

Constitutional Affair

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In the Beginning

On September 2nd Japan officially signed the documents of surrender with the Allied Powers and General MacArthur assumed the position of Supreme Commander of the Allied Powers, or more realistically the American Occupation. Soon after Katō Shidzue and her husband, the labor leader and left-wing politician, Katō Kanjū were invited to Occupation headquarters to discuss political issues. The Americans were interested in Katō Shidzue's ideas for implementing MacArthur's determination to "liberate" the women of Japan. Shidzue stunned her questioners with her understanding of democratic ideals and the practical work she and other women had performed before the war in their own efforts to gain women their human rights. She also gave a list of names of women who would be helpful in the days ahead as Japanese women claimed their role in the new democracy.

Katō and her activist associates proved to be well versed in the significance of enfranchisement and political equality. They surprised both the Occupation authorities and Japanese men, however, in their assertion that political equality would fall short of the mark they had set for liberation. These women saw the importance of combining political rights with economic and social liberation based on specific laws which promoted women's and children's welfare, thereby providing the foundation for real equality between men and women.

The MacArthur Constitution and Women's Rights

After much pushing and pulling, Occupation authorities got the sitting (wartime) government to pass an election law in late December of 1945 which enfranchised women and set the rules for new elections. Next this same wartime group was asked by SCAP to revise the prewar Meiji Constitution. At the same time several groups and individuals on the left and the right took it upon themselves to either revise or write a new constitution. MacArthur and others at the Government Section determined by early February that these men were not up to the task. MacArthur appointed a group of 19 men and 4 women to write a "democratic" constitution. The group was given one week in order to outflank the international oversight committee known as the Far Eastern Commission or FEC. MacArthur gave minimal but important guidance in terms of three principles. The first two were: retain the emperor; abolish war and the instruments of

war. The third stated that "the feudal system of Japan will cease." The work was begun on February 4th and was presented to Japanese government officials on February 13th.

The committee assigned to draft the Human Rights Provisions was composed of Dr. Pieter K. Roest, 47; Harry Emerson Wildes, 55; and Beate Sirota (Gordon), a 22yr. old Mills College graduate. They were responsible for researching and writing about one third of the Constitution. (31 articles in the final draft). None of these three had legal training but two had experience in Japan (Wildes and Gordon).

Gordon was assigned to the areas of women and education. She began by gathering constitutions of European governments and augmented appropriate clauses with her childhood observations of the subordinate role of Japanese women. She was influenced by the constitutions from the Weimar Republic, USSR, France, and The Scandinavian countries, all of which spelled out promotion of welfare, often specifically mentioning women and children.

Two articles written by Gordon made it into the American Draft.

Article 23. The family is the basis of human society and its traditions for good or evil permeate the nation. Hence marriage and the family are protected by law, and it is hereby ordained that they shall rest upon the indisputable legal and social equality of both sexes, upon mutual consent instead of parental coercion, and upon 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.

Article 24. In all spheres of life, laws shall be designed for the promotion and extension of social welfare, and of freedom, justice and democracy. Free, universal and compulsory education shall be established. The exploitation of children shall be prohibited. The public health shall be promoted. Social Security shall be provided.

Gordon had also included specific clauses which would protect and aid expectant and nursing mothers, promote infant and child welfare, and establish just rights for illegitimate and adopted children, and for the underprivileged. It was ruled by the Chief of Government Section, General Courtney Whitney, that the "minutiae of social legislation should be omitted and general statements should be made that social security should be provided." Thus all wording of protective legislation was eliminated.

We can, now, begin to see the outline of the controversy over just what equality of men and women should encompass. Gordon understood the need to include the "minutiae" but this conflicted with ingrained attitudes of most of the American men about what

should be in a Constitution and what should be left for future legislation. Many of the same rights which Whitney ruled out of the American draft, and, therefore, were not available to Diet members during their debates of the summer of 1946, were coincidentally offered as amendments in the Constitution Committee by Katō. And once again men would claim that such specificity was not appropriate for a constitution.

Once the American draft of a constitution was written, it was presented to the Shidehara government, still in power, which, then passed it off in the press and the Diet discussions to come as their own creation.

The Election of April 10. 1946

In the rescheduled election of 4/10/46, about 75% of the eligible men and about 67% of women voted. Of 97 women candidates vying for 466 seats, 8 Socialists, 8 Liberal, 8 Progressive, 1 Communist, and 14 women running for smaller parties or as independents were elected, for a total of 39. Katō Shidzue, who had campaigned strenuously using radio, the press, the megaphone and the street corner, won from Tokyo's second district as a member of the Socialist Party.

