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**THE NAIL THAT STICKS UP ISN'T ALWAYS HAMMERED DOWN:  
WOMEN, EMPLOYMENT DISCRIMINATION,  
AND LITIGIOUSNESS IN JAPAN**

**By**

**Kristen L. Luck**

**Submitted to the**

**L. Douglas Wilder School of Government and Public Affairs**

**of Virginia Commonwealth University**

**in Partial Fulfillment of**

**the Requirements for the Degree**

**of Doctor of Philosophy**

**In**

**Public Policy and Administration**

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## Abstract

Much recent scholarship is devoted to projecting Japan's future and analyzing its prospects as a global power. After two decades of economic stagnation, alarming demographic trends, and the 3/11 triple disaster, some scholars argue that Japan is grappling with an era of precarity, marked with instability and anxiety. Prime Minister Shinzo Abe returned to office in 2012, promoting his economic reform policy, "Abenomics" and within the third "arrow" of this approach targeting structural reforms, he promoted "womenomics", a term coined by Kathy Matsui of Goldman-Sachs. Prime Minister Abe's objective is to create a society where "women can shine" and women can participate in the labor market more equitably. However, it is unclear if equality can be achieved when Japanese women still encounter persistent workplace sex discrimination. While labor laws, such as the Equal Employment Opportunity Law, have attempted to tackle workplace sex discrimination, many scholars and critics believe the laws have not done enough.

One way Japanese women have attempted to combat workplace sex discrimination is with litigation. Starting in the 1960s, women have resorted to judicial relief to address discriminatory treatment in the workplace. However, while litigation is a powerful tool for social change in Japan, the literature suggests that Japanese women are reluctant to litigate, consistent with the larger consensus that Japan is a low-litigious society. If Japanese women have engaged in "litigation campaigns" and litigation rates are rising, yet Japanese women are reluctant to litigate, this creates an interesting paradox worth exploring. While these two conditions are not unique in

and of themselves, what is curious in this nexus is how Japanese women actually relate to the law.

This study analyzes how Japanese women relate to the law. Through semi-structured interviews with Japanese working women about their experiences, thoughts, and opinions, this study illustrates how Japanese women “do” law and deepens our understanding of their relationship with the law. In addition to this, this study proposes a new model for measuring litigiousness. Rather than measuring litigiousness in terms of aggregate litigation rates, this study operationalizes litigiousness in terms of personal intent. By applying this model to qualitative data, this study demonstrates that Japanese women actually do demonstrate a moderate degree of litigiousness as it relates to workplace sex discrimination. That is, the nail that sticks up isn't always hammered down.

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## Conventions

For Japanese terminology, I use the modified Hepburn system. For long vowels, I do not use the macron and conflate them with short vowels for common or popular words.<sup>1</sup> For uncommon words or proper nouns, I elect to spell out the long vowel. For names, I use the Western order of names (given name first and surname last). This stylistic decision was made for the purpose of this dissertation only to facilitate the reading ease of the intended audience.

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<sup>1</sup> See Project Nayuki. <https://www.nayuki.io/page/variations-on-japanese-romanization>

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*For Dale*



## CHAPTER 1: INTRODUCTION

While in recent years the Japanese government has tried to address gender disparities through Prime Minister Shinzo Abe's "womenomics" policies and Japanese society is responding to the recently arrived #MeToo movement, Japan still significantly lags behind industrial democratic nations in terms of gender equity. While the equitable participation of Japanese women in the labor market is thought to be an anecdote to the stagnant economy, Japanese women still face widespread workplace sex discrimination. The Japanese government has passed a number of laws to promote women's equality on face, particularly in the workplace, yet sex discrimination remains persistent. One effective tool to combat workplace sex discrimination is litigation, however, Japan is known to be a low-litigious society. Scholars have engaged in numerous debates about the source of this low-litigiousness, trying to determine to what extent this phenomenon is due to cultural or institutional factors. While litigiousness is usually measured in terms of litigation rates, it does not measure personal intent to mobilize the law, which contains a significant range of important activities that stop short of filing a lawsuit. The literature about Japanese working women indicates that they too are reluctant to litigate. While this is not hard to imagine, it does beg the question of how Japanese women actually relate to the law. That is, how do Japanese women "do" law? To what extent are they actually willing or unwilling to mobilize the law?

This study seeks to answer how and why Japanese women decide to mobilize the law when they believe they have encountered workplace sex discrimination. Through collecting semi-structured interview data with 23 working Japanese women, I identify the factors that contribute to how and why Japanese mobilize the law and perceptions they have about the law, trac-

ing how Japanese women move from legal consciousness (“something happened”) to law mobilization, thus capturing litigiousness. I operationalize litigiousness as the intent to mobilize the law up to and including filing a lawsuit, which deviates from the traditional scholarship that measures litigiousness in terms of aggregate litigation rates and explains little how society, in this case Japanese women, relate to the law. I develop a model to measure litigiousness and through this model determine that Japanese women display a moderate degree of litigiousness.

## **Background**

“In addition to that, I must transmit it is my own voice. If someone is waiting to speak, nothing will ever change,” writes Shiori Ito (2018, p. 2).<sup>2</sup> Ito, a Japanese journalist and filmmaker, was referencing to her decision to speak out publicly about sexual assault, allegedly committed by famed journalist, Noriyuki Yamaguchi, in her book, *Black Box*. The “black box” is the place where “private things” happen and are not supposed to become public, that is, the dark and silent place where sexual assault occurs. Prosecutors decided not to pursue her case in the criminal justice system, stating, “...it happened in a private room and was a ‘black box.’ Since that time, as a party, as a journalist, how to shine a light on the ‘black box’ is the thing I will concentrate on” (p. 2).

Ito’s story is not unusual. Ito met Yamaguchi while studying in New York City, and later on in Tokyo, she reached out to him regarding internship opportunities. Yamaguchi agreed to meet with her for dinner. After food and drinks, Ito began to feel ill and, rather than taking her to

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<sup>2</sup> I use the spelling of Ito’s name as it appears in English press and articles.

a train station to go home as she requested, Yamaguchi took her to his hotel room—a sequence of events that was corroborated by a taxi driver and CCTV footage at the hotel. Ito was unable to stand on her own and appeared intoxicated; she believes she was drugged. Once inside the room, Yamaguchi proceeded to rape Ito, who briefly attempted to fight him off until she passed out. In a subsequent email exchange, Ito accosts Yamaguchi about the rape, asking to speak with him; he claims he was drunk too and could not “resist” her. When she challenges him, he replies, “What do you mean ‘rape’? I absolutely won’t accept that.... If you want to fight this legally, go for it. There is no way you will win” (“Japan’s Secret Shame,” BBC2, 2018).

What is unusual about Ito’s story was her decision to pursue a criminal investigation, and when that did not result in charges, even after an appeal, she decided to sue her attacker for civil damages. Most women in Japan do not report sexual assaults with an estimated 10 per 1,000,000 going to the police (“Japan’s Secret Shame,” BBC2, 2018). What is even more compelling and unique is Ito’s decision to reveal her face and her name. Victims typically do not come forward publicly in Japan and Ito’s experience is a case for why. Since coming forward, not only has she become the target for threats and insults but so has her family.

One chilling and damning aspect of Ito’s case is the government’s suspected role in it. Yamaguchi, her attacker, is an acquaintance and biographer of Prime Minister Shinzo Abe. There was an arrest warrant issued for Yamaguchi, and the arrest was to take place as he returned from Washington D.C. at Narita Airport. At the last moment, the warrant was revoked, and many suspect that this was due to Yamaguchi’s connections to the prime minister (“Japan’s Secret Shame,” BBC2, 2018). Aside from the public commentary and opinions about Ito’s case, government politicians also spoke out publicly, rebuking her. For instance, Mio Sugita of the Liberal



Democratic Party participated in a Bunkajin TV program during which she is seen laughing hysterically at a joke made at Ito's expense. When interviewed by the BBC, she stated, "With this case, there were clear errors on her part as a woman. Drinking that much in front of a man and losing her memory. If you're working as a woman in society, you'll be approached by people you don't like. Being able to properly turn down those advances is one of your skills." When asked if she ever faced discrimination herself, Sugita laughed and replied, "Yes, if you live in society, you have tonnes [sic] of it. Of course, but that's just how it is" ("Japan's Secret Shame," BBC2, 2018). It is worth noting that Sugita has faced harsh criticism for making disparaging remarks against the LGBTQ community and denying Korean comfort women (Osaki, 2018; Okunuki, 2018).

With Ito's decision to publicly come forward about her sexual assault, she subsequently ushered in the #MeToo movement in Japan in late 2017. While many of the recent articles coming out of Japan seem to focus on accounts of reporters, not dissimilar to how #MeToo initially started with film actresses coming forward with their stories in the United States, the significance of these stories reflects the larger workplace culture, customs, and practices in Japan, which promote conformity, respecting seniority, and intimate after-hour meetings that usually involve alcohol. There is some debate as to the veracity of Japan's burgeoning #MeToo movement, as it has been slower to gain traction when compared to other countries. Indeed, a Bloomberg article authored by Kurumi Mori and Shoko Oda (2018) reported that there is a shift in the #MeToo hashtag to #WeToo by activists Monica Fukuhara and Ito. However, a dialogue was started, and

since that time, stories of sexual assault and sex discrimination continue to proliferate in the Japanese media.<sup>3</sup>

In April 2018, two high-ranking Japanese government officials announced their resignations following media reports alleging that they sexually harassed Japanese women, including reporters (Steger, 2018). On April 18, 2018 Junichiro Fukuda of the finance ministry resigned after *Shukan Shincho*<sup>4</sup> published the account of an Asahi TV reporter who alleged she was sexually harassed by Fukuda, who asked to touch her breasts and pressured her to have sex. The reporter had evidence of the harassment, which she recorded (Steger, 2018). On April 19, 2018, the governor of Niigata, Ryuichi Yoneyama, resigned after admitting to multiple affairs, one of which included a payment to a woman (Steger, 2018). The media coverage surrounding the resignations drew immediate connections to the #MeToo movement. Indeed, it seems that these cases contributed to a slowly emerging acknowledgment of the #MeToo movement, which was started in the United States only a couple of years ago. While the headlines seemed to denote progress on behalf of the movement, *The Financial Times* was also quick to point out backlash against the movement, citing the Japanese cultural aversion to drawing attention to harassment. According to the article's authors, Leo Lewis and Kana Inagaki (2018), "But so far, the scandal has done little more than remind Japan of its powerful aversion—women as well as men—to addressing sexual harassment and gender discrimination that is not exclusive to the media industry but entrenched across Japan's workplace" (2018).

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<sup>3</sup> In fact, stories broke so quickly between 2017 and 2019 that several changes needed to be made to the draft to keep up with developments.

<sup>4</sup> Please visit <https://www.shinchosha.co.jp/shukanshincho/>

During the summer of 2018, an investigation revealed that Tokyo Medical University lowered the entrance exam scores of female applicants, resulting in fewer females being admitted to the medical school. The Ministry of Education discovered that this was occurring at other medical schools as well, including Showa University, Kobe University, Iwate Medical University, Kanazawa Medical University, Fukuoka University, Kitasato University, Juntendo University, and Nihon University (Shirakawa, 2019). Some of the women who denied admission were offered seats at Tokyo Medical University, and a group of women filed a lawsuit against the university (Okunuki, 2018; O’Grady, 2018; Sugiyama, 2018). According to a January 22, 2019, article by *The Mainichi* (Izawa), government subsidies to Tokyo Medical University have been cut, as well as at Nihon University, Showa University, Juntendo University, Kitasato University, Kanazawa Medical University, and Fukuoka University. What is notable about the medical school scandal is how quickly the victims of the discrimination found legal remedy when the literature suggests that women are reluctant to litigate.

The #MeToo movement started too recently to sufficiently evaluate its impact on Japanese society, culture, and law. However, the movement is shining a light not only on that “black box” but other forms of sex discrimination and sexual violence. The significance of the aforementioned stories illustrates the longstanding, persistent, and stubborn sexism that is still deeply rooted in Japanese society. In each of these stories, women face sexual discrimination in aspects that were related to employment—rape by a colleague when seeking an internship, reporters doing their job and encountering sexual harassment by government officials, sexism while seeking admission to a medical school, which impacts opportunity and earnings, and sexism while seeking an education. Sex discrimination severely impacts women’s participation in

the labor market, even after more than 30 years since the passage of a pivotal law intended to curb such institutional sexism. In 1986, the *Danjo koyou kikai kintouhou*,<sup>5</sup> or “Law Promoting Equality between Men and Women,” was passed. (In this study, this law will be referred to by its English nomenclature—the 1986 Equal Employment Opportunity Law, or EEOL.) The passage of the EEOL spurred significant dialogue in the ensuing years and a spate of academic literature analyzing its efficacy. Since the passage of the 1986 Equal Employment Opportunity Law, Japan has undergone significant cultural changes regarding attitudes towards women, particularly in the workplace. However, despite this cultural shift, workplace discrimination is still pervasive in the Japanese workplace, so much so that Prime Minister Shinzo Abe recognized it as a threat to re-establishing a healthy economy. In his “Abenomics” economic policies, Prime Minister Abe initiated his own brand of “womenomics” to promote the stature of women in the Japanese labor market, including taking measures to address workplace gender discrimination. While these policies are a positive step in creating a more inclusive society, it is highly recognized that, when it comes to addressing workplace gender discrimination in Japan, legislation is not entirely effective as the laws rely on bureaucratic enforcement and incentivizing behavior rather than punishing it. One government institution—the Japanese judiciary—has been effective in promoting social change in Japan, particularly in regard to combating workplace gender discrimination. However, Japan is notoriously known as a country with low litigiousness, and according to some literature, women are reluctant to litigate when they encounter workplace gender discrimination.

If we accept that litigation is an effective tool for social change yet there is allegedly a reluctance to litigate, this creates a paradox. The issue is not so much whether or not Japanese

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<sup>5</sup> The Japanese kanji for this law is 男女雇用機会均等法.

women are or are not willing to litigate but rather raises the question about how Japanese women relate to the law. That is, how do they understand it, what is their legal consciousness, and how does that then transform into law mobilization which can inform a conceptualization of litigiousness. Thus, this study explores how and why Japanese women mobilize the law when they believe they have encountered workplace sex discrimination and proposes a new model to measure litigiousness. I will show that Japanese women do demonstrate a moderate degree of litigiousness, which is operationalized in terms of personal intent rather than aggregate litigation rates, capturing the significant range of law mobilization that may stop short of a lawsuit.

### ***Heisei and the End of an Era***

“I wish for peace and happiness to people in Japan and also around the world,” Emperor Akihito expressed in his final New Year’s address to the nation on January 2, 2019 (“Japan's emperor begins countdown to relinquishing Chrysanthemum Throne” and “Japan’s Emperor Akihito Prays For World Peace In Final New Year's Speech “, NBC News, 2019). In a rare decision, the emperor decided in 2016 to abdicate the throne due to his advancing age, stating:

When the emperor has ill health and his condition becomes serious, I am concerned that, as we have seen in the past, society comes to a standstill and people’s lives are impacted in various ways. The practice in the imperial family has been that the death of the emperor called for events of heavy mourning, continuing every day for two months, followed by funeral events which continue for one year. These various events occur simultaneously with events related to the new era, placing a very heavy strain on those involved in the events, in particular, the family left behind. It occurs to me from time to time to wonder whether it is possible to prevent such a situation. (“Transcript of Emperor Akihito’s Speech”, *New York Times*, 2016)

Emperor Akihito will step down from the Chrysanthemum Throne on April 30, 2019, officially ending the Heisei Era, which began in 1989 with the death of Emperor Hirohito. Despite the emperor's desire to mitigate potentially a disruptive and prolonged mourning in the event of his death, the end of the Heisei Era has Japan reckoning with what it represented and the future of Japan. At the time that this study was wrapping up as a partial requirement for degree completion, *The Japan Times* was publishing a special feature called "Defining the Heisei Era." In the January 26, 2019, feature, writer Rob Gilhooly focuses on the "fragmentation of the Japanese family" (Gilhooly, 2019). Indeed, many sociological changes occurred during the Heisei Era that pose unique problems to Japan and that will radically impact its future.

With a rapidly changing demographic landscape—a low birthrate coupled with a rising aging population amidst the backdrop of a sluggish economy—Prime Minister Shinzo Abe has tried to tap into a "resource," a group of people who might have the power to revive the economy: women. Prime Minister Abe returned to office in December 2012, having previously resigned in 2007, after a string of prime ministers who were elected to office and resigned within two years (Song, 2015). A conservative politician, part of the success of his campaign is attributed to his commitment to economic reform.

