimination against women to “prohibiting discrimination on the basis of sex”. New provisions were added to protect female workers from pregnancy related discrimination and to prohibit “indirect discrimination” but only in specific categories. (Nakakubo, 2003).

The concept of discrimination includes allocation of duties and grant of authority. (Ibid.). Provisions against sexual harassment were strengthened by obligating employers to take “necessary measures” to deal with this issue. There are also efforts included to revise the ineffective prefectural dispute procedures related to sex discrimination although it is feared that lawsuits may still be the major recourse, as the administrative remedies often do not work. Each prefecture continues to have a Equal Employment Opportunity Mediation Committee which presumably can act to provide “administrative guidance”. However, these agencies continue to rely on mediation, not compulsory arbitration, on voluntary compliance and on weak sanctions. The
amendments also permit mediation to go forward through a request from only one side (in the past both sides had to agree making the process very difficult to implement), and names of recalcitrant employers are to be publicized. Positive action remained recommended, not mandated, action. In that year, the revised Equal Employment Opportunity Law was used as the basis for a successful lawsuit against Nomura securities, after nine years of litigation. The court granted lump sum settlements but only from the time the revised Equal Employment Opportunity Law took effect, in April 1999. (Ibid.).

Furthermore, the concept of indirect discrimination was introduced as a form of prohibited discriminatory measures. Indirect discrimination means that, if any measures bring about discriminatory consequences for either men or women, they will be regarded as discrimination, even if they do not constitute explicit distinction between men and women and other forms of direct discrimination. Such measures are permitted only when there are reasonable grounds, such as those necessary for the performance of specific tasks. It has been pointed out that the two-track employment management system, which began to be introduced widely when the original Equal Employment Opportunity Law was enforced, amounts to this form of discrimination, because workers are virtually segregated by gender in different career courses under the system. In view of this and other situations, the international Commission on the Elimination of Discrimination Against Women recommended awareness-raising and measures to decrease wage disparities and non-discriminatory employment. (Committee of Experts on the Application of Conventions and Recommendations, 2007, International Labour Organization).

Other new provisions included prohibition of dismissal and other unfavorable treatment of female workers on the basis of pregnancy, childbirth and maternity leave. Also, sexual harassment against men was now in the scope of the Law; employers are now required not only to devote due care to its prevention but also to make specific arrangements for dealing with complaints, including through setting up focal points. Provisions for “positive action” were included.

The 2006 amendments to the Equal Employment Opportunity Law (and Labor Standards Law) prohibit discrimination based on sex in assignment of tasks and responsibilities as well as changes regarding terms of occupation and contract. However, pay discrimination itself is not outlawed, and there is no reference to equal pay for work of equal value. (Working Women’s Network, Report on the Situation of Working Women in Japan, 2007). The definition of indirect discrimination employed by the law’s revisions is still insufficient to deal with pay discrimination, temporary and wage based employment, or the tracking systems. It applies to body height, weight or physical capacity when recruiting or hiring workers; if there is a two career ladder, permitting transfers; requiring workers to “have experiences of job relocation” when requesting promotion. (Ibid.) Companies must provide “legitimate reasons” for a job distinction or evaluate this on a case by case basis. Female workers were to be able to engage in full working lives “with respect to maternity”. (Ibid.).
As a result of the weakness of the law in its various versions, at least some of the incremental change related to the Equal Employment Opportunity Law may be attributed to the filing of law suits challenging sex based workplace discrimination by working women’s groups and their labor lawyer allies and advocates. Although Japan is often referred to as a non-litigious culture, women’s and other change oriented groups have sought to use the courts as an alternative means of bringing pressure on the political system in order to change established norms, most commonly in local or district courts at the outset. After years of limited success, during which the courts suggested that discrimination was not “contrary to public order” in Japan (Sumitomo Electric case, 2000), the tide began to change in recent years. The Sumitomo Electric case was reversed in the Sumitomo Metals case in 2003. Successive efforts at litigation began with the Kyoto Gas case in 1998, largely brought by groups of working women and their labor law allies (now the Working Women’s International Network), and have progressed through the Kanematsu and other suits challenging discriminatory labor practices. In 2000, the Tokyo High Court ruled in favor of female plaintiffs in the Shiba Shinyo Credit case, ordering promotions and damages for wages lost and attorney fees. In 2002, the Tokyo District Court ruled in the Nomura Securities case that the two-track system based on gender was illegal and ordered compensatory payment to the affected women. In the Kanematsu case, ruled on in January 2008, Kanematsu Corporation was ordered to pay compensatory wages to 4 of six employees, though the pleas of two employees were denied (Asahi Shinbun, 12 May 2008). In 2008, a challenge to the two-track system was finally accepted by the Tokyo High Court, in a ruling finding that a sex based wage system was illegal. (Japan Times, 2 February 2008). This case had initially been filed in 1995, and it took efforts by working women’s groups who persisted throughout this period to get a favorable ruling. The plaintiffs were awarded compensatory wages for the discrimination they had suffered.