The Constitution Committee and Issue of Legal Equality vs. Social and Economic Equality

The Constitution was presented to a plenary session of the House of Representatives on June 25th for three days of discussion. It was then sent to a Special Committee on Revision of the Imperial Constitution with 72 members appointed by the speaker. Katō Shidzue (JSP) and at least one other woman (Takeda Kiyo, Liberal Party) were appointed to this committee which debated the American draft over the next month, suggesting amendments.

Beginning with the Plenary session Katō Shidzue argued that Article 23, Gordon's article, was not specific enough. She was supported in this assertion by the Socialist Party's most outspoken (and long winded) Representative, Suzuki Yoshio, who pointed to the Weimar Constitution, and those of the USSR, France, and China. "All," he said, "include a great many cultural, social, and economic rights and duties...At this epochal juncture of constitutional revision, we would like to make this [a document containing guidelines] for the people, which will include a great many provisions regarding cultural, social, and economic rights of the twentieth century, and the freedoms of the nineteenth century." Although he did not refer specifically to women's rights, these would be covered by Katō's able interpolations.

Since both Gordon (American draft) and Suzuki (Japanese debate) drew wisdom from the Weimar Constitution it is worthwhile to consider a few of the articles they examined.

The specificity of the Constitution is astonishing and, while not all of it is liberating, the document certainly takes into consideration the importance to society of women and children and prizes both equality between men and women and social and economic welfare as liberating factors. Here are a few specific provisions of the Weimar Constitution of 1919:

Art. 7 - The Reich has jurisdiction over population policy, maternity, infant, childhood and youth care.

Art. 22 - Representatives are chosen in universal, immediate, and secret elections by men and women over the age of 20.

Art. 109 - Men and women have the same basic civil rights and obligations.

Art. 119 - Marriage, as the basis of family life and the maintenance and increase of the nation, stands under special protection by the constitution. Marriage rests on the equality of the two sexes. The purity, health care, and social advancement of the family is the obligation of the state and the congregation. Large families have a right to equalizing care. Motherhood has a right to the protection and care of the state.

Art. 120 - The upbringing of offspring to physical, spiritual, and social virtue is the highest obligation and natural law for parents, whose activities in these respects are overseen by the state.

Art. 121 - Illegitimate children must by law be given the same conditions for their physical, spiritual and social development as legitimate children.

Art. 122 - Young people are to be protected from moral, spiritual, or physical exploitation.

When Katō Shidzue took the floor she voiced her concern about the conflict between the new constitution and the 1898 Civil Code, which supported a family system dominated by men. She also questioned political equality on paper vs. social reform and welfare protection in fact. As she stated in one of her interpolations before the Plenary Session, she believed that the equality between men and women as stated in the draft under discussion was no more than a formality, "since it merely says mechanically in a provision of this Constitution that men and women are equal, in a real sense there will be no equality in real life."

The issue of particular concern to Diet members was the one which spoke directly to the role of men and women in the family. It was Article 23 in the American draft and was designed to break the back of the feudal system and therefore, while it could be tinkered with, the basic concept was not considered negotiable by SCAP. This meant that the

Japanese government had great difficulty managing the debate which centered on this article without giving away the fact that they were powerless to make some changes in the ostensibly Japanese Constitution. Article 23 proved to be the most controversial item in the section of human rights.

In the Constitution Committee Katō parried with the Government Minister for the constitution, Kanamori Tokujirō, as Katō tried to show that the central issue of concern was the prewar family system as protected and promoted by the yet unreformed Meiji Civil Code of 1898, and that consequently it would be necessary to spell out very carefully the rights and protections of women if they were to attain real equality. It would also be necessary to revise the Civil Code.

Kanamori had been pressed hard by men who wanted to be sure that "equality of the sexes" would not destroy the household (ie) and some even hoped that it would not do away with the tradition of the house head. He had been assuring in his responses with such statements as, "We can expect that there will be considerable changes in the institutions of the family and succession, but, as the Prime Minister (Yoshida) has already explained, we do not assume that the rights of the house head or parents will immediately disappear." The discussion turned toward a concept of "different responsibilities for men and women," rather than equality.