Prime Minister Abe promoted Abenomics, his economic reform policies, which consist of three arrows: monetary policy reform, fiscal policy boost, and growth through competition. Abenomics sought to grow the economy and rectify deflation, which confounded the Japanese economy beginning in the late 1990s (Chantlett-Avery & Nelson, 2014). The "third arrow" of Abenomics is dedicated to implementing structural reforms; the central component of this is womenomics. Womenomics, a term coined by Kathy Matsui of Goldman Sachs in 1999 (Abe,

2013), stresses the importance of integrating women into economic activity and internal labor market equally. Japan faces a dire economic and demographic outlook: Due to declining marriage and birthrates, the population is anticipated to shrink by 30 percent, while the elderly population is expected to increase by 40 percent. This contributes to the growing labor shortage in Japan (Chantlett-Avery & Nelson, 2014). Women in Japan participate in the labor market at a notoriously low rate (63 percent), which is attributed to child-rearing attrition, a considerable pay gap, and a lack of women in leadership positions (Matsui, Suzuki, Tatebe, & Akiba, 2014; Chantlett-Avery & Nelson, 2014; *The Economist*, 2014). This figure includes the international standard definition of labor market participation, which includes all forms of employment (S. Wilson, personal communication, March 2017).<sup>6</sup> Prime Minister Abe's womenomics policies seek to rectify these problems by filling 30 percent of leadership positions with women by 2020, increasing the female labor participation rate to 73 percent by 2020, increasing the number of women returning to the workforce after childbirth to 55 percent by 2020, reforming childcare, encouraging men to take paternity leave, receiving more data about gender composition from companies, reconsidering tax/social security structures, and focusing on immigration so that more foreign housekeepers can work in certain zones (Matsui et al., 2014; Chantlett-Avery & Nelson, 2014).

Prime Minister Abe continues to promote womenomics and progress has been made. In 2014, five women were appointed to cabinet-level positions, totaling seven out of the 18 posi-

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<sup>6</sup> The precise date of this correspondence is unavailable. Occasionally, correspondence may be mentioned in this dissertation without a specific date. This is due to correspondence lost during an email account merger between two university accounts, despite my best efforts to work with the information technology department to prevent such losses.

tions (“Japan PM Shinzo Abe Boosts Women in Cabinet”, BBC, 2014). However, a month after this victory, two of the women, one of which was appointed as the justice minister, resigned due to possible corruption violations (Fackler, 2014). Also, in an attempt to increase female labor participation, Prime Minister Abe has pledged to address childcare concerns as open slots in day-care facilities are low and the cost is high (Fabian, 2014; Begley, 2016; Nonomiya & Oda, 2016). In September 2015, the Diet (the Japanese lawmaking body) passed the Women’s Active Promotion Law, which took effect on April 1, 2016, and will expire on March 31, 2026. Companies with more than 300 employees must examine women in the context of recruitment activities, any differences in employment tenure between men and women, total work hours, and how many women hold management positions compared to men (Aoki, 2015). However, there is no mandatory compliance with the law or penalty for noncompliance; rather, companies who make efforts to promote women’s stature within the organization will be rewarded with government contracts (Aoki, 2015).

While Prime Minister Abe continues to move briskly, proposing and implementing policies designed to promote women, the trajectory and efficacy of womenomics continues to come under question. It is too soon to adequately measure the impact of womenomics; however, many critics have expressed concern regarding overly ambitious goals, the need for more cultural shifts rather than institutional frameworks, and better working environments for men and women (Macnaughtan, 2015; Takeda, 2015; Lewis, 2017; Fish, 2015; Ogawa, 2017; *Womanthology*, 2016). Policies promoting the advancement of women are a step in the right direction and certainly push the agenda (Gelb, 2000); however, Japan demonstrates a pattern of lax and weak enforcement of gender policies, particularly in regard to the workplace. Furthermore, there are still



significant cultural barriers that women encounter in the male-dominated workplace. A government survey released in March 2016 indicates that nearly one-third of women polled have encountered sexual harassment (*sekuhara*) in the workplace (Anderson, 2016). Another survey by the Ministry of Health, Labor, and Welfare released in November 2015 indicated that nearly 22 percent of full-time female employees and 49 percent of part-time female employees encountered maternity harassment (*matahara*), and in 2014, the Supreme Court ruled in favor of a female plaintiff who alleged maternity harassment (*Japan Today*, 2015). While the maternity harassment case is the first of its kind, sexual harassment cases have continuously entered court dockets since the 1990s with the most recent prominent case, the *Prada* case, which is still ongoing, now in the United States (there were two lawsuits, one in Japan and one in the United States, as Prada is an international corporation).

It will be difficult for Prime Minister Abe to turn the economy around in such a short period of time just as it will be challenging to turn back two decades of population and marriage-rate decline. Scholars have attempted to explain the reason for the decline in marriage and birthrates. According to Frank Schoppa (2006), “Rather than redistributing income through government spending and providing care through public services, Japan built a system of social protection that relied largely on firms and families (especially women) to provide a safety net of income, benefits, and care” (p. 2). The crux of the system was offering lifetime employment to full-time employees (the *nenko* system), which were usually male head of households, and relegating women to domestic duties of wife, mother, and caretaker (Schoppa, 2006), which is a culturally engrained value that permeated policy in the early 1980s with regressive tax policies that discouraged dual-earner households. Schoppa questions why the government has not been

forced to make more substantial change, and he attempts to search for an answer by looking at firms and women using Hirshman's "exit, voice, and loyalty" framework. He argues that legislation has done little to assist women in the workplace, thus, their participation in the labor market; married women are participating in the workforce at a lower rate than in 1992, and other women are avoiding marriage and motherhood altogether, which is seen as a "quiet rebellion" of sorts (p. 182).

Other scholars have identified and attempted to explain the phenomenon of the quiet rebellion. Nancy Rosenberger (2013), in her decade-long longitudinal study of Japanese women, describes the quiet rebellion as "long-term resistance." Rosenberger ties long-term resistance to identity and ambiguity, as her study participants came "of age in late-modern Japan," which contained elements of surveillance and marketing of the 1980s (p. 20). To Rosenberg, long-term resistance is not a sudden protest but rather a simmering dissatisfaction with societal expectations and agency (p. 158). This is also demonstrated in the workplace. Rosenberger identifies the workplace as an institution, and within this institution, she states, "These Japanese women accept the idea that the larger structure is dominant and there will be little meaningful change, especially in companies and schools" (p. 171). That is, sensing the hopelessness of any significant change, the women instead rebel against those institutions that repress them, including the workplace and its culture.

The Japanese workplace is a such a powerful institution that it is metaphorically a surrogate family, making a gendered imprint on identity. Dorrine Kondo (1990) explores identity and power in the Japanese workplace in an attempt to understand "how selfhood is constructed in the arenas of company and family" (p. 9). The gendered work identities, she found, simultaneously

marginalized and empowered women. Kondo states, “Work...possessed theme and pattern: it provided a means of participatory belonging in a meaningful organization and constituted a method of creative self-realization” (p. 277). During the Meiji Restoration of the late 19th century, rapid industrialization was incompatible with family policies pushed by the Japanese government, and, thus, the workplace and management became metaphors of the *ie*, or family.

As the participants in Rosenberger’s study aged, their sense of identity also changed.

Rosenberger’s study concludes:

In the process of the long-term resistance of this generation, the emphasis on self has mellowed—as one might expect in ambiguous, long-term resistance such as this, and especially in Japan where self is laden with meanings, including realizing the self-margins as flexible and part of a whole as the apex of maturity. (p. 173)

Furthermore, the women had no confidence that government policies would improve their working conditions and that they independently needed to find solutions to their problems (p. 172).

Another contributing factor to the quiet rebellion or long-term resistance is increasing globalization. Women experienced more interactions with the foreigners in the 1980s and 1990s, which led them to explore not only their futures outside of traditional societal expectations but gender relations on the whole. Karen Kelsky (2001) states, “...[M]ore and more Japanese women are exploiting their position on the margins of corporate and family systems to engage in a form of ‘defection’ from expected life courses” (p. 2), and they do so by turning to foreign opportunities. Kelsky considers this the most important component to what she calls ‘deflection.’ By studying foreign languages, women acquire new concepts and vocabulary with which to consider their selfhood. By studying abroad, working abroad, or working in transnational firms, women find an outlet in ‘the foreign’ “to resist gendered expectations of the female life course in

Japan” (p. 2). Indeed, Ellen Fuller (2009) found in her study that Japanese women preferred to work in transnational firms, whereas Japanese men preferred Japanese firms. Fuller explores how Japanese women negotiate gender in transnational corporations. This not only means negotiating Japanese constructs of femininity and masculinity, but foreign concepts of femininity and masculinity, and, in this case, American. In fact, in the corporation that Fuller observed, the American worker dictated the terms of femininity (p. 112-113). Women still worried about career planning, motherhood policies, the lack of mentors and role models, and work/family balance; however, they were able to negotiate their gender by adopting constructs to gain authority and advance. For example, some women adopt the “mother strategy,” which is providing a maternal-type relationship with male coworkers. Working in international and transnational settings provided unique and complex matrices of gender negotiations and perceptions that informed self-identity both in the singular and multiple context (the Japanese do not believe there is a singular “self” identity but that individuals embody multiple selves) and group identity (Fuller, 2009; Kondo, 1990).

As women have engaged in the “quiet rebellion” (Miller, 2002), attitudes toward gender equality have improved markedly in the past 30 years. In fact, attitudes toward gender equity are at an all-time high in Japan. Chika Shinohara (2008) demonstrates a gender equality consciousness shift among the Japanese through her study of communities and processes that facilitate attitude changes. Using government survey data, Shinohara found that most Japanese are more comfortable with women’s equal participation in the labor market; however, women are still not participating at an equal rate. This is due to widespread sex discrimination, which is still pervasive and deeply rooted in the Japanese workplace, making the labor market largely inhospitable to

women's participation and undermining any sort of significant gains in economic recovery or social change.

### **Statement of the Problem**

In order for women to participate in the internal labor market, the barriers to gender equality must be removed in ways that transcend what some scholars have deigned symbolic and toothless public policy.<sup>7</sup> Since the end of World War II, the Japanese government passed numerous laws to address workplace discrimination: the Labor Standards Act of 1947, the Working Women's Welfare Act of 1972, the Equal Employment Opportunity Law of 1986 with additional amendments in 1999 and 2006, and most recently the Women Active Promotion Law of 2015. A latent function of these laws is the more favorable view of women in the workplace (Rawstron, 2011; Gelb, 2000); however, there are few enforcement mechanisms, thus allowing discrimination to persist. These insufficiencies have led women to pursue litigation for redress.

According to Frank Upham (1987), "Japanese women...have pursued a litigation campaign reminiscent of the civil rights and environment struggles in the United States, using the courts to press for basic social reforms not easily attained solely through political means" (p. 5). While often a last resort, litigation can an effective means to facilitate social change and in Japan, the courts are sometimes used for that specific purpose (Steinhoff, 2014). While scholars such as Frank Upham focus on the legal process and the outcomes of judicial activism, others such as Patrician Steinhoff and Celeste Arrington focus on social movements and litigation

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<sup>7</sup> I would argue that even symbolic public policy or legislation can be effective, as I believe it was in the case of the 1986 EEOL; although, I concur that the law would be more effective with the appropriate enforcement mechanisms and/or institutional structures.

(Steinhoff, 2014, pp. 8-9; Arrington, 2016). Arrington (2019, 2016) also addresses the “radiating effects” of litigation, or indirect outcomes, which are results that may arise even if there is no court victory. My study does not focus on litigation as a means of social change per se. Rather, I am interested in the personal relationship Japanese women have with the law and how they “do” law.

Litigation waves targeting workplace sex discrimination started in the 1960s with unlawful terminations and continued into the 1970s and 1980s with wage inequities (Upham, 1989). The passage of the 1986 Equal Employment Opportunity Law was meant to ameliorate, at least on the surface, workplace sex discrimination, but few cases were mediated due to the stipulation that both the complaining party and the responding party had to agree to participate, and thus, women resorted to litigation.<sup>8</sup> The law also failed to address sexual harassment, a concept that the Japanese had yet to define, and academics as well as the courts were tasked with defining it (Wolff, 1996). Starting into the 1990s, *sekuhara*,<sup>9</sup> or sexual harassment, entered into the litigation arena. As described in the earlier section, *matahara*, or maternity harassment, is the most recent focus of gender discrimination in the workplace with a case decided on by the Japanese Supreme Court in 2015. Although several pieces of labor legislation have been passed in the nearly 70 years since the Labor Standards Act of 1947, those laws have no enforcement or right to private action. In fact, when women sue, they do so not on the basis of the discrimination or harassment but instead the adverse outcome or harm, such as a dismissal (Asakura, 2004). In-

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<sup>8</sup> This two-party agreement was corrected in the 1999 amendment.

<sup>9</sup> In this dissertation, I use the colloquial terms for different types of harassment (*sekuhara*, *matahara*, *pawahara*, *morahara*, etc). However, these terms can also be spelled out completely in Japanese scholarship (such as *sekusharu harasumento*).

stead, women have relied on Japanese tort law to file suit, specifically Articles 90, 709, and 715 of the Civil Code.

The judiciary provides a platform for laws to be interpreted, remedies ordered, and case patterns established for future guidance. Literature available on Japanese labor legislation and women frequently cites women's reluctance to litigate; however, it simultaneously indicates that litigation rates are on the rise (Gelb, 2000).<sup>10</sup> Rising litigation rates is hardly a unique phenomenon; we litigation rates increasing in other East Asian countries such as South Korea and China and there are a number of plausible explanations for this. It is also not difficult to image why it would be daunting for a woman in any society to file a lawsuit against her employer in the instance of workplace sex discrimination. However, this stated paradox in the literature is curious as it begs the question: How do Japanese women relate to the law? How do Japanese women "do" law? How do Japanese women shift from legal consciousness ("something happened") to law mobilization ("I know my rights and I am going to use to the law to do something about it")? If litigation rates are indeed low, how can we instead measure a woman's intent to mobilize the law up to and including litigation, thus creating a new paradigm for litigiousness?

There is literature available about Japanese women relate to their citizenry (LeBlanc, 1999) and how Japanese women engage as politicians (Dalton, 2016). There is work about how Japanese women relate to internationalism (Kelsky, 2002). There are also several studies about how Japanese women relate to their work, whether it is management (Lam, 1992), part-time work (Broadbent, 2004), or transnational work (Fuller, 2009). There have been numerous arti-

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<sup>10</sup> Gelb's article relies on anecdotal evidence of rising litigation rates, so it is not clear to which litigation rates she is referring and thus the author is unable to corroborate litigation trends since 2000.

cles and books about the creation, implementation, composition, and efficacy of the Equal Employment Opportunity Law. Yet, we could understand more about Japanese women's relationship with the law as it relates to workplace sex discrimination.

Initially, this study was intended to explore the reasons that women are reluctant to litigate as stated in the literature since the 1980s about the Equal Employment Opportunity.<sup>11</sup> This literature seems to accept, or at least acknowledge, the cultural, institutional, and structural arguments made by prominent scholars such as Kawashima, Haley, and Upham (Foote, 2014). However, nestled in that paradox of Japanese women are reluctant to litigate and litigation rates are rising, is this question about litigiousness. Perhaps a more salient and appropriate approach is to peel back the loaded concept of "litigation," which focuses primarily on lawsuits, and focus on "litigiousness," which is the propensity to sue (Moog, 1993; Hensler, 1998). Litigiousness is generally measured in terms of litigation rates; however, this does not accurately capture different yet significant ways in which the law may be mobilized, as many actions stop short of litigation (Tanase, 1990). Actions such as filing complaints or engaging in mediation are just as significant and by neglecting to acknowledge other ways in which the law is mobilized, the study would be myopic in its focus and forgo valuable insight. But more than that, this all begs the question of how Japanese women actually relate to the law, particularly as it relates to workplace sex discrimination. Thus, the study will examine why and how Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace. Law mobilization includes actions such as discussing the issue with a personal or professional confidant, filing a workplace grievance, filing a prefectural complaint, engaging in mediation and arbitration, as

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<sup>11</sup> Please see Appendix E where I trace this claim in the literature.



well as the broadening range of other ways in which women confront discrimination, including exit, voice, or loyalty.