However, it should be cautioned that specific legal decisions in Japan are not precedent setting. And, the Equal Employment Opportunity Law is considered a “guideline” not always binding in terms of company policy. The government and the courts still tend to favor private concerns in practices related to hiring and promotion, given the strong link between the formerly dominant party, the Liberal Democratic Party and the corporate sector. In this regard, even the positive changes in the Equal Employment Opportunity Law in recent years will need to be carefully monitored to assess successful adoption and implementation.

DV Policy in Japan Japanese policy toward domestic violence was first addressed in 2001 when the so called DV law was passed. This was much later than the US, whose policy was enacted in 1994, after active advocacy at the state and local level, where models for national policy were enacted earlier. In Japan, local activists pressed for a national policy and with the external prod offered by international meetings and treaties, were able to gain passage of the Domestic Violence law. Local study groups and research committees which included activists, scholars, shelter workers and victims of abuse joined together to press for legislation. They conducted local surveys to document the presence of domestic violence everywhere and disseminated educational tapes. They
established a Domestic Violence Prevention Information Center in Kobe Japan which pressed for a national approach to the problem. Other local groups included the National Network of Women’s Shelters, Research Group on Violence Against Women, the Kansai-based domestic violence protection center, *Onna no Space* of Sapporo, et al. Under then-existing legislation the 47 prefectures and some local administrations provided assistance to victims, primarily through the creation of short term shelters. The law passed in 1999 was the result of networks created between local activists, bureaucrats and female members of the Diet. Local women’s groups were consulted in the legislative drafting process. The law which passed unanimously, provides fewer resources and remedies for victims than its American counterpart, but is still a significant milestone. It also provides for training of police, judicial personnel and health operatives at the local level.

Local governments were given the primary responsibility for providing support for victims and ensuring protection for victims. Under the system, local governments issue resident cards in order to receive local government services. The law was amended in 2007 to expand protection orders and reinforce provisions for municipalities to establish centers and counseling support for domestic violence victims. (Freiner, 2010) However, anti DV groups including the Association for Supporting Families Victimized by the Domestic Protection Law, attacked the law and prevented a lecture on domestic violence from taking place in the city of Tsukubamirai. (Fujmura – Fanselow, 2010, 350). Though concerned groups and individuals including the Asia-Japan Women’s Resource Center, collected over 2600 signatures to protest the cancellation and ask for rescheduling, they did not succeed. Elsewhere in Tsukuba and Nagaoka protests accompanied the lectures, and there was concern about the future of such events. (Ibid)

Women’s centers at the local level (josai sentaa) are responsible for implementing the law; they are the direct descendents of prostitution centers which have a long history in Japan society. Their conversion at the local level was a reaction to the Fourth UN Conference on Women in 1995 – this also led to the establishment of new centers. Today there are approximately 180 centers which operate as Spousal Violence.