Taking her turn in this heated debate, Katō Shidzue pointed to her conviction that the final draft of this article of the constitution must force a change in the basic nature of the Japanese family structure.

She began by recalling that Prime Minister Yoshida had commented previously that the new equality "would not destroy the beautiful customs of the traditional Japanese family" for "those customs have to be respected and maintained." She then asked in the manner of appropriate interpolation whether the Prime Minister meant "the traditional ethical virtues of the Japanese family system, such as members of the family protecting their family honor, cultivating harmony, manners, industrious habits, and the like?" Or whether he was lauding family life as represented by an all-powerful male household head and oppressive laws against women.

She went on to describe her idea of the family, one in which husband and wife were equal, a place where family members could "rest and replenish their energy and body and heart. It must serve the function of protecting children until they mature, fostering their moral and emotional growth. Home must be the place where all the members can live happily and freely, develop their respective unique personalities and develop maturity of character. I believe family life must be understood properly and protected amply so that it will serve those functions."

She underscored her argument by saying that the current Civil Code was in complete contradiction with the article under discussion and with the Constitution and democracy in general, for "the current family system not only does not recognize husband and wife as legally equal, but it also considers the wife legally incompetent."

Ministers Kanamori and Justice Minister Kimura Tokutarō tried to respond with assurance that basic equality of men and women would be protected and that the Civil Code would be revised. In this they took a different approach from their previous answers to conservative male Diet members, who wanted assurances that the family system would be retained.

As Katō had insisted, the article as it stood was not adequate to provide for the liberation of women from the oppressive family system. There needed to be specific statements about social welfare programs for women and children and protection and provision for widows not just war widows, but all widows. Katō saw a significant difference between simple legal equality and the kind of social and economic security which would provide women with material improvement and thus real freedoms. She intuited what Gordon had learned from European constitutions. The discussion was lengthy and intense and divisive.

On July 25th a smaller, appointed, sub-committee (no women) met in secret until August 20th. (The records of this committee were not released to the public until 1995. It is believed that the Japanese leadership was afraid a public airing would reveal the American authorship of this draft.) In the subcommittee Suzuki Yoshio once again took the lead for the Socialist Party and since no women were in attendance, was responsible for representing Katō's desired amendments as she had presented them in the Diet [Constitution Committee meetings](#) and in Socialist party meetings. She wanted specific protections for mothers and children. She had stated,

"I think that the idea that must be clearly recognized in this article is the protection of motherhood in addition to legal equality for women. To put the matter very concretely, in the provisions on the rights of laboring Article 25 women's uniqueness must be recognized and provisions for the special protection of pregnancy, birth and care for children must be stated clearly." She also wanted to include an amendment which stated "The livelihood of women widowed by war damage and other causes shall especially be protected."

Suzuki led the Socialist Party delegation to include the last item in their amendments but not the special consideration of women and children. In the end Suzuki agreed with the majority to include a comprehensive general amendment which left out the specific protection of women and children, the provision for war damaged women, and security for the elderly. The emphasis, therefore, was placed on married couples and families

and, yet, did not speak to the issue of the dominance of a male household head as called for in the 1898 Civil Code. The final amendment read:

Article 24 (amending Article 23 in the American Draft) 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.

2. 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."

And Suzuki's compromise which essentially threw out Katō's amendments and replaced Article 24 of the American Draft became the very general Article 25.

Article 25. (Japanese Constitution) All people have the right to maintain the minimum standards of wholesome and cultured living.

2. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Of course, as Katō pointed out in her interpolation and in the many articles and radio broadcasts to come on the subject, a significant stumbling block to constitutional equality was the Meiji Civil Code which conflicted totally with the new constitutional freedoms and with the equal role for women as expressed in the above article. Equality could not be achieved when the Constitutional article looked toward "laws to be enacted" while not specifically denying the role of the household head. She firmly believed that equality was not simply a matter of voting and running for office.

Political Rights without Social/Economic Guarantees

In fact, if anything, without further guarantees, these political rights would become mere symbols of what women had yearned for when they criticized the feudalism of the past. In the future there could be so much emphasis placed on the successful enfranchisement of women that actual social and economic gains would be side-tracked as the public assumed that if women were legally equal in the political arena they could legislate equality in other areas. Of course, this presupposed a power in the Diet which the women soon learned they did not have.

For comparison sake, consider the issue of legal vs. real equality when examining the unsuccessful attempt to add the Equal Rights Amendment to the U.S. Constitution in the 1970s.