## **Research Questions**

This dissertation will address the following research questions:

**Q1: How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q2: Why do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q3: How do Japanese women perceive grievance options and law mobilization?**

**Q4: What barriers do Japanese women perceive to mobilizing the law?**

## **Need for Study**

While research and analysis on the Japanese legal system is not expansive, several scholars, Japanese and Western, have devoted scholarship to addressing its unique features, qualities, and deficiencies, particularly focusing on the reluctance to litigate. Early Japanese academics, such as Takeyoshi Kawashima and Yoshiyuki Noda, contended that the Japanese as a society embodied a gentleness that made them averse to pursuing litigation (Upham, 1989; Ginsburg & Hoetker, 2006). However, both John Haley (1978) and Mark Ramseyer (1988) debunked this myth. Ginsberg and Hoetker tested the theories put forth by Kawashima, Haley, Ramseyer, and Tanase (which is also reflected in Frank Upham's analysis) using secondary data and statistical

analysis. This scholarship effectively addresses the use of the Japanese legal system generically, but does not specifically address women's litigiousness in regard to workplace gender discrimination.

But more than that, I have re-conceptualized the term *litigiousness*. The standard measure of litigiousness is litigation rates, providing numerical and empirical evidence for analysis. Litigation rates speak to aggregate litigiousness, that is, the litigiousness on the macro-level. But it does little to investigate *personal intent* at the individual or micro-level (Moog, 1993; Hensler, 1988). Litigiousness operationalized as *personal intent* is difficult to study when looking at litigation rates. Litigation rates can tell us many things, but they cannot tell an investigator the structural facilitators and impediments an individual encounters when accessing judicial relief. Litigation rates cannot inform an investigator of the variables influencing an individual's decision-making process or how that individual has made decisions. Litigation rates cannot tell an investigator what is in the heart and mind of the individual mobilizing the law (or choosing not to).

Japan's unique legal culture commands reconsidering how litigiousness is captured, studied, and analyzed. Japan, like other East Asian societies, imported their laws and legal system from China, infusing it with their own indigenous customary law. A central tenet of this legal culture was a reliance on informal dispute resolution. During the Meiji Restoration of the late 19th century and early 20th century, Japan decided to modernize by importing French and German law, ultimately deciding on the German legal system. Japan successfully did so by coupling their "indigenous" legal culture and system with the imported European system. This legal culture carried over when their Constitution was replaced by an American drafted constitution in

1947. Thus, if we consider how the Japanese are “low- or -non litigiousness,” relying instead on informal methods of dispute resolution or extra-legal options, then there is an array of activity that does not culminate in a lawsuit that gets excluded from study when we operationalize litigiousness in terms of litigation rates. Is this activity any less significant? I would argue not. Rather, I want to investigate that space in which activities start informally and inch toward formal remedy. Those activities, I believe, denote litigiousness.

Other reasons for using qualitative methods to study litigiousness are availability and quality of quantitative data. Furthermore, it would be difficult and impractical for a foreign researcher to execute an expansive survey study in Japan that produces a large enough data set. Survey data typically presented in scholarship and news media originates from either the government or corporate research entities.<sup>12</sup> Many studies about Japanese working women are qualitative and include statistics from several sources, including government data. However, one must consider the potential biases of the data source. In January of 2019, an investigation revealed that the Ministry of Health, Labor and Welfare reported inaccurate wage data. The data was skewed by a so-called “sampling error.” The ministry was tasked with collecting wage data from companies with more than 500 employees; however, only a third of these companies were included. The faulty data collection started in 2004 and went on for 13 years until the error was “discovered.” According to the *Nikkei Asian Review* on January 17, 2019:

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<sup>12</sup> Mary Brinton (2003) states, “Large-scale data collection on the part of individual researchers is not *impossible* to carry out in Japan. But it is highly labor intensive in the best circumstances (i.e. with plentiful funding) and extraordinarily so in less optimal circumstances. .. To require Japanese or foreign researchers to engage in this type of work that is best carried out by survey research organizations or government agencies creates, as I have argued throughout this chapter, a disincentive to investigate issue for which such data are necessary and a disincentive to share data one they are collected” (pp. 203-204).

The ministry has acknowledged that the faulty survey data cost 19.7 million people about 53.7 billion yen (\$490 million) in unpaid benefits. That, plus updates to the ministry's computer systems to correct the problem, will raise the cost of the foul-up to about 79.5 billion yen.

Furthermore, the investigation of the underreported wage data resulted in finding 40 percent of 56 key economic statistics were reported incorrectly (Cislo, 2019). The scandal, according to a Kyodo News survey, created a distrust in government data, with 80 percent of respondents indicating that they had lost trust in the government (*Kyodo News*, 2019; *The Japan Times*, 2019; Cislo, 2019; *Reuters*, 2019).

Next, I want to examine how Japanese women relate to the law and expand the feminist jurisprudence theoretical framework. That is, how do Japanese women “do” law?<sup>13</sup> I use feminist jurisprudence as a lens through which to examine how Japanese women relate to and use the law. While there is some disagreement where the term “feminist jurisprudence” originated from, it is widely accepted that it emerged in 1978 at Harvard University. While Japanese women engaged in their own feminist movements, starting as early as the late 19th century (Mackie, 2003), feminist jurisprudence was largely imported from the West in Japan.<sup>14</sup> I will discuss Japanese feminism and feminist jurisprudence further in the “Theoretical Framework” chapter.

Finally, in terms of understanding litigiousness as it relates to workplace sex discrimination, I want to understand how the Japanese move from legal consciousness to law mobilization and develop a way to measure this phenomenon. Thus, I created a scale measuring this process and, in effect, litigiousness. This was achieved by analyzing and coding qualitative data, a technique that is not typically used when studying litigiousness.

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<sup>13</sup> Drawn from from Bartlett (1990).

<sup>14</sup> Interview with Hifumi Okunuki (January 21, 2018).

This study will effectively update the literature currently available on the workplace sex discrimination. This study will also bridge the language gap in the literature available about workplace gender discrimination and sexual harassment in Japan. Although studies and literature exist in Japanese, these sources are difficult to access in English-speaking countries for a number of reasons, including literal accessibility to databases and documents and, most importantly, the language barrier. While it is important to recognize that this study is done under the scope of American (U.S.) public administration and feminist disciplines, it will deliver insights into Japanese workplace discrimination, gender policy, and litigation, which can inform U.S. scholarship on related policy topics.

### **Organization of Dissertation**

This dissertation will answer how and why Japanese women mobilize the law when they believe they have encountered workplace sex discrimination. The purpose is to analyze and understand how Japanese women relate to the law. In Chapter 2: Theoretical Framework, I will discuss feminist jurisprudence and grounded theory as the conceptual frameworks that guide the study. I start with a discussion about the rule of law as it relates to the United States and Japan and then introduce feminist jurisprudence as a theoretical framework. Furthermore, I introduce theories about Japanese litigiousness and frameworks for analyzing workplace sex discrimination and litigation. I finally propose my own model of how legal consciousness progresses into law mobilization and a scale by which to measure litigiousness.

In Chapter 3: Policy, Legality, and Case Law, I go into more depth about Japanese legal culture and the judiciary system. In this chapter, I will also discuss Japanese labor law as it re-

lates to workplace sex discrimination and highlight key court cases. This is to provide the reader with key information about Japanese legal culture, which will be reflected to some degree in the “Findings,” and also show how the judiciary has responded to lawsuits in the past.

In Chapter 4: Methods, I discuss the methodology used for the study. The fieldwork was conducted in Tokyo and Kyoto, Japan during January and February of 2018. Participants were Japanese working women, including entrepreneurs, temporary employees, full-time employees, and lifetime management-track employees recruited to the study via snowball sampling. The data gathered were semi-structured interviews with the participants. I used *creative interviewing* techniques, which included ethnographic and empathetic interviewing. I also discuss ethical considerations, as well as data reduction and data analysis using qualitative coding.

In Chapter 5: Findings, I discuss the study findings. I present a profile of the participants and their experiences as working women in Japan. I then answer the study’s four research questions: responses to sex discrimination, reasons for law mobilization, barriers to law mobilization, and perceptions of law mobilization. I then measure litigiousness, using a scale to demonstrate how legal consciousness shifts into law mobilization. This scale, I believe, predicts how likely a woman is to mobilize the law up to litigation.

Finally, in Chapter 6: The Conclusion, I summarize the study findings and their meaning, providing implications for future research and policy recommendations. Beyond answering my own research questions set forth at the beginning of the study, I discovered surprise findings, including data on paternity harassment and power harassment.

## CHAPTER 2: THEORETICAL FRAMEWORK

This section will detail the theoretical framework—feminist jurisprudence—that will be used in this study to explore why and how Japanese women mobilize the law when they encounter gender discrimination in the workplace. This first warrants a discussion about the importance of the rule of law in democracy and how women were historically excluded from this philosophical debate. I will also touch on the rule of law in Japan as many of its functions and institutional structures. Next, I will discuss feminist jurisprudence, the types of feminist jurisprudence, and feminist epistemology. As it relates to this study, I wanted to understand how Japanese women relate to the law—that is, I want to learn how Japanese women “do” law. Following the discussion about feminist jurisprudence, I will present theories about sexual harassment litigation and Japanese litigiousness, explaining how these theories will assist with discovering why and how Japanese women decide to mobilize the law if they have encountered workplace sex discrimination. Finally, I will present my model of law mobilization.

In these next sections, I incorporate the work of many scholars who have produced works on feminism and feminist jurisprudence, litigation, and legal consciousness. In the subsequent chapter, I tie in scholarship about Japanese legal culture and tradition, provisions of labor law that relate to workplace sex discrimination, and case law. It is important for me to pull together these works to set up this study. I agree with Sara Ahmed (2017) who writes, “Citation is a feminist memory. Citation is how we acknowledge our debt to those who came before; those who helped us find our way when the way was obscured because we deviated from the paths we were told to follow” (pp. 15-16). Ahmed does not cite “white men” as an institution in her work (p.

15). I do not share Ahmed's citation policy—she celebrates vulnerability of less material—and I would be unable to complete this study otherwise. However, she states, “We cannot conflate the history of ideas with white men, though if doing one leads to the other then we are being taught where ideas are assumed to originate. Seminal: how ideas are assumed to originate from male bodies.” Feminist jurisprudence is a departure from this assumed neutrality of the law. As I will discuss, feminist legal theory originated in Western scholarly circles and feminist jurisprudence in Japan is based on that scholarship. But as Leon Wolff (1996) mentions, while Western scholarship informs the norms and literatures of the other, we rarely see the converse, where non-Western informs Western discourse. My study seeks to find a place in that gap by not only bringing a diverse range of scholars to the review of the literature but with the data itself. Ahmed believes “[c]itations can be feminist brick” (p. 16) and metaphorically describes her work as a “house” (p. 16). She indicates that this creates vulnerability but within this vulnerability, her scholarship thrives and it is on that point I hope mine does as well.

### **The Rule of Law and Democracy in Japan**

The rule of law is a critical component to functioning democratic societies. The rule of law limits government power by the authority of law itself, keeping power in the hands of the governed (Harrington & Carter, 2009). Massimo Tommasoli (2012) describes it as “not solely an instrument of the government but as a rule to which the entire society, including the government is bound” and that “rule of law is fundamental to advancing democracy”. The rule of law has become a global ideal, yet many scholars do not agree on a singular concise definition of the concept (Tamanaha, 2004, p. 4). Rule of law includes the stated, uniformly followed, and equally applied laws of a society that bind citizens and government officials (Bevir, 2009; Tamanaha,



2012). Rule of law is divided into “thin” and “thicker” definitions; the “thin” definition focuses on the mechanics of rule of law, that is, how it is created and applied, while “thick” definition focuses on democracy and human rights (Tamanaha, 2007; Tommasoli, 2012). In sum, the rule of law does not put the sovereign above the citizens. In fact, sovereigns are bound by the law, just as citizens, and all citizens are equal under the law (Bevir, 2009, p. 182-183).

While Bevir states that “the rule of law is a moral concept rather than institutional blueprint” (2009, p. 183), institutions uphold the rule of law. In particular, an independent judiciary and legal profession is necessary so that the law is interpreted and applied consistently and fairly (Bevir, 2009; Tamanaha, 2007). Indeed, Leif Carter and Thomas Burke (2007) describe the law as “a language that lawyers and judges use when they try to prevent or resolve problems—human conflicts—using official rules made by the state as their starting point” (p. 7). Constitutions are intended to limit state actors and provide legal rights to citizens (Bevir, 2009).

## **The Development of Japanese Law, The Constitution, and Institutions**

The rule of law in Japan is encapsulated in the Constitution of Japan, which was enacted in 1947 and predicated on the Western concept of rule of law (Hamada, 2007; Maslen, 1998; Oda, 1999). As discussed in the aforementioned subsection, the rule of law is a nebulous concept without a precise definition. However, it suffices to say that the *relationship* between the civil society and the state is a fundamental premise when considering the rule of law. Prior to a discussion about the current Japanese Constitution, it is important to understand the first Japanese Constitution promulgated during the Meiji Restoration and its implication for modern Japanese law.

The Japanese legal tradition is based on Chinese legal tradition, which was imported around the seventh century along with Buddhism, Confucianism, and a writing system (Oda, 1999). The law was used to exercise state power and premised on public law rather than private law (Haley, 1991). However, rather than accept this new legal system wholesale, the Japanese fused the Chinese legal tradition with their own indigenous law. By the Kamakura and Ashikaga Eras, three types of law had emerged, along with a new criminal and legal system (Oda, 1999, p. 16). At the start of the Tokugawa Era, a two-volume legal code was written, and another criminal and civil procedure system was created (p. 19-20).

It is important to consider the legal tradition that was imported from China and how the Japanese related to the law. Confucianism arrived just shortly before the legal system, and the legal codes within this system normalized those Confucian tenets, especially as it related to relationships and social hierarchy. Haley (1991) states, “Law was an instrument of state control not an instrument to control the state, while the traditional moral order or cosmology regulated both” (p. 22). That is, the state created law, the state enforced law, and this, in turn, reinforced the state’s interest.<sup>15</sup> Private disputes were not brought to court and were expected to be settled through informal or extra-legal means. Haley writes, “Harmonious settlement of the quarrel rather than an outcome in conformity with norms established by law was generally in the interest of the state and its officials as well as the parties who controlled extralegal processes of settlement” (1991, p. 23). This is perhaps the reason why, even today, the Japanese prefer informal means of settling disputes privately and the heavy reliance on administrative guidance.<sup>16</sup> As this

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<sup>15</sup> It is important to note that the “state” was not a centralized government or modern nation-state until the Meiji Restoration.

<sup>16</sup> Administration guidance will be discussed more in-depth in the following chapter.

early development relates to the rule of law, Haley indicates that this fusion of indigenous law and imported Chinese code helped the Japanese apply the law more evenly, stating it “could build the foundation of legitimate governance on the wealth of rule by law and perhaps by extension of the rule of law” (p. 49). During the Tokugawa Era, which was marked by decentralized feudal states run by *shoguns*, and the tradition of informal dispute resolution for private conflicts continued. What is particularly striking here is that, according to Elliott Hahn (1983):

The Tokugawa governments used these tenets [social hierarchy and harmony] as societal pressures to force potential litigants to settle their problems by themselves, refrain from litigation and preserve the harmony of society. To have one’s own rights emphasized in court meant telling another that he or she had erred. . . . Societal harmony was the all-important objective and the rights of the individual mattered little. (p. 519)

This certainly impacted modern Japanese legal culture.

In 1853, Commodore Matthew Perry led U.S. Naval ships into Tokyo Bay and the Japanese were forced into unequal trade treaties after nearly 400 years of isolation. This forced entry subsequently ended the Tokugawa Era, and, in response, the Japanese decided to rapidly modernize, industrialize, and militarize. From an international relations perspective, this was done in response to external forces, which shaped not only foreign policy but also domestic policy (Pyle, 2006). This era, known as the Meiji Restoration, started in 1868, and the political elites rallied the nation to “revere the emperor, expel the barbarians” and build a “rich nation, strong army.” Kenneth Pyle (2006) describes Japan’s foray into international politics at gun point as traumatic, and it was this trauma that rallied the nation to mold itself to compete in the new world order (p. 401). He states:

While other Asian states resisted the new international order that Western imperialism imposed, Japan alone responded through all-out emulation of the institutions of the great

powers. Playing by the rules of the game, within the space of a generation, Japan became itself an active participant in the system. (p. 401)

The Japanese did this by sending a delegation to Europe to study their systems of government and law. They imported the Prussian system of government and both French and German civil code (Maslen, 1998). This was a voluntary transfer; that is, rather than accepting the institutions and laws of a colonizing agent, Japan voluntarily imported the European government and legal systems and without abandoning their own indigenous legal traditions (Maslen, 1998; Kim, 2012). In terms of the law, voluntary legal transfers tend to be more readily accepted and create higher levels of legality (Pistor & Wellons, 1999; Ginsburg, 2001).