IN 2004, the responsibility of state and local governments for the support of survivors in “achieving self reliance” was reinforced in the law passed that year. Centers provide varying degrees of temporary protection; there are also hotlines available in Tokyo and other cities. But one significant problem remains; the lack of national funding support and the often precarious state of support at the local level. Women are also inhibited from seeking help since the patriarchal system of family registry under the Civil Code means that they are registered locally under their husband’s name; in Yokohama the local Women’s Association created the Easy Moving and Dwelling Private Program in 2004, which permits them to co-sign for the rental of apartments for women seeking refuge from spousal violence. (Freiner, ibid). In this
instance, the unitary political structure has made possible some change, but the system has provided inadequate responses for both cultural and systemic reasons.

Educational Policy In the educational system, attacks on gender equality policy, similar to those described with regard to DV policy, only with even greater impact, have limited the ability of schools to provide “gender neutral” approaches. As in the case of the anti ERA movement in the US, the Basic Law for Gender Equal Society became a source of conflict and backlash. The teaching of sex education was attacked and the teaching of issues related to the comfort women (enforced prostitution during WW II) eliminated due to efforts by neo nationalist right wing groups who had control over textbook preparation. (Wakakuwa and Fujimura Fanselow, 2010, 342). Rather, texts were to emphasize women’s role as home and family caregiver and “celebration of housework”. (Ibid.) Local assembly members added their voices and began to attack sex education as an example of post war individualism, influenced by the West. The mayor of Arakawa ward in Tokyo criticized gender equality and appointed right wing members of the Japanese Society for History Textbook reform to the local council for Gender Equal Society. A leading spokesman for the group advocated “chastity education” and referred to gender theory and feminism at the roots of all evil. (Ibid, p 342). The Chief Cabinet secretary at the national level, a council of Metropolitan Governors, and a local council in Fukoku prefecture all decried the use of the term “gender free” as inappropriate, and later voices from the Tokyo Metropolitan Board of Education discontinued use of the term; as did the local Kanagawa Board (as in the US, these boards have considerable autonomy) (Ibid, 343). In the interplay between different levels of government, in 2005, the backlash groups and LDP government leaders launched the “Extreme Sex Education and Gender Free Education Project”, restating the importance of marriage and the family. A network of feminist scholars and educators, together with other women, formed to try to combat these efforts. (Ibid, 345). Later a local center in Fukui removed publications related to feminism and sex education as “too radical”. (Ibid, 345). Under conservative LDP governments in 2005 and 2006, national efforts to strengthen the family and decry gender equality continued unabated until the assumption of directorship of a new minister for Gender Equality was appointed in 2007. (Ibid, 349). The committee established on “Education Rebuilding” was abolished with the advent of a new government controlled by the Democratic Party of Japan. However, controversy continued when efforts to include material on “comfort women” were protested by twelve cities and Mitaka Ward in Tokyo. The previously mentioned Japanese Society for Textbook Reform was able to gain acceptance of books (authorized by the Education Ministry) which omitted any reference to comfort women. Citizen groups have continued to press publishers to restore these references. (Ibid, 352). It is unclear how effective the DPJ government will be in taking decisive action related to a more balanced approach to “gender free” and gender equality issues.
Policies in the United States.