ERA Amendment as approved by the Senate in a vote of 88 to 8 on March 22, 1972.

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

After exploring the comprehensive discussions about equality and women's rights as debated in the Constitutional meetings of 1946 and reading the articles which actually appear in the Constitution as it went into effect in May 3, 1947, this short sentence hardly seems controversial. Of course we know that it was, and not simply among men. Women also campaigned against the amendment. One could suggest that women who saw themselves as "political feminists" fought long and hard for the amendment and those who, while perhaps not giving themselves this title, considered themselves "cultural feminists" fought against its passage. As in Japan one of the key divisive points was interpretation of the role of women in the American family. While the US did not have a formal family code, we did believe certain "myths" about women and the family. The result was that many women and more men felt the proposed amendment would "destroy the family." It would destroy our "beautiful customs and traditional ethical virtues," as Prime Minister Yoshida had termed it in the Japanese case. Also the use of the word sex, instead of our present more sophisticated use of gender in such circumstances, meant that all sort of confusion and hysteria was propagated about co-ed bathrooms, sexual promiscuity, rampant homosexuality and so forth. Also, women looking for the protection of women opposed this legislation because it did not provide any. Unfortunately for the women urging passage of the Amendment, there was no occupying force pushing for change and the American system required a much more onerous route to passage than a simple legislative vote as in Japan. Therefore, a few States were able to block passage.

More to the point, however, why did many American women feel we needed such an amendment? Why wouldn't the 14th Amendment which guaranteed equal protection for women? Here we are back to the issue of apparent equality vs. real equality.

Like the situation which Katō intuited in Japan, we had seen that the 14th Amendment could easily be interpreted away and, in fact, was both in the case of women's rights and racial equality. For example, on the issue of racial equality in 1944 the Supreme Court upheld the incarceration of Japanese-Americans on the basis that there was clear and present danger and therefore this group was not prejudiced against on the basis of race, but rather treated rationally on the basis of national security.

Although the ERA amendment did not pass, it is true nevertheless that women have made gains in the U.S. over the years. However, I would suggest that here, as in Japan, these gains have come more readily when they can be tied to specific federal laws, especially labor laws, or newer affirmative action laws, and that even in these cases there are difficulties in changing material conditions for large groups of women. As both

Gordon and Katō had determined, legal equality can generate a conscious expectation of rights, but it does not provide objective economic, political and social conditions which will bring about real freedom and equality. Removal of legal restrictions, does not guarantee equality. Even a liberal constitution is inadequate without some sort of affirmative action programs and provisions of adequate child and welfare services in order to insure women's right to "life, liberty, and the pursuit of happiness" as it is stated in both the U.S. Declaration of Independence and the Japanese Constitution.

A Revision of the Civil Code of 1898: Women Use Informal Powers to Press their Case

On January 10, 1946 a group of women presented General MacArthur with a declaration lauding the SCAP commander for recent directives which banned secret and ultra-nationalistic societies and ordered that those responsible for Japan's recent assault on world peace be purged from government activities. The statement focused on the immediate "fight for democracy" through a "bloodless revolution" which would remove the "feudalistic remainders" from Japanese society.

The statement was drafted by Hani Setsuko and Miyamoto Yuriko who were joined in the presentation to MacArthur by Katō Shidzue, Yamamoto Tsugi, Sata Ineko, Yamamuro Taniko, Akamatsu Tsuneko, and Matsuoka Yoko. All were activists in pre-war organizations including several organized attempts to enfranchise women at both the national and local levels.

Miyamoto and Sata were both writers with ties to the Communist Party.

Matsuoka and Hani were cousins with backgrounds in journalism and education.

Akamatsu was a women's labor organizer, who would be elected to the House of Councilors in the first Upper House election in 1947.

Katō was the founder of birth control organizations, and would soon be elected to the House of Representatives.

Yamamoto was a physician, a noted specialist in tuberculosis and children's diseases, and was associated with Katō's birth control movement before the war.

Yamamuro was a social worker and the daughter of the founder of the Salvation Army in Japan.

All eight joined together by the end of January, 1946 to form a political organization focused on social democratic activism- The Women's Democratic Club (Fujin minshū kurabu). All were considered, in varying degrees, to be to the left of center. All

recognized the power of the Americans in charge of the Occupation, especially MacArthur, and, further, recognized the antagonism of the male political establishment toward the inclusion of women in their ranks. All worked with Lt. Ethel B. Weed, Chief of the Women's Division at Civil Information and Education, (CIE) of SCAP.