The 1889 Constitution functioned less to provide a democratic government to sovereign citizens and, instead, sought to create national cohesion and a centralized government (Pempel, 1989, p. 19). While there was a legislative branch, the Diet, and executive branch, the prime minister and cabinets, these branches were weak and appointed by the emperor, and the officials were not popularly elected (Pempel, 1989). Furthermore, oligarchs (*genro*) controlled the government, which is a vestige of Tokugawa social order. Japan initially relied on French civil code as a model but then changed to the German civil code. The Japanese judiciary continued to define and create customary law *vis-à-vis* the judiciary; according to Marie Seong-Hak Kim (2012), “Japanese judges, like their French counterparts, were constrained because they were supposed to ‘apply’ norms, and not to ‘create’ them.... But custom provided significant freedom for the judges” (p. 99).

The 1889 Constitution was replaced during the American Occupation after World War II. In visceral biological and gendered terminology, John Dower (1999) states:

Regendering this hermaphroditic creature in 1946 involved casting aside the authoritarian German legal model on which it was based (and in which most Japanese legal specialists continued to be trained), and replacing it with a charter rooted in basic ideals from the Anglo-American legal tradition. (pp. 346-47)

This language was drawn from the *Guide to Japan*, which described the Meiji Constitution as having a “Prussian tyranny as its father, and British representative government as its mother, and attend at its birth by Sat-Cho midwives...was a hermaphroditic creature” (as quoted in Dower, 1999, p. 346). Initially, Japanese leaders were tasked with drafting the new constitution; however, they did little more than make superficial changes to the Meiji Constitution, so the General Headquarters drafted the new constitution (McElwain & Winkler, 2015).

What is striking about its drafting, under General Douglas MacArthur, was that the constitutional convention included four women, including a woman named Beate Sirota.<sup>17</sup> Sirota lived in Japan as a child and was educated at Mills College; she also worked at the U.S. Foreign Broadcasting Intelligence Service and the Office of War Information (Dower, 1999, p. 365).

Dower points out that she was the only committee member who understood Japanese culture and language and served on the civil rights subcommittee. Sirota also understood just how intrusive the Japanese government was on citizen’s private lives<sup>18</sup> and was deeply committed to addressing the national desire to have a less oppressive government. Dower (1999) states, “In Sirota’s case, ‘this feeling was based on an unusual sense of identity with Japanese women, coupled with her personal knowledge of their legal and marital oppression’” (p. 366). The provisions of the

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<sup>17</sup> Beate Sirota’s married name was Beate Sirota Gordon per the article about her death in the *New York Times* (Fox, 2013).

<sup>18</sup> There was a chilling slogan during the Meiji Era that the home was a “public space where private thoughts should be forgotten.”

new constitution remained during negotiations with the Japanese because of Sirota's linguistic and diplomatic skills; she even advocated on behalf of the Japanese on certain points (p. 380).

The opening of the 1947 Constitution of Japan reads as such:

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. **Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people.** (The Constitution of Japan, 1947) (author's bolding)

It is important to note the shift from citizens serving as subjects of the emperor to the government serving the citizens. The word used is *kokumin* or "nation/country people." According to Dower (1999), Americans initially translated people as *jinmin*, but Japanese leaders assisting with the drafting process thought this was too adversarial sounding, while *kokumin* was more harmonious and included the emperor (who was now a symbolic leader and state figurehead) (pp. 381-82).

As it relates to gender, there are two articles to note in the 1947 Constitution. In Article 14, the Constitution guarantees that "[a]ll people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." Article 24 guarantees that marriage is mutually consensual and "maintained through mutual cooperation with the equal rights of husband wife as a basis...laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes." It is worth noting that, as it relates to this study, no workplace sex discrimination cases were successfully litigated based on constitutional merit (Upham, 1989).

Bringing the discussion back to the rule of law, one feature that must be understood about Japanese law is the vague, ambiguous language used in the constitution, legislation, and statutes. Kawashima (1963/2002) discusses the problem with Anglo-American and European law in terms of language: “In its essence the law of Anglo-American society appears to be similar since it also represents logical thinking through words which have very specific and limited definitions” (p. 31). Indeed, Hahn discusses the flexibility of language, stating that American lawyers use the specific and precise language in contracts for guidance on resolving disputes, while the Japanese value harmony rather than honoring the language in the contract (p. 520). Kawashima states:

To me the question of legal thinking based on word with very strictly defined concepts is very interesting since in Japan legal reasoning is based on verbal propositions with ambiguous, changeable, and elastic meanings. In Japan the meaning of words used in legal principles or in statutes is taken for granted by Japanese people as being necessarily ambiguous and elastic. Here, the people would not be surprised to discover that the meaning of law sometimes is changed, shaped and sometimes distorted.... (p. 31)

We see the ambiguity and vagueness encapsulated in the Constitution of Japan. In their article about how the Constitution has gone since 1947 without revision, which is highly unusual in democratic countries, Kenneth McElwain and Christian Winkler (2015) describe the Constitution as vague and in a comparative analysis argue that certain elements that are specifically mentioned in other constitutions are absent in the Japanese Constitution, and, when necessary, a parliamentary majority determines the appropriate statutes when those absent elements present legal issues that need remedy (p. 250).

The American Occupation and new Constitution of Japan brought democracy to Japan, a concept that was not embodied in pre-war Japan (Ishida & Krauss, 1989, p. 9). The 1947 Constitution guaranteed popular sovereignty to the citizens of Japan and strengthened government insti-

tutions. After World War II, the emperor of Japan remained but served as a figurehead while the Diet instead became the “formal promulgator of law” (Krauss, 1989, p. 39). The Diet consists of two houses, an upper (Councillors) and lower (Representatives). Approximately four to six representatives are elected from local districts, as proportionate to population size, and are beholden to strict campaign regulations. The prime minister is elected by the Diet and enjoys the ability to dissolve the House of Representatives but may himself be subject to a no-confidence vote. The prime minister must also come from a major party faction (Krauss, 1989). Although the two-party system developed during the Taisho Era (1912-1926), one political party dominated Japanese politics from 1955 to 1993 (Ishida & Krauss, 1989; Richardson, 1997). The “1955 System” describes the Liberal Democrat Party’s (LDP) conservative stronghold on Japanese politics for a nearly 40-year period. Female participation has traditionally remained low.

The Japanese bureaucracy is very small and powerful, exerting tremendous influence on policy making and implementation (Krauss, 1989). The bureaucracy is a remnant of the Meiji oligarchy, a holdover despite the bottoms-up democracy implemented during the American Occupation (Campbell, 1989). The central function of the bureaucracy is to issue administrative guidance, both formal and informal. Formal administrative guidance is administered through statutes and ordinances, while informal administrative guidance is social pressure (Krauss, 1989). Indeed, in the case of workplace gender discrimination and labor policy, complaints are filed at the municipal level, and evidence of informal administrative guidance is demonstrated in such laws as the Equal Employment Opportunity Law (1986 and 1999) for which there are virtually no enforcement mechanisms.



The Japanese judiciary, although an independent branch of government, functions as a bureaucratic institution. According to John Haley (2006), “Organized as an autonomous national bureaucracy, the judiciary comprises a small, largely self-regulating cadre of elite legal professionals who enjoy with reason an extraordinarily high level of public trust” (p. 109). The judiciary is structured as follows:

**Table 2.1 Japanese Judicial System**

Court Type	Number	Descriptions
Summary	438	<ul style="list-style-type: none"> <li>• Civil cases &gt; ¥900,000</li> <li>• Minor criminal cases</li> <li>• Single judge hears case; non-career individual</li> </ul>
District	50 (203 branches)	<ul style="list-style-type: none"> <li>• Generally requires three-member panel</li> <li>• May serve as an appellate court</li> </ul>
Family	50 (203 branches)	<ul style="list-style-type: none"> <li>• Domestic and juvenile cases</li> <li>• Lay conciliators, not judges, hear cases</li> <li>• Most lay conciliators are women who hold law degrees</li> </ul>
High Court	8	<ul style="list-style-type: none"> <li>• Appellate courts for summary or district courts and second appeals</li> </ul>
Supreme Court	1	<ul style="list-style-type: none"> <li>• Fifteen justices; only 5-6 are career judges</li> <li>• Nominated by cabinet; appointed by emperor</li> <li>• May include president of high court, judge, summary court judge, prosecutor, lawyer, or law professor</li> </ul>

(Source: Haley, 2006)

The judiciary is also highly bureaucratic and subject to administrative control (Miyazawa, 2006). Many members of the judiciary are lifetime employees who studied law as undergraduates, passed the bar exam, completed training at the Judicial Research and Training Institute (JRTI), and are recruited by the Supreme Court. They are summarily transferred at intervals dur-

ing their career. The lower courts are run by the General Secretariat of the Supreme Court, an extremely powerful bureau with strong authority. As the General Secretariat handles personnel matters and appointments, it is likely that “Japanese judges appear to need tremendous courage to decide a case in a way that is likely to displease the GS” (Miyazawa, 2006, p. 123). The intent of an independent judiciary—whether U.S. or Japanese—is to uphold democratic institutions and processes while protecting the rights of its citizens.

In this subsection, the rule of law as a legal and political concept was discussed, subsequently fleshing it out in terms of Japanese rule of law. In particular, the rule of law nebulously refers to how the state and citizens are bound by the law and that all citizens are equal under the law (Bevir, 2009). This is important because it denotes how citizens *relate* to the law. In Japan, the Constitution of Japan provides the basis for the rule of law. Under this Constitution, all citizens are equal under Article 14, including women. But how do Japanese women relate to the law?

## **Women and the Law**

The law is considered “blind,” as depicted by the metonymic token of Lady Justice (Knox, 2014; Swatt & Nyberg, 2012), and neutral and objective in its application. However, many feminists consider the law an “instrument of male supremacy” (Baer, 2011), which necessitates inquiry into the treatment of women under the law. Accepting that Western law is inherently masculine and Japanese law is predicated on European and American legal tradition, this

subsection fleshes out how feminist jurisprudence, or feminist legal theory, is apt and appropriate to serve as a theoretical framework. The Seneca Falls Declaration also addresses the rule of law:

The Seneca Falls Declaration of Sentiments and Resolutions (1848) declared that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed. (*Seneca Falls Declaration of Sentiments and Resolutions*, Comager, 1963, p. 315)

Here, the suffragettes speak to the rule of law in the United States with the inclusion of women based on the Declaration of Independence. However, the declaration continues, pointing to “a history of repeated injuries and usurpations on the part of men toward women” (p. 315). Women were “compelled” to “submit to laws, in the formation of which she had no voice” and left without even the most basic of rights, let alone representation (p. 315). The exclusion of women from law led to gender bias and unequal treatment under the law (Bauer, 2011). The law needed, according to feminists, reconsideration by asking the “woman question;” that is, a repositioning of legal reasoning and inquiry that includes the perspectives and experiences of women (Wishik, 2013, p. 66). According to Katherine Bartlett (1990), “One method, asking the woman question, is designed to expose how the substance of law may silently and without justification submerge the perspectives of women and other excluded groups” (p. 836). *Feminist jurisprudence* is the framework under which this inquiry into law occurs to expose gender biases and develop new methodologies and reasoning (Bartlett, 1990; Wishik, 2013; Bauer, 2011).

The next section will focus on feminist jurisprudence, outlining its development and applications. Also included is a section about Japanese feminism and feminist jurisprudence. In

terms of feminist jurisprudence in Japan, *feminisuto hougaku*<sup>19</sup>, was imported from the West<sup>20</sup> and as Leon Wolff (1996) explains, equality discourse in scholarly and legal studies is implied rather than a “discreet topic of study” (p. 511). In fact, Wolff argues that most feminist jurisprudence scholarship is conducted almost entirely in the Western cannon of political and cultural thought and relies heavily on American legal traditions (p. 513). While Wolff tries to bridge this cultural and linguistic gap, and Martha Jean Baker (1997) tries to draw parallels between Carol Gilligan’s “ethics of care” and Japanese feminist legal scholarship. Prior to a discussion about feminist jurisprudence in Japan, I will discuss as Julia Bullock, Ayako Kano, and James Welker (2018) call “Japanese feminisms”, however, it is important to acknowledge that there are unique Japanese feminisms and feminist debates, the crux of feminist jurisprudence in Japan is grounded in Western scholarship and theory.<sup>21 22</sup>

## **Feminist Jurisprudence**

Feminist jurisprudence is predicated on “women doing law” (Bartlett, 1991), and how women relate to the law. Feminist jurisprudence, or feminist legal theory, was born of the second

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<sup>19</sup> フェミニスト法学 or フェミニズム法学 is the Japanese term for feminist jurisprudence.

<sup>20</sup> Also from a conversation with Hifumi Okunuki on January 21, 2018.

<sup>21</sup> In an academic entry, Satoshi Kodama (2000) defines feminist jurisprudence (for Japanese audiences) and identifies Catherine MacKinnon and Ann Scales as “main thinkers”. See: [https://plaza.umin.ac.jp/kodama/ethics/wordbook/feminist\\_jurisprudence.html](https://plaza.umin.ac.jp/kodama/ethics/wordbook/feminist_jurisprudence.html)

<sup>22</sup> The ordering of these subsections is to try to provide the reader context about feminist theory, feminist jurisprudence, and feminism/feminist jurisprudence in Japan. It would be remiss to focus on either country exclusively, however, it must be noted access to Japanese feminist jurisprudence materials presents some challenges.

wave feminist movement and was preceded by feminist social advocacy (Levit & Verchick, 2006). According to Levit and Verchick:

All feminist theories share two things—the first an observation, the second an aspiration. First, feminists recognize that the world has been shaped by men, particularly white men, who for this reason possess larger shares of power and privilege.... Second, all feminists believe that women and men should have political, social, and economic equality. (p. 15-16)

The term combines the sociopolitical movement to end female subordination (feminism) with the interpretation, application, and implementation of law. Simply stated, feminist jurisprudence is the intersection of theory and praxis (Bender, 1988). The requisite of feminism is not being female but, as Ann Scales (2006) describes, “Rather, there is a socially constructed process that conscripts people into a gendered way of seeing the world. This process includes not only rites of genderization for individuals but also habits of thinking that are contingent but powerful” (p. 83). According to Catharine MacKinnon (1998), “Feminist jurisprudence thus pioneers a relation between life and law through which women’s unequal social reality will be legally confronted and transformed” (p. 220). Feminist jurisprudence analyzes the oppression of women and the systematic ways it pervades sublimation, exploitation, and exclusion from political, economic, and social participation (Bender, 1988, p. 4).

The term *feminist jurisprudence* was introduced in 1978 at a Harvard Law School conference to recognize the 25th anniversary of women graduating from the institution; the debate has ensued if such a theory should exist (Cain, 1988), and Ann Scales (2006) claims to have invented the term. The concept of feminist jurisprudence emerged in the 1960s with second-wave feminism, or liberal feminism, which sought equal treatment for women. In 1971, the U.S. Supreme Court ruled in *Reed v. Reed* that an Idaho law gave preference to men over women in matters re-

garding interstate estate administration. The court ruled that there were no differences between men and women to warrant this law (both sexes were “similarly situated”) (Scales, 2006, p. 84-85). This effort was led by the ACLU Women’s Rights Project and Ruth Bader Ginsburg; the concept of “similarly situated” gave way to Catharine MacKinnon’s “differences approach.” While this fit neatly into the aims of the liberal feminist agenda, it was not a one-size fits all approach to other legal issues when sex and gender differences often inherently exist (Scales, 1986, p. 1374-1375).