Equal Employment Policy In the United States, the role of the Civil Rights Act of 1964 (Title VII), and affirmative action policy, both emanating from the national level, cannot be overestimated. The Equal Employment Opportunity Commission established by this law has played a significant role in attaining compliance with anti discrimination policy. Women’s groups advocating at all levels of the political process played an undeniable part in fostering this policy change although they were more actively involved after the law was passed and its importance was clearly understood. In the five years following the passage of the law, women filed over 50,000 law suits pressing the weak agency that had been created to enforce the laws more vigorously. The reach of the law under the federal system extends to state and local government as well as the national level; the system sometimes referred to as “cooperative federalism”. Although enforcement was slow and uneven, these policies undeniably contributed to women’s advancement in the labor force, though as in Japan, change which threatens existing patriarchy inevitably results in backlash. Although most of the policy initiative and change emanated from the national level, several locally based feminist litigation groups, in California and Philadelphia, among many others, have provided support for women’s legal efforts to combat discrimination as in Japan. Women’s groups used the courts to considerable advantage, however, with more profound consequences for employment given a more powerful judicial system. The reach of the legislation extended to all employers with over 15 employees at all levels of the political system. Women’s groups pressed for strengthening and expanding the laws, and were able to make considerable progress, though undeniably more under Democratic presidents. Additional national legislation related to employment for women included the Civil Rights Act of 1991 which prohibited indirect discrimination as well as articulating the significance of policies with a disparate impact on women (though the burden of proof remained on the plaintiff) and provided that employers could not retaliate against plaintiffs. The United States has also passed the unfunded Family and Medical Leave Act which provides twelve weeks of unpaid leave for care of children and families, though California, New Jersey and some cities have provided funding, as an example of local discretion and support for this important policy.

In the United States, also, two other policies will be examined which relate to sex discrimination against women and may present a stronger case for the role of both centralized and decentralized policy making and implementation. Title IX of the Educational Amendments of 1972, which banned all sex discrimination in all educational institutions receiving federal funds; affecting all activities, whether academic or athletic. This law covers all aspects of educational activity. The states were authorized to pass implementing legislation after the national law was passed. Efforts to curtail enforcement under the Republican administrations were either defeated or overturned when the Democrats next took office. The policy includes admissions, financial aid, housing, health and residential services and counseling and guidance as well as grading and discipline. Funding for the law to make it a reality came several years later. Under the federal system, ten regional equity centers incorporated gender equity into their
mandates, providing teaching training, model materials and guidance on implementation. State departments created their own policies. In 1974 the WEEA, Women’s Educational Equity Act, became the first law to focus directly on women and education. Advocated for by thousands of feminists at all levels of politics, major sources of funding were created in a huge surge of support. Clearly, the progress of this policy drew on existing networks and mentors (Katherine Hannson, Vivian Guilfoy and Sarita Pillai, 2009). One of the unexpected developments related to Title IX was a grass roots network of families, teachers and community residents (including fathers who valued the positive roles they saw their daughters assuming in terms of confidence and empowerment) who fought to keep the policy intact. (See Gelb and Palley, 2006).

The Violence Against Women Act in the United States

In 1994, Congress passed the landmark Violence Against Women Act (VAWA). The law established a comprehensive approach to addressing and ending violence against women. VAWA provides a framework for collaboration that involves federal, state and local governments, social service providers, law enforcement personnel, prosecutors and the courts. The law has proven to be a remarkable success at addressing and ending violence against women and girls, and has been reauthorized twice.

This law was the result of activism at the grassroots level, under the aegis of the National Organization of Women (NOW) and the national coalition against domestic violence, both national groups but with strong state and local branches and activist roots. Also participants were organized labor, an other civil rights groups. The law both followed in the trajectory of earlier civil rights laws and operated under the federal system with important funding for the state and local systems which had preceded it. It also created a new federal criminal offense to cross state lines for interstate battery a very substantial sum of money has been allocated and the support reauthorized and increased over the years. Community partnerships continue connections between the police, health providers and victim advocates. There are now over 1,000 groups which participate in efforts to continue the commitment to ending and dealing with domestic violence.