Most importantly, all believed that the new democracy would provide the opportunity they had worked so long for—the chance to bury the feudal ideology expressed in Japan's Civil Code of 1898.

Unfortunately the new Constitution as approved in September, 1946 (effective as of May 3, 1947), did not respond to either practical or theoretical issues raised by these women. There was more work to do.

In September, 1946, as the new Constitution was being voted on in the Diet, these women and others began to publicize the oppressive measures evident in the Meiji Civil Code. Their efforts were most effective within women's groups like the Women's Democratic Club, which now had branches throughout Japan. Several of the women, especially Katō, used the media weapons of the press and radio. The women also found support from SCAP officials, Ethel Weed of CIE and Ruth Ellerman at Government Section. Elected Diet women, especially the eight Socialist Party members, and some men also helped. The big question was not whether the Code would be revised at all but whether those sympathetic with the pre-war family system could maintain some aspects of the prewar family structure, particularly the household head, while continuing to give lip service to the equality provisions of the new Constitution.

Serious debate took place in The Women's Democratic Newspaper (Fujin minshū shinbun) which was edited by Matsuoka Yoko and included all of the original members of the Women's Democratic Club on its banner. It was just a four page paper, but all newspapers were small due to paper shortages, and each issue passed through many hands. While this newspaper was a vehicle for presenting issues of interest to women from various parts of Japan, the primary focus for the year from September, 1946 to September, 1947 was to alert the public that new constitutional guarantees of equality were meaningless without the abolition of the feudal laws which ensured the superiority of men over women. This debate often led to controversy among the columnists, especially between Miyamoto Yuriko on the communist left and the less radical Katō Shidzue, a left-wing socialist. But regardless of their theoretical disputes, the primary issue remained clear: human rights for all citizens demanded abolition of the male household head and his rights of power and control.

The changes which were achieved by the time the new Civil Code became effective in January, 1948 were monumental, if not comprehensive. The statements about the household head of the family were deleted and men and women, husbands and wives

made equal in the family, as parents, and for the division of property. Also children were made equal rather than vesting all property in the eldest son. The statement that women were incompetent was stricken.

However, a few remnants of the past remained. Foremost among these is the continued role of the Koseki-ho or Family (Household) Registration Law. It is still required that marriages, divorces, births, and other information be maintained in the family registry, usually in the ancestral family seat. This has caused much anxiety for some women and for some mothers and their children. Since this is described as family law there is no provision for single adults or single mothers with children. Consequently it conflicts with the "individual dignity and the essential equality of the sexes" as stated in Article 24.

According to this family law the name appearing first in the family register indicates the head of household. Even though that household is now the Western-style family of husband, wife and unmarried children, the indication still signifies a prewar household. The wife's name is first if the husband has taken her family name and the husband's is first if his name is used, as is usually the case. A new marriage requires a new register and the place of this register is still called honseki and is usually in the location of the head's family home. A "head" would have to apply to change the register in order to move it. In the event of divorce a wife's name returns to her family register unless she applies to set up her own register within three months of the divorce. An unmarried woman remains in the family register under her father's name regardless of her age or personal wishes.

Laws do exist which would provide for independence for divorced women, but they require specific and sometimes difficult measures to invoke. Furthermore, women who do not follow the appropriate procedures and are therefore not in a koseki cannot get certificates of nationality and, therefore, cannot get passports for their children.

Women Apply the Japanese "Bill of Rights"

As in the fight to revise the Civil Code, women found strength as they sought to secure their rights by acting informally but in concert. This drew from the strong tradition of a "right to assemble" practiced before the war, and the right to petition which had been in place even during Tokugawa times. Of course, the new freedoms of assembly, petition, as well as freedom of speech and the press, were thought by the Americans to be new to Japan. MacArthur and SCAP were somewhat dismayed, in fact, by how easily the Japanese formed rallies of size and power. And, women were no exception to this rule. In fact, early in the Occupation period SCAP worked to suppress several of these Constitutional freedoms which they had pressed on Japan.

I would like to examine one significant case which highlights the use of some of these rights. It involved the Ashida Cabinet, the Diet members, freedoms of press, speech, and petition and informal group actions by concerned women. The issue involved workers rights to form unions, bargain collectively, and strike.

The following are the relevant articles from the Japanese Constitution which apply to this case.