The gravitas of feminist jurisprudence is its mission to deconstruct Aristotelian abstract universality and objectivity from its patriarchal, male-dominated origins (Scales, 1986; 2006). Patriarchy is the systematic hierarchy of male domination and governing of politics, economics, family relationships, and sexual relationships, generally favoring men whether they consciously “buy” into the system or not. Furthermore, while women are victims of the system, many also collaborate with it (Bender, 1988). In regard to feminist jurisprudence, Conaghan (2000) states: Thus, in feminist legal theory, the legal subject is posited, not as the abstract, ungendered creature of the traditional legal imagination but as an ideological construct, endowed with attributes that vary according to context, and compel particular (gendered) perceptions of the social world. (p. 361)

Recognizing patriarchal constraints and manifestation in law is only the start of the feminist jurisprudence objective; rather, the imagination must transcend the acknowledgment of harm and injury to envisioning law without the vestiges of patriarchy (Wishik, 1985). Robin West claims that feminist jurisprudence is unable to even exist until patriarchy is eliminated (West, 1988; Cain, 1988).

A central tenet of feminist jurisprudence is to challenge the concept of objectivity in law, a deeply prized assumption in the field of law. According to Scales (1986):

A legal system must attempt to assure fairness. Fairness must have reference to real human predicaments. Abstract universality is a convenient device for some philosophical pursuits, or for any endeavor whose means can stand without ends, but it is particularly unsuited for law. Law is, after all, a social tool. (p. 1380)

Drawing from Wittgenstein, law relies on “rules, standards, categories, and modes of interpretation,” but feminism instead turns differences into relationships and analyzes the power dynamics (Scales, 2006, p. 91). Objectivity, touted in Western thought as unbiased and neutral, instead is a myth (Bender, 1988; Scales, 2006).

Just as feminist theory contains many scopes with which to evaluate systematic oppression, feminist jurisprudence is similarly situated in creating, applying, and critiquing law. Those theories include equal treatment theory (liberal feminism), cultural feminism, dominance theory (radical feminism), postmodern feminist legal theory, critical race theory, lesbian legal theory, pragmatic legal feminism, and ecofeminism (Levit & Verchick, 2006). Although each theory imparts critical knowledge in legal theory, for the scope of this project, equal treatment theory, cultural feminism, dominance theory, and postmodern legal theory will be detailed in the subsequent section.

## **Theories of Feminist Jurisprudence**

According to Levit and Verchick (2006), feminist jurisprudence or legal theory is grounded in both observation and aspiration (p. 15). As mentioned above, the critical acknowledgement is that the law is a product of a male-dominated society under a patriarchal system; however, feminist jurisprudence promotes the belief that men and women should enjoy equal treatment

under the law. Many feminist theories exist to explain legal phenomena and provide remedies to correct it; however, Scales (2006) argues that what was once the basis of productive debates has now resulted in deep schisms in the field.

## **Equal Treatment Theory**

Equal treatment theory is a direct result of second-wave, liberal feminism of the 1960s and the basis for Ruth Bader Ginsburg's approach in *Reed v. Reed*. The general crux of equal treatment theory is that men and women should be treated the same and equally (Levit & Verchick, 2006). According to West (1987), "The liberal feminist's strategy is directly implied by her diagnosis: what we must do is prove that we are what we are—individualists and egoist—and then fight for the equal rights and respect that sameness demands" (p. 83). It was during this wave of liberal feminism that great strides were made in feminist jurisprudence. MacKinnon (1984) concedes:

...I should say that it takes up a very important problem: how to get women access to everything we have been excluded from, while also valuing everything that women are or have been allowed to become or have developed as a consequence of our struggle either not to be excluded from most of life's pursuits or to be taken seriously under the terms that have been permitted to be our terms. (p. 83)

According to Davies (2007), "Essentially, liberal feminism argues that the basic beliefs of political liberalism—that human beings are rational and autonomous and out to be treated equally—apply to women as well as to men" (p. 653).

The problem with equal treatment theory, however, is that, while this theory made incredible strides for women, it also neglected to account for instances in which women are biologically different than men (such as with childbirth) (West, 1987; Levit & Verchick, 2006). This theo-



ry treats men and women the same with sex as the only deviating factor between the two (MacKinnon, 1984). Furthermore, liberal feminism, in its quest for equal treatment and “sameness,” aligns itself with a masculine jurisprudence; that is, that women must act like men (West, 1988).

## **Cultural Feminism**

Rather than relying on gender-neutral laws, which are constructs male-dominated systems, cultural feminism argues that women are inherently different from men, and the law must take those differences into account. The law should also address biological and cultural differences between men and women, differences that are embedded in many institutions that “follow rules based heavily on male-dominated experience, which can disadvantage women” (Levit & Verchick, 2006, p. 18).

Cultural feminism is derived from the work of Carol Gilligan and care ethics. According to Davis (2007), “The male ethics tended towards the clear application of rules, whereas the female ethics were more ‘relational’ and based upon an ‘ethic of care’, that is, informed by the relationships between people rather than by abstract principles” (p. 655). This is seen later in the sexual harassment litigation study by Phoebe Morgan (1997), who discovered that women tended to file claims or arbitrate due to familial relationships and other social support. In essence, Gilligan promotes the theory that women have a different “voice” and are by nature nurturers and their “voices” should join a chorus more or less in mainstream society. This approach is heavily criticized, particularly by Catherine MacKinnon and Joan C. Williams (Williams, 1989).

## **Dominance Theory**

Dominance theory, also known as radical feminism, focuses on power differentials between men and women. In essence, women face discrimination in political, economic, and personal spheres as a result of male domination (Levit & Verchick, 2006). Women are oppressed by men through institutional and systematic entities rather than by individual parties (Davies, 2007, p. 654). The gold standard of gender neutrality or objectivity is constructed as masculine and, according to MacKinnon (1984), “Gender neutrality is thus simply the male standard, and the special protection rule is simply the female standard, but do not be deceived: masculinity, or maleness, is the referent for both” (p. 82). Equal treatment theory neglects to account for women’s suffering, and how male domination does not offer a “level playing field” for women. According to West (1987), “Hierarchical power imbalances do that to people—they make the disempowered less than human, and they make the empowered ruthless” (p. 84).

Under dominance theory, women are treated as sexual objects who live in fear of men’s domination. Furthermore, men also suffer at the hands of patriarchy; they must perform masculinity or suffer the consequences (Levit & Verchick, 2006). Radical feminism believes that women are connected through common experiences of being female (Tong, 2009; Levit & Verchick, 2006). This “sisterhood” is criticized by critical race feminists and lesbianism feminists who believe that women of color and other sexual orientations are excluded from liberal and radical feminism.

## **Postmodern Legal Theory**

In postmodern legal theory, language contains the root of gendered power structures that can be deconstructed and used as a tool in reverse (Levit & Verchick, 2006). There is no core to identity but rather linguistic constructions housed in socioeconomic and political environments,

which eschews the need for feminist politics based solely on femaleness (Davies, 2007, p. 657). By using deconstruction, power relationships are revealed, and according to Levit and Verchick (2006), “Postmodernists suggest that we create and transmit hierarchies such as gender oppression by subtle and pervasive systems of speech and action (discourse and so-called discursive practices)” (p. 37). Postmodernism rejects traditional philosophy, even going as far to claim it is not real (Scales, 2006). Notably, Mary Joe Frug (1992) indicated that legal rhetoric “should be recognized as a site of political struggle over sex differences” (p. 1046) and that, while some have critiqued postmodern feminism as potentially stagnant, she nonetheless finds its utility by embracing its essential message.

## **Feminist Legal Method**

### **Feminist Legal Methodology**

In order for feminist jurisprudence to gain legitimacy and progress, it must be grounded in sound methodological foundations. Katherine Bartlett (1990) likens feminist legal methods to “feminists doing law” in much the same way a typical lawyer “does law” by analyzing facts and applying legal principles (p. 836). Furthermore, she indicates that feminists use, at their disposal, the standard methods of legal reasoning, as well as feminist methods. According to Bartlett, there are three critical components to feminist methods: asking the “woman” question, feminist practical reasoning, and consciousness raising.

- **The Woman Question.** The woman question seeks to determine the extent upon which law or standards disadvantage women or if a law fails to address particular experiences of women (p. 837). Bartlett states, “Asking the woman question reveals the ways in

which political choice and institutional arrangement contribute to a women's subordination" (p. 843).

- **Feminist practical reasoning.** Feminist practical reasoning adopts the Aristotelian model and transforms it by adding the feminist perspective. In traditional practical reasoning, complexities of an issue or problem are considered and rules are applied to leverage new insights; justification is warranted and welcomed (p. 853-854). In feminist practical reasoning, it is not a direct contrast of so-called masculine practical reasoning but rather "challenges the legitimacy of the norms of those who claim to speak, through rules, for the community" (p. 855). That is, there is no singular community which dominates practical reasoning.
- **Consciousness raising.** Consciousness raising is a popular topic of feminist jurisprudence, in which women voice their experiences of being a woman to form a collective consciousness. Bartlett contends that this extends beyond the traditional notion of small, private groups but also to larger institutional capacities and structures (Bartlett, 1990; Levit & Verchick, 2006).

Ann Scales (2006) offers an eight-pronged approach to feminist legal method in her book *Legal Feminisms: Activism, Lawyering, and Legal Theory*. In this approach, Scales believes that the feminist jurisprudence project is able to maintain its "focus" and purpose.

- **Avoiding political divisions.** Scales cautions to avoid becoming adherents to particular political dogma, which pervade generic politics but also riddles feminist debates; rather, she encourages finding acceptance with "strange bedfellows" and contradiction (p. 101-102).

- **Avoiding neutrality.** In direct defiance of traditional legal approaches that value neutrality and objectivity, which are false, Scales instead urges the contemplation of how power and privilege play into a particular legal issue.
- **Questioning “false necessities.”** Scales warns against adhering to “bottom lines,” such as false dichotomies and “slippery slopes” (p. 104-108).
- **Employing epistemology.** Deconstruction and interrogation of knowledge elicits multiple interpretations in determining “whose reality” (p. 108-109).
- **“Looking from the bottom.”** According to Scales, “Looking to the bottom is anathema to mainstream liberal jurisprudence because it brings a big dose of purposive interpretation of rules and allegations, so leads yet again to accusations of subjective decision making” (p. 109). “Look to the bottom” means that one should “look through” social hierarchy to determine which party’s reality is free or constrained.
- **Answering in the present.** Rather than trying to predict which decision will adversely impact the future, Scales instead urges that decisions be made with the information presently available and previous precedence.
- **“Practicing solidarity.”** According to Scales, “At a minimum, solidarity means our thinking through, as professionals and as activists, how legal decisions affect other people” (p. 113).
- **Keeping perspective.** Scales accords this with keeping people in mind when pursuing legal courses instead of a singular end-goal at any cost.

## **Feminist Epistemology**

There are three dominant feminist epistemologies, which are feminist empiricism, feminist standpoint theory, and feminist postmodernism (Harding, 1991). Thus, feminist standpoint epistemology is the operating theory guiding the issue that frames analysis of the labor laws.

According to Harding (1991):

They [feminist standpoint theorists] argue that not just opinions but also a culture's best beliefs- what it calls knowledge- are socially situation.... It is these distinctive resources, which are not used by conventional researchers, that enable feminism to produce empirically more accurate descriptions and theoretically richer explanations than does conventional research. Thus, the standpoint theorists offer an explanation different from that of feminist empiricist of how research directed by social values and political agendas can nevertheless produce empirically and theoretically preferable agendas. (p. 119)

Harding (1991) argues that women, as an oppressed group, have a different starting point in their research, are outside of social order, have a keen skill to discern ignorance, have the opposite of the masculine experience, are rooted in everyday life, mediate dualisms, are "outsiders within," and have found a ripe time to enter the academy as standpoint theorists. According to Cerwonka (2011):

Therefore, instead of looking to the experience to provide intact "standpoints" from which to generate accounts of the world, we must ask what factors constituted the experience and identities, and how the positionality—even of marginalized people—is relational to a range of influence (some of them unflattering even). (p. 66)

Regarding this richness and complexity, which may at times be disarming, Peto and Waaldijk (2011) warn against "historical angels," which cajoles feminist scholars into writing mainstream, stream-lined analysis so that the findings and data are not complicated, thus perhaps exposing

experiences that the dominate cultures does not want visible. The term “historical angels” is drawn from Virginia Woolf’s phrase “angel in the house.”

## **Implications of Feminist Jurisprudence**

Much of the literature devoted to feminist jurisprudence notes the backlash it has received, so much so that it is referenced metaphorically as a “dirty word” (Scales, 2006; Bender, 1988; Harris, 2011; Conaghan, 2000). According to Harris (2011):

Looking back now, the most powerful agents of backlash may not have been the Anita Bryants and Bobby Riggsses, but the Katie Roiphes: a generation of younger women who seemed less concerned about or committed to feminism as a cause; or even as a self-description. (p. 1)

Scales (2006) reflects on the ill-timed spoof by the *Harvard Law Review* after the posthumous publication of Mary Joe Frug’s “Postmodern Manifesto.” Rather, even though the piece was an unfinished draft, the publication turned into an insensitive joke. Harris (2011) argues that feminist legal theory still remains but the women that it was about have disappeared (p. 2). However, Littleton (1987) contends that, as with most social movements, questions emerge about the gains of the movement, and she believes that the feminist jurisprudence project was valuable because it brought attention to the suffering of women, the advocacy made important changes to the legal field, and it changed discourse.

Feminist jurisprudence, despite its debates and controversies, generated much social change and impacted how the law treated women. It also created new legislation and case law patterns, as well as institutions devoted to protecting women from sex-based gender discrimination. Title VII, which prohibits discrimination on the basis of sex, is an amendment to the Civic

Rights Act of 1964 (42 U.S.C. § 2000e). The inclusion of sex in the law was introduced by Representative Howard Smith, a Virginian, who did so in anticipation that the amendment would not pass with the addition, thus negating the intended benefit of nondiscrimination on the basis of race, color, religion, and national origin. According to Lindgren and Taub (1988):

The only arguments favoring the amendment at the time were that sex discrimination was wrong and without the amendment, white women would be at a disadvantage in relation to black women.... One of the most powerful remedies for sex discrimination available today owes its origin to a misfired political tactic on the part of opponents of the Act. (p. 111)

The Equal Employment Opportunity Commission (EEOC) was created by Congress as the administrative agency to superintend Title VII. It also published Guidelines on Discrimination Because of Sex (Westman, 1992). One particularly effective mechanism at the commission's disposal is its ability to bring suit on behalf of individuals who have brought forward complaints, among many other responsibilities, which include investigating and resolving complaints, filing *amicus curiae* briefs, and filing class action lawsuits (Gelb, 2003, p. 44).

The EEOC established guidelines in 1980 to address sexual harassment, which it divided into two types: *quid pro quo* and hostile environment (Westman, 1992; Schoenfelt, 2002; Adler & Peirce, 1993). *Quid pro quo* occurs when a tangible employment benefit is threatened without the return of a sexual favor (Adler & Peirce, 1993). This type of harassment was recognized for the first time in the case *Williams v. Saxbe* (Schoenfelt, 2002). *Hostile environment* harassment, which is the established pattern of unwelcome sexual behavior "interferes with the individual's job performance, or creates an intimidating, hostile or offensive work environment" (Adler & Peirce, 1993, p. 780). Hostile work environment was further defined by the court in *Meritor Savings Bank v. Vinson*.



Feminist jurisprudence also contributed to the development of case law that further defined sexual harassment. Hostile environment harassment, which is the established pattern of unwelcome sexual behavior “interferes with the individual’s job performance, or creates an intimidating, hostile or offensive work environment” (Adler & Peirce, 1993, p. 780). The Supreme Court first recognized hostile environment harassment in the case *Meritor Savings Bank v. Vinson*.

Finally, one of the hallmarks of feminist jurisprudence was the creation of the reasonable woman standard. The “reasonable man” encompasses the virtues of a good, prudent, law-abiding citizen who will not break a law without a reasonable sapient reason. The reasonable man is seen in legal writing dating back hundreds of years and, while his purity remains intact, his form has changed considerably. According to Ronald Collins (1977), “Only a god or this mythical creature could transform the natural law element into positive law or assume the particular physical and mental characteristics of any given actor whether young, old, blind, deaf, crippled or perfectly normal” (p. 315). Collins further states that women have been argued as “unreasonable,” as demonstrated in *Daniels v. Clegg*; he states, “This historical fact—that women’s legal status as ‘persons’ in the eyes of the law had not completely vested—offers one explanation for the prevalent use of the phrase ‘reasonable man’” (p. 319). A woman’s unreasonableness, coupled with the history of law written by men, is why the reasonable man standard endured throughout the centuries as the golden standard.