Key provisions of VAWA include:

- the creation of the Domestic Violence Hotline (1-800-799-SAFE (7233);
- assistance to combat domestic violence, rape and sexual assault, and assistance to victims;
- provisions that address the needs of battered immigrant women and children, enhancing penalties for repeat sex offenders;
- strengthened criminal penalties for crimes against women including domestic violence, rape and sexual assault;
- initiatives that address the impact of domestic violence on children;
- a definition of dating violence and funding to address dating violence;
- measures to combat violence on college campuses;
- a recognition of the unique needs of disabled and older victims of violence;
- transitional housing assistance and services to domestic violence victims who are homeless and in need of housing; and
- an improvement of the laws pertaining to protection orders, sex offender registration and interstate domestic violence.

VAWA also created a number of grants that created and improved law enforcement and prosecution strategies on the state and local levels as well as grants that provided services to victims. The measure also established grants to state and local governments to address rural domestic violence and child abuse, grants for battered women’s shelters, and grants to address and prevent sexual assault among homeless and runaway youth. To date, VAWA has been reauthorized several times and a total outlay of $9 billion has been directed toward this policy since its inception. (Legal Momentum 2011).

CONCLUSION

The comparative analysis of policy related to gender equity in Japan and the United States, related to the theme of centralization and decentralization in federal and unitary systems demonstrates that the path to policy change is not easy in either nation. In both nations, mobilization, law making and implementation occur at all levels of politics. Local government can be a force for strong advocacy by groups supporting feminist goals, but as we have seen, in Japan, local government in recent years has also been co-opted by right wing activists with anti feminist and anti gender equality goals and views. With regards to gender equality policy, initial progress was followed by significant backlash, with few recent examples of positive momentum either at the national, prefectural or municipal level. In the case of policy toward domestic violence, similar forces have sought to impede change. In the area of equal employment policy, the Equal Employment Opportunity Law has undergone three revisions. Aspects of gender inequity in the workplace have been addressed but the data cited in this article suggests how much further anti sex discrimination policy in Japan needs to go. And, this policy arena demonstrates the ineffectiveness of prefectural level mediation provisions.

In the United States, policy processes including mobilization, legislative and legal outcomes and implementation, have been different by degree, though not completely opposite to the process in Japan. However, local activists have been able to be effective in creating pressure for change with regard to violence against women policy and Title IX, educational equity for girls and women. They have been able to monitor threats to the continuation of these often effective policies by utilizing grass roots pressure at the local
level. The devolution related to policy formation and implementation has often benefitted women’s policy initiatives. However, the Japanese case reminds us that anti feminist and gender equity forces may also coopt local government and backlash, certainly not uncommon in the United States, may bring change to a halt. The case of equal employment policy has been far more effectively dealt with in the United States, at all levels. In this instance, structure and the manipulation of cultural norms, have conspired against women’s equality aspirations in Japan.

REFERENCES


Catalyst. February 2010.


“Kanematsu Loses Gender Bias Suit in Appeal Reversal”.


Magnier, Mark. “In Japan, Women Fight for the Last Word on Last Names.” Los Angeles

National Center for Educational Statistics. 2010, National Center for Education.

Nakakubo, Hiroya. Canadian Embassy. “Gender Equality and the Role of Law.” Asia


Osawa, Mari. 2000. “Government Approaches to Gender Equality in the mid-1990s”.
Social Science Japan Journal. 3:1, 3-19.

Reuters. 19 October 2010. 25 October 2010.

Social Watch. 2009.

Stetson, Dorothy and Amy Mazur. 1995. Comparative State Feminism. Thousand Oaks,
California Sage Publications.

Aims At” (Danjo Byodo Sankaku Shakai kihon ho Osawa no mezasu mon) in
Chizuko Ueno ed. Radically Speaking (Radikaru ni katoreba taidan sho). Tokyo:
Hiebon Sha Publishing. 19-92.


Wakakuwa Midori and Kumiko Fujimura-Fanselow. 2011. “Backlash against Gender -
Equality After 2000” in Kumiko Fujimura –Fanselow, Transforming Japan. New
York : Feminist Press. 337-60.

Wall Street Journal. 7 January 2011.