Art. 25. All people (changed from "all men" in American draft) shall have the right to maintain the minimum standards of wholesome and cultured living.

2. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Art. 27. All people shall have the right and the obligation to work.

2. Standards for wages, hours, rest and other working conditions shall be fixed by law.

3. Children shall not be exploited.

Art. 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Japanese laborers and union leaders embraced these rights even before the new Constitution was written. They organized unions in large numbers and used their right to strike liberally. They combined the labor clauses with the rights of assembly and petition and the freedoms of speech and press, and presented both the Japanese government and SCAP with economic demands during a time of great material hardship. MacArthur had shown several times throughout 1946 and early 1947 that he would prevent mass actions including strikes, but, after the new Constitution became effective in May, 1947, it seemed to be more difficult to act aggressively against labor unions. Even though 1948 saw some wage increases, workers were still economically depressed and dispute tactics were steadily increasing. One particularly tricky issue was the growing activism of workers employed by the government. MacArthur was told by the U.S. government at home that the upsurge in labor actions would harm chances for Japan's economic and business recovery and that such activities had to be stopped. Blaine Hoover, Chief of the Civil Service Division of the Government Division at SCAP, presented a way out for the Americans. He suggested that civil servants-all government workers- be removed from the Trade Union Law passed by the Diet in December, 1945, and then he urged the Diet to pass a new National Public Service Law, amending the National Public Employees Law (No. 120) of 21 October, 1947. This new law would prohibit all public service workers (not just police and firemen) from bargaining collectively or striking.

At this time women were relegated to women's sections in both political parties and labor unions. But those associated with labor unions and the left-wing political parties were as shocked as left-wing men over the attempt to ram through a new National Public Service Law. The new law would prevent effective labor action by low-level government workers (clerks, mechanics, manual workers in railroads, communications and general government offices), many of whom were women. Women in the front line of labor activism knew exactly who was responsible for the new legislation. On July 22, 1948 MacArthur had forced the Ashida government to implement a cabinet order which would prohibit the use of the strike by government workers.

"Cabinet Order concerning the Provisional Measures To Be Taken in consequence of the Letter of the Supreme Commander for the Allied Powers to the Prime Minister dated 22 July 1948 (Cabinet Order No. 201).

The Cabinet hereby establishes...

Art. 1.1. No person in the position of an employee of the government or a local public entity, regardless of whether appointed or employed (hereinafter referred to as "public employees")...shall possess the right of collective bargaining, with its usually understood coercive character supported by the threat of a strike, vis-à-vis the government or a local public entity...

Art. 2.1. Public employees shall not engage in strikes, delays, or other dispute activities that tend to reduce the efficiency of operations of the government or a local public entity.

3. Those who act in violation of Article 2, paragraph 1 shall be liable to penal servitude not exceeding one year, or a fine not exceeding 5,000 yen."

The upper echelons of the civil service were pleased, but lower level workers were dismayed. One socialist member of the Ashida cabinet, Secretary of Labor Katō Kanjū, wanted to resign over this action but was talked out of doing so by James Killen at SCAP. The Socialist Party, and Communist Party members were strongly opposed to the new law. Women in both the Communist Party and Socialist Party, in smaller parties which leaned to the left, in labor organizations and female civil servants in lower level positions all objected.

A group of Tokyo women took action. Knowing Representative Katō Shidzue's ability to gain an audience at SCAP, this group asked her to present to General MacArthur on August 18th their petition on the effect which the new law would have on the democratization of labor, particularly women workers. A few days later, on August 23rd Katō was joined by Matsuura Masako, head of the Women's Section of the Tokyo City Labor Unions, and four other union women to consult with Blaine Hoover, and Charles

Kades. The women's petition euphemistically stated that the Cabinet Order had been a "reactionary interpretation of General MacArthur's letter." It then went on to comment that:

"In spite of the provisions of the new Constitution the old feudalistic attitude toward women had not been eliminated. If the issuance of the Cabinet Order brings about the deterioration of the status of working women, it is too serious a problem to overlook."

The women's concerns were heard by a total of twelve SCAP officials including Ethel Weed, Chief of the Women's Bureau, Ruth Ellerman of Government Division, and one other woman. Hoover responded to the issues raised by the women by stating that the New National Public Service Law would provide an opportunity for "faithful politicians" to take the place of "unqualified persons who are now in important positions." And it would "give the opportunity of promotion to efficient men and women. The system of the Personnel Affairs Board will be such as to protect the rights of public workers." He further commented that "public servants have a duty to the public and should accomplish their ends by other means [than collective bargaining and strikes]." Hoover placed a lot of emphasis on the appointed Personnel Affairs Board within the Cabinet to protect the rights of workers.