The concept of the reasonable woman first appeared in 1986 in the case *Rabidue v. Osceola Refining Co* and gained notoriety in *Ellison v. Brady* (1991). According to Adler and Peirce (1992), “In creating a ‘reasonable woman’ standard, the Ellison court clearly intended to estab-

lish aggressive new guidelines for conduct in the workplace rather than adhere to a traditional standard that, in its view, simply reinforced prevailing levels of discrimination” (p. 801).

Critiques of the reasonable woman standard include the argument that no two women are the same, and, therefore, their perceptions cannot be the same. This standard perhaps makes women “vulnerable,” and it could be considered paternalistic (Kerns, 2001). In recent years, there has been a trend in recognizing male victims of sexual harassment, which signifies yet another shift in standards (this is seen in Japan as well). In 2010, the Ninth Circuit heard *EEOC v. Prospect Airport Services, Inc.*, in which a male plaintiff alleged sexual harassment and discrimination. The case presented unique challenges to the reasonable woman standard; in this instance, the plaintiff’s masculinity was questioned when he rebuffed and complained about his coworker’s advances, which caused him further distress. Ann McGinley (2012), upon whose work this section is predicated, proffers the solution of a reasonable response; that is, based on the facts of the case, the focus on whether an employer has responded reasonably to incidences of sexual harassment.

## **Feminism and Feminist Jurisprudence in Japan**

In this subsection, I am will briefly introduce “first wave” Japanese feminism to give a brief overview of that movement. This is to provide the reader with some context of “Japanese feminisms”. However, the crux of this section will focus on the second wave (starting in the 1960s) to present day feminist theory in Japan.

### **Japanese Feminisms**

What does Japanese feminism mean and what are its implications? Is there only one type of Japanese feminism or are there Japanese feminisms? Ayako Kano (2018) asks this in the recently released *Rethinking Japanese Feminisms*. The genesis of the volume started at an international conference and included chapters written on a variety of modern topics. The authors of these chapters, as Kano explains, come from a variety of backgrounds, stating, “All of us participants are interested and academically invested in the study of Japan, but our degrees of affiliation and identification vary widely, and that is a good thing: it allows us to question the ‘assumed isomorphism’ of race, space and culture” (paragraph 6). The point that Kano makes that this diversity expands the field of Japanese studies and also “allows us to shake loose some of the assumptions of knowledge production: assumptions about who ‘we’ are, and for whom and about whom we write” (paragraph 6).<sup>23</sup>

Kano (2016) also asks in *Japanese Feminist Debates: A Century of Contention on Sex, Love, and Labor* what is particularly unique about Japanese feminist debates (p. 9). For Kano, debates take place in the *rondan*, or public space (p. 6) and she delineates the difference between “feminist” (which is theory) and “Japan” (which is related to comparative frameworks) (p. 7). Kano believes that Japan has been excluded from large-scale studies as a non-Western country, which is peculiar as it is an industrialized democratic nation. Furthermore, Japan’s unique history with late modernization and colonialism, occupation, and rapid economic growth followed by stagnation makes it difficult for one to “understand the shape of the women’s policy machinery,

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<sup>23</sup> It is important to note who Kano (2016) identifies as major feminist writers on Japan: Sharon Sievers, Marnie Anderson, Hiratsuka Raicho, Hiroko Tomida, Jan Bardsley, Dina Lowy, Barbara Sato, Sarah Frederick, Vera Mackey, Mire Koikari, Setsu Shigematsu, Sandra Buckley, Joyce Gelb, Yoshie Kobayashi, and Laura Dales. That is to say that feminist scholars who write about Japan come from a variety of backgrounds.

as well as the nature of its interaction (or lack thereof) with women's groups in Japan, without understanding this dramatic history" (p. 10).

To correspond with the theoretical framework (feminist jurisprudence) and its history, I mainly focus on contemporary feminism in Japan, which is about 1970 onward. That is not to say, however, that Japan did not have significant feminist debates prior to the *uuman riibu* movement in the 1970s and I present a brief overview of that history. However, there are already several prominent scholars who focus on feminist history in Japan (Jan Bardsley, Vera Mackey, Barbara Maloney, and so many more), so this brief overview is simply to orient readers with contextualization of these earlier debates with appropriate references for further study if desired.

The first wave of Japanese feminism was initiated during the Meiji Restoration, a period of rapid nationalization, militarization, and industrialization in Japanese history. In the late 19th century at the height of the Meiji Restoration, the Popular Rights Movement was founded, which pressed the government for a national assembly. This movement was spearheaded by Kita Kusunose, known as the "grandma of people's rights," who argued that, because she had paid taxes on behalf of her household since her husband's death, she should have the agency to vote (Takemura, 1998, p. 3). Although the movement gained popularity, several pieces of legislation were passed to curtail political participation, including the Policy Security Regulations Law of 1900, which expressly prohibited women from political participation (protests, events, meetings, speeches, etc.) (Takemura, 1998). Furthermore, with the passage of the 1898 Civil Code, the *ie* system was established, making men the head of the household and limiting women's rights, including ownership of property (which was transferred to her husband), child custody (they belonged to the father), and divorce (adultery with a married woman whose husband sued the

paramour was the only instance a woman could obtain a divorce, while a woman's adultery could result in an immediate dissolution with criminal charges) (Dales, 2009; Takemura, 1998).

In 1911, Raicho Hiratsuka started the journal *Seito*, or *Bluestockings*, for which various feminist writers contributed articles about various topics related to reproduction, sexuality, and women's creativity, and eventually took on topics, such as labor rights and suffragism (Mackie, 2003). Also around this same time, *Shin Fujin Kyokai*, or the New Women's Association, was established by Raicho Hiratsuka and Fusae Ichikawa followed by *Sekirankai*, or Red Wave Society, by Kikue Yamakawa (Takemura, 1998). Other organizations were to follow, tackling issues, such as suffragism, anarchism, education, political activity, socialism, unionization, and labor. One key debate during this period of first-wave feminism occurred between two Bluestocking feminists, Raicho Hiratsuka and Akiko Yosano. Hiratsuka, believed that the government carried the responsibility of protecting women and mothers, while Yosano disagreed, arguing that the state should not intervene and support women, who instead should seek financial independence (Dales, 2009).

Various strands of feminism with divergent missions continued to exist and evolve in the 1930s during the Pacific War, ranging from pacifist movements to conservative efforts supporting the war. With the Japanese defeat and American Occupation, women were finally granted suffrage and rights with the new constitution drafted in 1947 (Mackie, 2003). Many of the provisions pertaining to women's rights were incorporated by Beate Sirota (Dales, 2009; Fox, 2013). It was during the years after the American Occupation that the Japanese government engaged in "state feminism" where leaders tried to "re-impose a conservative vision of normative femininity

grounded in conventional domestic roles for women” and did so through women’s associations and women’s centers (Bullock, Kano, and Welker, 2018, loc. 165).

The second wave of Japanese feminism emerged in the 1960s with protest against the U.S.-Japan Security Treaty and the Vietnam War (Mackie, 2003; Dales, 2009). A new women’s group, *Agora*, was established to provide consciousness-raising and in 1972, a journal by the same name was started. Also established in the 1970s was *Tatakau Onna*, or Fighting Women, which fought for abortion rights. According to Mackie (2003):

Countless small groups were formed in the 1970s, and their renowned newsletters formed the basis of *mini-komi* (mini communication), providing an alternative to the *masu-komi* (mass communications) which had no place for discussion of women’s issues—except in a sensational or patronising manner. (p. 156)

It was also during this period that the term *uuman riibu* (women’s lib) became popular, and much of this movement drew upon Western feminism. *Uuman riibu* was a type of radical feminism and also started to focus on transnational feminist issues (Bullock, Kano, Welker, 2018). *The* focus of the liberation movement shifted to reforming institutions. The International Decade for Women started in 1975 in Mexico City and continued into the 1980s (Mackie, 2003). Japan signed the Convention on the Elimination of Discrimination Against Women (CEDAW) and promised to eliminate gender discrimination in the workplace, which is the impetus for the Equal Employment Opportunity Law to be detailed in a later section (Gelb, 2003). Despite the legislative gains made by the EEOL, gender roles regressed and became even more conservative during the 1980s (Dales, 2009).

According to Kazuko Takemura (2010), there was an increased interest in feminism during the 1990s particularly in terms of sexuality studies encompassing homosexuality, poststruc-

turalism, and postcolonialism and called by some the “era of women” (Fujimura-Fanselow, 2011, p. xvii). It was also during this time that feminism became institutionalized; that is, the government began to take an interest in women’s issues. The Liberal Democrat Party lost its dominance in 1993, which ended the 1955 System and created opportunities for different political parties to influence policy. Numerous policies focusing on women resulted, including the Angel Plan, Childcare Leave Law, Parental-Leave Law, Long-Term Care Insurance Law, Law to Promote Specified Nonprofit Activities, Council on Gender Equality, Basic Law for Gender Equality (1999), the revised EEOL, and the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children; these policies spilled over into the early 2000s with the Anti-Stalking Law and the Law for the Prevention of Spousal Violence and the Protection of Victims (Boling, 2008, p. 69; Kano, 2011, p. 43). There are various explanations regarding the state feminism trend, ranging from *gaiatsu*, or international pressure, and non-governmental agencies (Boling, 2008). Yoshie Kobayashi (2004) contends that institutions, such as the Women’s Bureau, which underwent several name changes and merged into the Equal Employment, Children, and Families Bureau of the Ministry of Welfare and Labor, and the Office for Gender Equality in the Cabinet Office started to eventually set the policy agenda. Women who worked in these bureaus also received advice from “femocrats” (Kano, 2011).

This state feminism received intense backlash in the early 2000s. While a number of laws were passed in the 1990s to promote gender equality, even beyond the workplace, by the early 2000s “gender” was a loaded word and the backlash reached new heights by 2005, fueled by Prime Minister Abe during his first administration (Kano, 2017; Kano, 2011). Kano (2011) notes that the Japanese names of various gender policies refer to equality but try to avoid the phrase

*danjo byodo* (gender equality, or “male-female equality”) “because they associate it with equality of outcome rather than equality of opportunity, and hence with practices such as affirmative action and quotas” (p. 44). Furthermore, “gender-free” was misunderstood as “eliminating gender” rather than bias based on gender (p. 45). This “gender-free” backlash was kicked off back the Basic Law for a Gender-Equal Society” (*Danjo kyodo sankaku shaki kihonho*) (Wakakuwa and Fujimura-Fanselow, 2011). The actual phrasing of the law translated into “male-female joint participation” and did not include the actual word for equality, which is *byoudou*. According to Kano (2017), citing Mari Osawa, “[C]onservative politicians have long been weary of the term 男女平等 [*danjo byoudou*] because they associate it with equality of outcome rather than equality of opportunity between men and women, and hence with practices such as affirmative action and quota—“the paraphernalia of ‘Western-style feminism’” (p. 142). Kano also notes the unusual choice of *senkaku*, which appears to be an invitation for women’s participation rather than “add women and stir” (p. 143). Thus ensued an avalanche of conservative policies, including the sustained requirement that married couples must share the same surname of the husband, an “investigation” of “Radical Sex Education and Gender Free Education” by the LDP. Kano states, “The argument of the backlash advocates can be summarized as a kind of biological essentialism: their main claim is that there are natural biological differences between men and women, and that this would dictate different social roles for men and women” (p. 53).

What were the implications of these feminist movements in Japan? Let’s go back to Kano’s (2016) discussion about *rondan* and feminist debates where discusses space. In her book *Feminist Movements in Contemporary Japan*, Laura Dales (2009) studies the intersection of feminist theory and praxis, focusing on agency (p. 2). She states, “It is an interesting coinci-



dence that the concept of agency, which may imply movement or freedom, can be conflated with the concept of agency as a structural or institutional body” (p 3). In Dales’ study, she focuses on women’s groups which act “for material change while also representing women to, and through, government bureaucracy” (p. 3). Here, Dales focuses on one end of this dynamic—women’s groups—and government bureaucracy, which was an arm of state feminism. This nexus between society and state influenced public policy and cultural norms in Japan. Yoshie Kobayashi (2004) explores the influence of the state on shifting gender relations in Japan in her book *A Path Toward Gender Equality*. Kobayashi’s study focused on if and to what extent the state influenced gender relations in society, specifically looking at the creation of the 1986 Equal Employment Opportunity Law. She is somewhat more skeptical of the achievements of feminist movements and feminism and her study challenged liberal, radical, socialist, and Marxist feminist theory, arguing that state feminism theory by “arguing that a part of the state can affect gender relations through its policies and law, indicates the significance of a state’s action and its interaction with society for improvement of gender equality” (p. 164). For Kobayashi, feminist movements are somewhat underdeveloped in Japan, and the strong state-society relationship coupled with international pressure facilitated state feminism.

What is state feminism in Japan and what does it look like? The Women’s Bureau was established within the Ministry of Labor during Occupied Japan until 2000 (Kobayashi, 2004). It is interesting to note that the initial members of the bureau were not career bureaucrats but earlier feminists; the first female administrator assumed leadership in 1975 (coinciding with the Year of the Woman) (Kobayashi, 2004, p. 3). The Women’s Bureau became the part of the Ministry of Labor and Welfare (as mentioned in the earlier section) and in part focuses on employment; there

is a gender equity office in the cabinet that focuses on legislative issues. Kobayashi points out that there is a debate about the state cooptation of feminism, creating “establishment feminists”. Advocacy groups working in conjunction with state institutions have the ability to create effective public policy as demonstrated in domestic violence legislation in Japan as these groups can provide information, data, and policy frames to bureaucrats and policymakers (Kamata, 2014; Gelb, 2003). However, cooptation of civil society groups (in this case, women’s groups or feminist groups) creates a void, making these groups a mouthpiece for the government and minimizing dissent (Kobayashi, 2004; Nakamura, 2002). For Kano (2016), this cooptation makes the *rondan*, or debate space, that much more important as “[t]he *rondan* arguably serves as a replacement of some of the functions of government—that is, the airing of disparate points of view. Moreover, representatives of the *rondan* often participate in policy making as members of appointed advisory councils to the government. Alternative intellectual viewpoints thus become absorbed into bureaucratic policymaking” (p. 11).

## **Japanese Feminists on Working Women**

The “lost decade” in Japan started in 1991 with the economic bubble collapse which then became two “lost decades” which included two worldwide recessions (1997 and 2008) and a major natural disaster with the Tsunami/Fukushima Triple Disaster (Allison, 2016; Baldwin and Allison, 2015). To cope with economic stagnation, companies changed their hiring practices, shift-

ing away from traditional, lifetime employment to relying on contingent workers. According to Anne Allison (2016):

When able to do so, companies tended to hold onto their more senior workers rather than hire young ones under the assumption that older men had families to support—and that keeping the primary breadwinner’s salary ‘safe’ mean ‘safety’ for the nation. But even this mindset, a holdover of the enterprise society, was derided for burdening business with a rigidity it could no longer afford. Replacing the job-for-life, family-based model of work came one of more flexible, results-based employment (p. 29).

This shift in employment makeup was not solely determined by firms; rather, the LDP’s deregulation of labor which created the precariat which are low-paying jobs with little security and further perpetuates inequality (Osawa and Kingston, 2015).

Japanese women typically already held temporary or part-time employment instead of the coveted lifetime or management track positions. As of 2004, 72 percent of part-time positions were held by women, many of whom enter and exit the labor market in a so-called “M-shaped” curve (Broadbent, 2004). According to Kaye Broadbent (2003), “A preoccupation with the industries and elements seen to underpin Japan’s economic ‘miracle’ has hindered our understanding of work practices in the service or feminised industries such as retail because they have been seen as marginal to the economic ‘miracle’” (p. 11). As such, Broadbent argues that temporary, contract, dispatch, and other types of employment are understudied.

While precarious employment impacts both men and women, it suffices to say that it marginalizes Japanese women even more so. Women’s workforce participation increased by 7 million in the 20 year period between 1987 and 2007 and this was due to increases in non-regular employment (Nakano, 2011). This means, according to Nakano, that women do not receive the same training and benefits as regular employees who are typically male. Wage disparity, or the

gender wage gap, still dogs women as they earn only 69 to 73 percent of what men earn (Nakano, 2011; Osawa and Kingston, 2015). Nakano attributes this to fewer women in management, limited length of employment, gendered divisions of work, gendered divisions in level of work, lower benefits, gendered job tracks, and lack of job transferability (p. 261). Furthermore, and this is a critical concept that many of the participants of this study commented on, women are unable to partake in the long working hours and after-hours socialization that are hallmarks of “masculine work” (p. 263).

While precarious employment is causing distress among Japanese men and women and debates ensue about the efficacy of Prime Minister Abe’s womenomics, the entry of women in the workforce historically has caused debates amongst Japanese feminists. These debates are detailed in the subsequent chapter as they relate to specific laws. However, the central focus of these debates concerned women and protection. These debates are not dissimilar to debates seen in the United States it related to equality jurisprudence in early Supreme Court decisions about working hours, type of work, and the like. However, these debates ensued well into the 1980s and the creation of the 1986 EEOL.

In terms of gender and precariousness, Kano (2015) believes that the gender backlash that has continued since the early 2000s is a result of precarity. That is, men feel alienated by the economy and as such experience anxiety, turning their anger toward gender (p. 94). In regard to the future of gender in Japan, Kano reflects on precarity, which includes isolation and hopelessness, particularly as it relates to the shifting demographics in Japan and the declining birthrate (p. 101). She refers to Chizuko Ueno and an essay she wrote about the 3/11 triple disaster. The essay, which can be found on Ueno’s blog via Women’s Action Network (WAN), is titled “*Shakai o*

*risettoshitai to iu fuonna ganbou?*” or “A Disturbing Desire to Reset Society?” She alludes to a dark desire to reset society which could have come from the triple disaster yet did not occur as this must happen deliberately and consciously. Ueno (2012) states, “Even if the war should have happened, everyone would be welcomed by the earthquake ... such a disturbing desire. According to the wish, a disaster occurred once in a thousand years and an accident happened in every 20,000 years. And behold, society is not reset. Japan must change. But that's not by stop thinking and blank delegation. It should not be forgotten that only the daily routine of deciding on their own destiny themselves will build our tomorrow.”<sup>24 25 26</sup>

## **Feminist Jurisprudence in Japan**

In their book, “*Feminizuma Hougaku: Seikatsu to Hou no Atarashii Kankei*”,<sup>27</sup> or “Feminism Law: A New Relationship Between Life and Law”, authors Mutsuko Asakura, Tamie Kaino, and Noriko Wakao (2004) start the book by stating, “As for legal theory, it is related to life and law. However, currently men’s perspective dominates civil society and women’s actual lives are even less often spoken in women’s own words. That is why law must depart and face the real life in which women live and recognize what is happening there” (p. 2).<sup>28</sup> They discuss how justice is rooted neutrality which is determined by men who hold power but that this neu-

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<sup>24</sup> “社会をリセットしたい” という不穏な願望” From “Chizuko’s Blog” via WAN. <https://wan.or.jp/article/show/4399>

<sup>25</sup> Kano (2015) also describes this essay in her book chapter.

<sup>26</sup> The 3/11 Triple Disaster is a turning point in much scholarship as it relates to precariousness and Japan’s future. For instance, Anne Allison (2016) describes the disaster as a metaphor for precarity.

<sup>27</sup> “フェミニズム法学:生活と法の新しい関係”

<sup>28</sup> This is my translation of the passage.

trality is constructed from a man's experience, which has been accepted as universal. Women were marginalized into a private space which was separate from the public sphere (p. 3). Asakura, Kaino, and Wakao also acknowledge that men have dominated academic research as well. They state that their volume about feminist jurisprudence will help change society by redefining the relationship between law and life as it relates to women.

Feminist jurisprudence, whether applied in American or Japanese contexts, spans across many topics and issues. As mentioned in an earlier section, Japanese feminist jurisprudence is grounded in American feminist jurisprudence.<sup>29</sup> However, one must be cautious of cultural essentialism. According to Leon Wolff (1996) notes the lack of literature stating, "Specifically, feminist dialogue on jurisprudence of equality has been taking place almost exclusively within a Western socio-political and cultural framework. . . . On the other hand, literature in English on equality from non-Western perspective in [sic] sadly lacking. This has unduly limited equality discourse" (p. 513-514). In his article, "Eastern Twists on Western Concepts: Equality Jurisprudence and Sexual Harassment in Japan", Wolff tries to highlight Japanese contributions to equality discourse, citing that it is an international concern (p. 514). He also attempts to discuss how academics and courts were defining "sexual harassment" as there is no law prohibiting it; however, it must be noted that Wolff's article was published in 1996 and sexual harassment is addressed in the 1999 amendment to the Equal Employment Opportunity Law.

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<sup>29</sup> Interview with Hifumi Okunuki (January 21, 2018). Also see Satoshi Kodama's (2000) academic definition entry at [https://plaza.umin.ac.jp/kodama/ethics/wordbook/feminist\\_jurisprudence.html](https://plaza.umin.ac.jp/kodama/ethics/wordbook/feminist_jurisprudence.html).

Wolff renders his version of Japanese feminist jurisprudence, which bears some similarities to Western feminist jurisprudence. *Relational* equality is similar to equal treatment theory—men and women should be treated equally. *Inherent* equality, according to Wolff:

...considers that equality is not a comparative exercise involving a consideration of whether or not the treatment of women stands on the same level as the treatment of men; rather, equality subsists inherently—it exists when both men and women are free to express their personhood, including their sexuality, without restriction. (p. 523)

*Quantifiable* equality is a unique concept in which equality is measured in terms of units and comes in three versions: power strand (similar to Catherine MacKinnon's work and dominance theory), economic strand, and cultural strand.

Martha Jean Baker (1997) also attempted to draw parallels between Carol Gilligan's "voice of difference" and Japanese law, explaining that, whether it is a Japanese voice or a woman's voice, "language and values of the dominant (Western, male) establishment in an effort to explain themselves and the relevance of their work" are adopted (p. 151). Her conclusion implies that Japanese law in its essence is feminist as a "general voice of that culture" (p. 152).

Both Wolff and Baker are accurate with their interpretations of Japanese law, legal cultural, and in essence feminist jurisprudence. However, they like me are filtering these impressions through their own worldview (with Wolff even devising his own terminology). Having said this, accessing materials and scholars on feminist legal theory in Japan is a daunting task indeed. For a scholar not based Japan, locating books on the topic is extremely difficult, never mind the language barrier which would have to be overcome to identify searchable key words. Certain databases, such as Westlaw Japan or CiNii, are expensive and only certain institutions subscribe to them. During my research, I wanted to access the *Shiho tokei nenpo* (or Annual Report of Judi-

cial Statistics) that Ginsburg and Hoetker used in their 2006 article; however, this was only available in hard-copy at the University of Michigan. While this possibly could have been requested through the interlibrary loan system, it would have been quite troublesome and perhaps untenable to have multiple volumes of this report shipped. My point by sharing my efforts to access Japanese legal materials is to illustrate how challenging it can be for a scholar and thus illuminate why there might be a lack of exchange on topics such as feminist jurisprudence.

Nonetheless, as it relates to equality and feminist jurisprudence and labor in Japan, Mutsumiko Asakura and Hisako Konno (1997) indicate that gender equality has eventually been embodied (p. 2) and they cite a number of laws and advancements that occurred in the decade since the passage of the Equal Employment Opportunity Law. However, Asakura and Konno (1997) and Asakura (2004) indicate that the law was insufficient. Significantly, as it relates to this study and litigation, one of the failures of the law was that it stipulated, in the case of a sex discrimination complaint, both parties must agree to mediation. That is, a request for mediation would not be granted if only one party, the complainant, made the request. In fact, only 11 cases were mediated in the first 10 years that the law was in effect. For that reason, which is a significant institutional failure, women resorted to the courts and filing lawsuits during the 1990s (Asakura, Kaino, and Wakao, 2004, p. 22). Here we see a plausible explanation to the paradox of rising litigation rates versus a stated or assumed reluctance to sue.

When the EEOL was amended in 1999, it finally allowed mediation upon the request of one party; however, problems still ensued. In particular, mediation sets out to solve a problem by mutual cooperation of both parties involved. However, it does not address the issue of legality or illegality (Asakura, Kaino, and Wakao, 2004). Thus, it does little in terms of “naming, blaming,



and claiming” (Felstiner et. el., 1981) the wrong-doing but simply resolves a single instance of discriminatory treatment. Furthermore, if one of the parties does not accept the conditions of the resolution, the next step would be to bring a lawsuit and logically, this would normally be done by the complainant (Asakura, 2004).

In terms of sexual harassment discourse, this word started to appear in the late 1980s becoming the word of the year in 1989 (Asakura, 2004); however, there was not a consensus on its definition in legal and scholarly circles which likely prevented it from translating into effective policy in terms of legislation and/or enforcement (Seizlet, 2005). However, while the term just recently appeared in legal discourse, the concept dates back to industrialization during the Meiji Restoration (Asakura and Kanno, 1997). As more women turned to the courts during the 1990s, the judiciary started to define sexual harassment as well as academics (Wolff, 1996). This resulted in the amendment of the EEOL in 1997 (implemented in 1999) which also addressed for the first-time sexual harassment (Seizlet, 2005). By doing do, sexual harassment discourse became a public topic (Asakura, 2004; Seizlet, 2005).

Asakura (2012) mentions a shift from *feminist law* to *gender law*. Feminist jurisprudence gained traction in Japan during the second wave of feminism yet by the 1980s, Asakura believes that there was a shift from women to gender, specifically citing Joan Scott and Judith Butler. To Asakura, this signifies a broadening of the focus from women’s rights to issues of power between the sexes. She does not believe there is a clear difference between feminist law and gender law particularly as it is taught at universities and law schools, however, *gender law* still challenges the male-dominated labor law theory and also includes men.

Feminist jurisprudence is the framework with which to study Japanese workplace gender discrimination and the law. It provides an adequate context with which to explore how women are treated under the law in Japan. In order to understand and respond to the research question—why and how Japanese women mobilize the law when they believe they have encountered workplace gender discrimination—additional theories about litigation and mobilization flesh out complex decision-making processes. The next section juxtaposes theories on litigiousness and sexual harassment in the United States with a decades old debate between American and Japanese scholars about Japanese litigiousness.

## **Legal Culture and Litigation in Japan**

### **Japanese Legal Culture**

In the above subsection, I discuss theories and research about litigation and sexual harassment in the U.S. context. However, my study is about Japanese women and workplace sex discrimination litigation, seeking to explain how Japanese women relate to the law. In order to address my research questions about how and why Japanese women decide to mobilize the law when they believe that they have encountered workplace sex discrimination, we first need to have a discussion about Japanese legal culture and scholarship about Japanese litigiousness. According to Merryll Dean (2002):

The problem for anyone wishing to study the Japanese legal system is the struggle to understand the difference between what is seen and unseen, said and unsaid. Moreover, as a result, that which appears to be the same often turns out to be manifestly different whilst that which seems alien is reflected within one's own system of law. (p. 2)

While Oda (1999) states that the Japanese legal system is based on codes and statutes, or what is written, Dean illuminates the unwritten rules and structures that comprise a Japanese legal consciousness. Japanese legal thought will be explored further in the next chapter.

According to Hamada (2007), Japan historically has relied on administrative guidance and consensus rather than litigation (p .3). There is written law, which captures the essence of Western rule of law, but in Japan there is reliance on what Susan Maslen (1998) calls “living law,” which are indigenous legal norms (p. 281) and interpreted loosely by academics and judges (Hamada, 2007, p. 4). Legal scholar Masaji Chiba proffers an alternative model with which to consider Japanese jurisprudence and rule of law, which includes official (written) law, unofficial law (such as administrative law), and legal postulate (social and cultural norms) (Maslen, 1998, pp. 292-293). Enforcement of the Japanese Equal Employment Opportunity Law (1986, 1999, 2006) is predicated on administrative guidance (*gyousei shidou*); therefore, the efficacy of minimizing sex discrimination in the workplace was limited. Administrative guidance is not legally binding, and, because the law also relies heavily on mediation, indigenous legal norms ensue (Goodman, 2003; Parkinson, 1989; Hanami, 2000; Kobayashi, 2004).

### **Barriers to Litigation**

The literature about the Japanese Equal Employment Opportunity Law (1986, 1999, 2006) tends to elaborate heavily on the policymaking process and various components of the law with a general conclusion that the law needs more powerful enforcement mechanisms. These articles, usually written by law students, generally exclude critical examination of the effects of bureaucratic institutions and administrative guidance or the role of the judiciary. In fact, lawsuits are brought under various civil codes instead of the EEOL (such as Article 90 or Article 709).

The literature does, however, allude to the barriers to litigation, although rarely taking into account other forms of judicial relief that may be just as effective.

Regarding access to the courts, a common problem cited by the literature is an unwillingness to litigate. Geraghty (2008) states, “Although litigation is always an option, Japanese culture is not fond of the litigious approach to dealing with problems” (p. 523). Miller (2003) suggests that subsequent amendments to the EEOL contain a safety valve permitting litigation (presumably arguing that the law be used in litigation rather than reliance on Article 90 of the Civil Code). She states, “Opponents who view this measure as unnecessary might cite the time and cost of litigation in Japan, a country well known as a non-litigious society” (p. 212). Starich (2007) points to the penchant for the EEOL and amendments to promote voluntary compliance and mediation, which discourages an employee and may prompt her to file suit, giving up a lot of money and time. Starich writes, “These factors may discourage potential litigants, removing the threat to employers of potential lawsuits. The low probability of discrimination lawsuits also undermines attempts to deter discriminatory behavior” (2007, p. 571).

Larsen (2001) acknowledges that the Japanese bureaucracy is a powerful government branch. In U.S. government, there are three branches of government that are equally powerful (executive, legislative, and judicial), but the bureaucracy in Japan is arguably even more powerful than those branches. Larsen contends that the provisions in the EEOL that strongly favor and encourage mediation are a result of the bureaucracy maintaining control and confining social change that results from litigation. According to Larsen (2001), “Maintaining this control requires careful statutory drafting and usually gives the bureaucracy wide discretion to set policies and to control the administrative process of a particular statute” (p. 218). Furthermore, he

claims, “Under this bureaucracy controlled system, litigation is not allowed to develop into a means for resolve disputes or setting the social agenda” (p. 218).

The literature points to institutional barriers and cultural barriers to litigation. The cultural barrier of low litigiousness is not unique to gender discrimination but a curious phenomenon analyzed by prominent legal scholars for over 50 years. The Japanese are not known to rely heavily on litigation for dispute resolution or social change.

At first, this phenomenon was attributed to the Japanese people, who embody a gentleness and wholesomeness, a magical quality of sorts. Takeyoshi Kawashima (1963) explains that the Japanese are hierarchical and prefer social order, preferring to maintain relationships, which is antithetical to inherently adversarial litigation. He states, “Because of the resulting disorganization or traditional social groups, resort to litigation has been condemned as morally wrong, subversive, and rebellious” (1963/2006, p. 152). Kawashima continually stresses the goal of harmony as a stasis in dispute resolution and claims that the judicial system is a reflection of this pursuit of harmony. He states, “Japanese not only hesitate to resort to a lawsuit but are also quite ready to settle an action already instituted through conciliatory processes during the course of litigation” (1963/2006, p. 153). He concludes by stating that reconciliation is part of traditional Japanese culture.

John Haley, however, disputed the gentle, adversarial-averse portrayal of the Japanese as a myth. Haley (1978) acknowledges that litigation rates are low in Japan and that, in general, the Japanese have low litigiousness. However, he does not consider this phenomena to be uniquely Japanese, as previous scholars have portrayed them. He argues that litigiousness cannot be

equated with litigation rates and that, in most countries, litigation is a last resort due to time and cost.

Haley claims that the alleged aversion to litigation is a myth. He points out that the few studies done on attitudes toward litigation indicate that the Japanese are willing to litigate, and litigation rate patterns from the Meiji Restoration to the Pacific War reflect this. Furthermore, outcomes are predictable and also make informal resolution more attractive (Haley, 1978; Ramseyer, 1989). Haley recognizes that litigation rates were dropping at the time his article was published in 1978 and attributes this to “institutional incapacity” (1978, p. 378). He operationalizes institution incapacity in the following ways: 1) the availability of mediation (informal resolution), 2) “Meaningful access to courts” (p. 380), and 3) the ability to offer adequate relief. Haley explains that there are many barriers to accessing the court, including a shortage of lawyers and judges, overcrowded courts, and narrow application of statutes.

Mark Ramseyer (1988) revisited Haley’s work a decade later in 1989 and included the ensuing discussion about the piece. For Ramseyer, Haley’s piece did not adequately explain why it is profitable for the Japanese to mediate rather than sue. However, Ramseyer believes that the real reason the Japanese are reluctant to sue is due to the predictability of outcomes. Furthermore, he agrees with Haley’s hypothesis that litigation does not pay but that proving this argument is difficult.