Two days later, on August, 25th Katō, Matsuura, and three other union women visited the Chief of Government Section, Courtney Whitney, at GHQ once again to explain their concerns. Whitney began with the following statement.

"General MacArthur is interested in the idealistic improvement of women's status in Japan. He insisted on granting women suffrage, and enforced the principle of equal rights of women. Although women legally have the same status as American women, they are still bound by traditions and customs. The only way to surmount those difficulties is to make political equality a reality. They must argue in the Diet. They should have the strength they had when they sent 39 women representatives to the Diet at the first election. It is the duty of Japanese women to use the political rights that have been granted them. I am sure that the public service law will never discriminate against women."

Whitney tried to mollify the women by praising their progress up to this point and suggesting that "by the revision of the National Public Service Law women will be possibly promoted even to the highest positions." But when the women asked that representatives of the workers including women should be members of the deliberation committee in order to prevent the bureaucracy of the Personnel Affairs Board from acting arbitrarily, Whitney referred the women to the Diet saying, "The opinion of the Diet defines the authority of the Personnel Affairs Board. Therefore working people should send their representatives to the Diet."

When SCAP officials wanted a particular law affected, they forced the issue, when they did not care about the outcome or specifically opposed a proposal, they tabled it or suggested the long, slow political route.

The women continued to question Whitney and were told that the Diet could amend the new law and that the law would not discriminate against women. They were unconvinced. After leaving GHQ, they summarized their position as follows:

"Now we know clearly that women's problems can be solved by the unity of women. And at the same time we noticed the difference of fundamental ideas, sentiments and understanding between the Japanese who had long lived under the feudalistic system and the Americans who had never experienced such a system on their large rich soil. The establishment of the New Japan should be done by the hands of workers and yet the actual living circumstance of the low-class public service workers had not been fully understood."

The women were not fooled. The Diet did not amend the law. SCAP and an anti-labor Japanese power system won the day. The New National Public Service Law passed the Diet December 12, 1948. Once again it was clear that political equality as represented by the vote and elective office is inadequate to provide economic and social equality. There has to be specific legislation which protects and promotes women if they are to have an equal share of power, goods, and livelihood.

This National Public Service Law and its various amendments have been reviewed by the Supreme Court several times with varying outcomes. During the 60s the court ruled that in certain instances this law was not constitutional; however, in 1973 the Supreme Court reversed itself and said that Diet could limit the rights of government employees and workers of public corporations. This ruling, which is still in effect, was based on the issue of the "common good", a term which invites a particularly broad interpretation and one which the Japanese Supreme Court often uses in constitutional cases. The legal community considers this law to be in violation of Art. 28 of the constitution.

I emphasize this issue to point out once again that, as we all know, legal rights are often quite difficult to maintain even when the language appears very plain. And this is even more true when the group demanding rights is not very powerful. Women certainly have fit that description. But what amazes me is not the powerlessness of these women but rather how clearly the activist women in the 1945-1949 period understood the promise of democratization. They knew just what was needed to provide for real equality between men and women and the manner in which the issue must incorporate social and economic equality as well as the obvious political rights of voting and running for office. These women also understood the power system in place in Japan during the Occupation Period. It is often said that they did not do very well in the Diet in those early

days. I suggest that in fact several of them managed to use the political tools available to them efficiently considering the stranglehold that the conservatives maintained in committees and on the Diet floor with its anti-female bias. Also, the women were only too aware of the power of the retained bureaucracy to override the wishes of the public and their elected representatives. As Katō Shidzue had pointed out during the lobbying against the New National Public Service Law, while that law was ostensibly designed to limit the pervasive power of the bureaucratic officials, in fact it had had no effect whatsoever on them, but instead it destroyed the civil rights of lower-level public workers. Activist women, also, were aware of the great power center at SCAP and used their welcome in several divisions of the American stronghold toward real economic and social gains. They were not always successful in this arena either, but when they were rebuffed they put in play the arsenal of freedoms provided for in the constitution, freedom of speech, press, petition, assembly and so forth. These became the building blocks of the women's consumer, environmental, educational and family planning movements of the future.

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