Tom Ginsburg and Glenn Hoetker (2006) empirically tested the hypothesis of these scholars to statistically accept or reject their premise. They turned to the increasing rate of litigation at the time that their study was published and analyzed trends leading up to that point in time. Regarding Haley’s hypothesis that the strained capacity of the judicial system, that is, the

low number of attorneys and judges, coupled with discontinuous trials served as an institutional barrier to the courts, was accepted. Ramseyer's hypothesis, however, was rejected; Ginsburg and Hoetker did not find substantive evidence that predictability impacts litigiousness or the propensity to litigate. They rejected Tanase and Upham's hypotheses that low litigation is a result of availability of alternatives, as alternatives and litigation rates are both rising. Ginsburg and Hoetker concluded that more lawyers and better civil procedures influence litigation rates. It must be noted, however, that Haley delineates the distinction between litigation rates and litigiousness; that is, litigation rates may be indicative of litigiousness, but they do not fully explain litigiousness.

The literature on gender discrimination litigation suggests that litigation rates are on the rise (Geraghty, 2008; Starich, 2007; Gelb, 2000); however, these studies are descriptive in nature, relying on media reports and informational interviews. Furthermore, they rely on the premise that, culturally, the Japanese are reluctant to litigate, perpetuating the theories of legal sociologists, such as Kawashima, although they do not reference this literature. Chika Shinohara's work delves into legal consciousness in Japan (2008, 2012), examining how attitudes towards gender roles and sexual harassment has changed since the passage of the EEOL and subsequent sexual harassment cases. Her study, however, does not address litigation and attitudes toward litigation.

As Haley (1978) argued, litigation rates are not synonymous with litigiousness, and by proxy, legal consciousness. Also, Setsuo Miyazawa (1987), who completed a survey of legal consciousness surveys, pointed out that there has been more work completed toward studying legal culture than attitudes, articulating that culture is related to the aggregate while attitudes are

related to individuals. With these factors in mind, this dissertation will seek to answer what attitudes Japanese women hold toward workplace gender discrimination mediation and litigation.

### **Litigation as a Tool for Social Change in Japan**

The Equal Employment Opportunity Law relies mostly on voluntary compliance components of the law, thus rendering it relatively ineffective. Gelb (2000) points out that the law was designed to promote conflict resolution through mediation. However, the lack of adversarial channels for resolution and sanctions failure is consistent with the low litigiousness for which the Japanese are known.

Frank Upham's *Law and Social Change in Postwar Japan* is an acclaimed, oft-cited work in Japanese legal scholarship, and a portion of this title is devoted to gender discrimination in Japan. According to Upham (1987), "Japanese women, on the other hand, have pursued a litigation campaign reminiscent of the civil rights and environment struggles in the United States, using the courts to press for basic social reforms not easily attained solely through political means" (p. 5).

Equal employment law is only one chapter in Upham's book, which was published in 1989, a mere three years after the 1986 EEOL was passed. Multiple law reviews have published papers on the EEOL and subsequent amendments; however, these articles are largely descriptive and lack any sort of data collection and methodology. Weathers (2005) aptly points out there is a dearth of literature regarding policymaking on the topic of gender discrimination and criticizes the narrow scope of those studies. He explains that Joyce Gelb's *Gender Policies in Japan and the United States* is one such work that focuses mostly on feminist activism. He states, "This



approach may enable researchers to gain close access to both oral and written sources, but tends to narrow the perspective” (Weathers, 2005, p. 71).

Litigation, of course, continues to be a key resource in combating gender discrimination in Japan. In discourse regarding workplace gender discrimination, litigation is described as “waves” or “litigation campaigns.” The first wave or campaign started in the 1960s and focused on wage and workforce reduction discrimination, while the second wave or campaign in the 1970s and 1980s centered more on “discriminatory promotion, job rotation, and tracking that attempt to accomplish indirectly the goals of early retirement and unequal compensation attained directly by earlier practices” (Upham, 1989, p. 129). It is unclear under which “wave” or “campaign” litigation is grouped after Upham’s publication; some of the literature points “toward the next wave,” but scholars in recent publications have not specified it precisely. We also do not have a lot of literature about the coordination, if any, of these campaigns.

### **Theories of Sexual Harassment Litigation**

Legal consciousness about sexual harassment in the United States happened with the publication of Catherine MacKinnon’s *The Sexual Harassment of Working Women* in 1979. Sexual harassment is more than just an individual issue; rather, it is a social problem that transcends the abuse or harassment of a singular individual or incident. Even though sexual harassment is a pervasive problem, it yields relatively low complaints (Riger, 1991).

In the simplest explanation, women may or may not choose to seek redress for sexual harassment based on perceived outcomes of taking such action. Costs and benefits are considered when determining the appropriate course of action and are not neatly measured in quantitative

terms. In instances in which women encounter micro-inequities, they may not seek action due to the probable cost of failure; grievances are preferred over other types of complaints (such as Equal Employment Opportunity, or EEO); and EEO complaints tend to be filed with improved chances of winning (Hoyman & Stallworth, 1986; Gleason, 1981).

Empowerment is also a critical component of pursuing legal action against a harasser or employer. In a study conducted by Phoebe Stambaugh (1997), the theme of “empowerment” emerged from the qualitative interviews that she conducted with sexual harassment litigants. Accessing the legal system to seek redress for sexual harassment introduced an element of powerlessness due to the intricacies, complexities, and sheer stress it may cause. The women also felt a loss of control as their cases were processed by the legal system. However, in a direct paradox to the powerlessness felt through the experience of the initial harassment, accessing the legal system, and navigating the process, the women indicated that they also found power through self-advocacy, legal threat, and legal knowledge. Thus, a crucial result of pursuing legal action was not only the possibility of attaining redress but also gaining empowerment in the process.

However, pursuing a grievance or litigation contains elements of risk. Hoyman and Stallworth (1986) posited that, while there are a variety of options available for women to pursue legal action in instances of sexual harassment in the workplace, they often do not use those remedies as explained by cost/benefit analysis (Gleason) and Hirshman’s<sup>30</sup> “exit, voice, and loyalty”. Hirshman’s theory indicates that employees who are dissatisfied within an organization may “voice” their grievance, “exit” or leave the organization, or stay but say nothing (“loyalty”).

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<sup>30</sup> Via Schoppa (2006).

Hoyman and Stallworth's study made two important observations: Women do not file more sexual harassment grievances than men, and those who are active in unions tend to be more inclined to file.

In another study by Phoebe Morgan (Stambaugh) (1999),<sup>31</sup> relationships were a determining factor if or when a woman decided to pursue a sexual harassment grievance. Morgan cites gaps in previous theories about sexual harassment litigation as the impetus for her study. Resource mobilization theory explains that the more resources to which a woman has access, the more likely she is to litigate. In sexual harassment cases, oftentimes a woman has lost her employment, thus necessitating legal action, but the loss of employment also means a loss of income or resources. However, despite the lack of resources, women still pursue legal action. Morgan found gender socialization theory to be helpful in explaining grievance and litigation patterns that show how women are socialized not to be confrontational or internalize harassment, but she found that conclusion unsatisfactory. Instead, relationships are a critical component of the reason a woman will decide to pursue legal action; in other words, women tend to weigh legal action in terms of how it will impact loved ones.

### **From Legal Consciousness to Law Mobilization: My Model**

This study will examine the steps from legal consciousness to law mobilization in the context of Japanese women and workplace sex discrimination. It will explain how and why Japanese women decide to mobilize the law when they believe they have encountered workplace

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<sup>31</sup> I use works under both of Stambaugh/Morgan's names. ,

sex discrimination. Legal consciousness and law mobilization work on a continuum, constantly negotiated and renegotiated in the process. A critical element of this study is also legal culture. That is, while many scholars study litigiousness in terms of litigation rates (aggregate and macro) presented above in the literature about Japanese litigiousness, I operationalize litigiousness in terms of personal intent (individual and micro). The debate about Japanese litigiousness is one of legal culture, but how women perceive their experiences, options, and decide on a course of action speaks to legal consciousness and law mobilization, which fit into the overarching construct of legal culture.

There is plentiful literature about legal consciousness, particularly as it relates to general rights consciousness and feminist consciousness. Bartlett (1990) discusses how consciousness-raising—individual women sharing their experiences at the micro-level and institutional awareness at the macro-level—is a key component of the feminist legal method. She states:

The primary significance of consciousness-raising, however, is as meta-method. Consciousness-raising provides a substructure for other feminist methods—including the “woman question” and feminist practical reasoning—by enabling feminists to draw insights and perceptions from their own experiences and those of other women and to use these insights to challenge dominant versions of social reality. (p. 866)

For this study, I relate to the framework presented in Patrick Ewick and Susan Silbey’s (1998) *The Common Place of Law: Stories from Everyday Life*. Ewick and Silbey conducted narrative analysis on 141 interviews that they conducted in New Jersey between 1990 and 1993. Although the scope of the study is inherently American and focuses on a range of legal issues, their framework is nonetheless a comfortable fit with the discussion regarding feminist jurisprudence (my theoretical framework) and legal consciousness in the context of this study.

In Ewick and Silbey's study, they place law within the context of society. They state, "In order to discover the presence and consequences of law in social relations, we must understand how legality is experienced and understood by ordinary people as they engage, avoid, or resist the law and legal meanings. This is the study of legal consciousness" (p. 35). Legal consciousness is typically described as an attitude or an epiphenomenon; however, Ewick and Silbey construct it as a cultural practice. They discuss dueling paradigms in legal research, the real versus the ideal, and their research attempts to ameliorate this dichotomy (p. 39). They state:

We draw on a recent and growing body of literature in sociology that attempts to bridge these dualisms by redefining the relationship between the individual and social structure, reconfiguring what was understood to be an oppositional relationship as one that is mutually defining. Within this framework, consciousness is understood to be a part of a reciprocal process in which the means given by individuals to their world become patterned, stabilized, and objectified. (p. 39)

Within their framework, societies create the conditions that foster thought and action through schemas and resources, which beget social power and agency. Finally, within Ewick and Silbey's framework, there is legal consciousness before the law, with the law, and against the law.

The crux of Ewick and Silbey's study is the redefinition of legal consciousness in cultural dimensions rather than attitudinal or structural approaches. That is, they focus "on the cultural practices which make up legal consciousness, transmit it, and alter it subtly over time" (Cowan, 2004, p. 932). This includes the interplay of schemas and resources, or, in other words, legal consciousness is a type of production that is continual and ongoing (Cowan, 2004; Marshall, 2005). In terms of dispute resolution, moving from legal consciousness to rights mobilization starts with "naming" the discriminatory treatment and then deciding to "lump it," or accept it, or file a grievance (Hirsch & Louie, 2018/2015). However, if an individual decides to "disuse" the

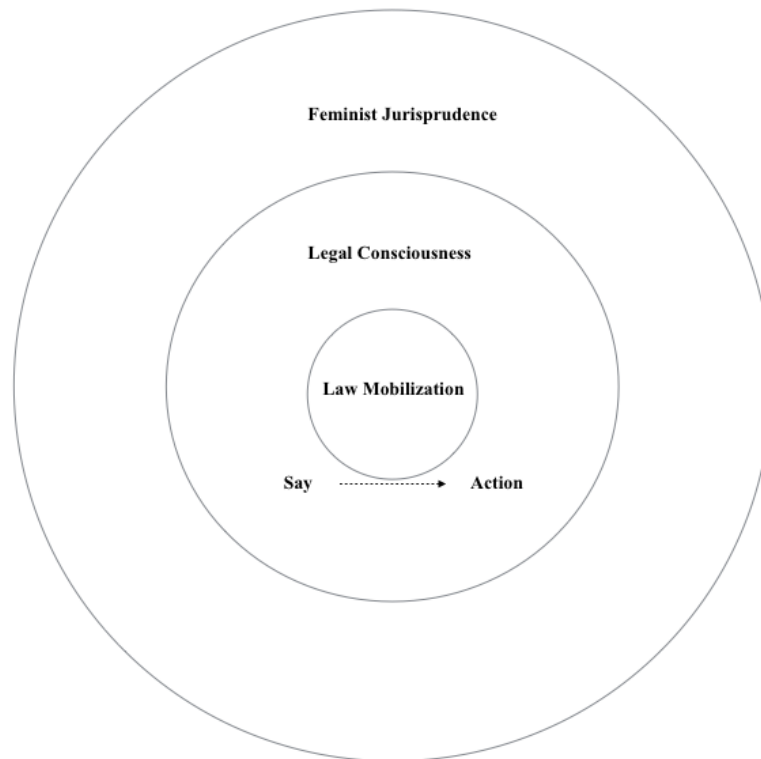
law and their legal consciousness and “rights remain idle,” the law’s impact and possibility is severely limited (Marshall, 2005, p. 89).

My study is not a study about legal consciousness in a strict sense. Like David Cowan’s (2004) study on homeless applicants in the United Kingdom, I wanted to focus on a very specific aspect of how Japanese women interact with the law—*how* and *why* they decide to mobilize the law. In Cowan’s study, he wanted to analyze how homeless applicants interacted with the law and bureaucracy. Part of my orientation was informed by Chika Shinohara’s study about legal consciousness, “Equal Employment Opportunity Policies and Attitudes toward Gender-Roles in Japan Since 1985,” which focused on the attitudinal aspect of legal consciousness drawn from government survey data. Shinohara also worked with Christopher Uggen (2009) on a study analyzing public consciousness about sexual harassment in the United States and Japan, measuring mentions of sexual harassment in major newspapers. Uggen, along with Amy Blackstone and Heather McLaughlin, formulated a typology of law mobilization as a response to sexual harassment, which was found as follows: ignoring, avoiding, self-helping, telling acquaintances, telling peers, telling superiors, and consulting with an attorney or external resources (Blackstone, Uggen, & McLaughlin, 2009, p. 658).

Here is how my study differs. I am not proving or disproving a particular theory, framework, or model about legal consciousness or law mobilization. My study is exploratory, and I resolved to have no preconceptions about how and why Japanese women would mobilize when they perceived workplace sex discrimination. Furthermore, I was recruiting participants via snowball sampling in the field and did not know if I would interview any Japanese who had mobilized the law, let alone filed a lawsuit. Finally, I was interested in *litigiousness* operationalized

in terms of *law mobilization*. That is, I wanted to learn about Japanese women's *individual intent* to mobilize the law or file a lawsuit. I developed and organized these concepts as follows:

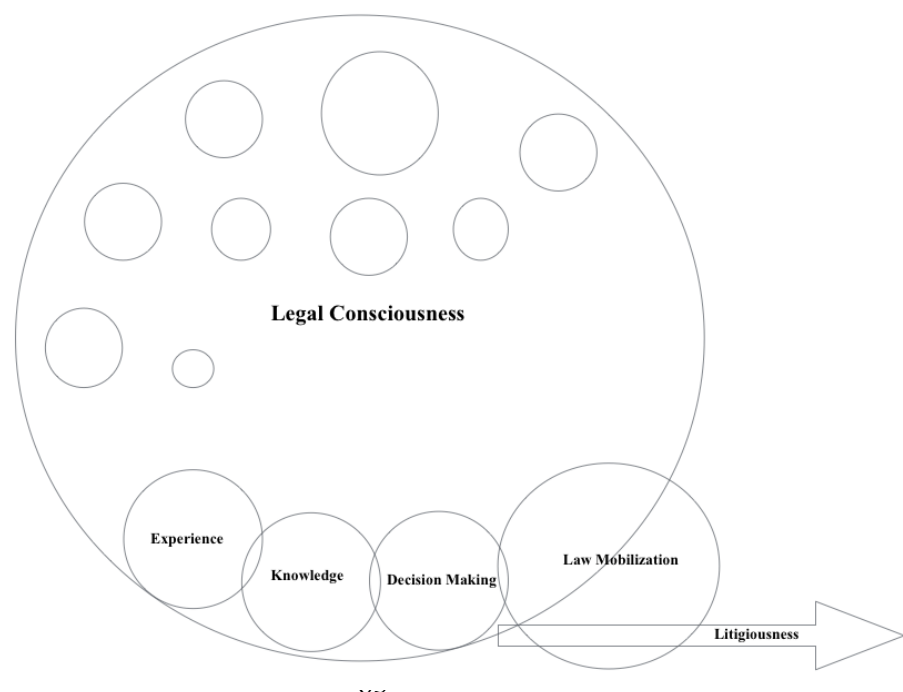
**Figure 2.1 Feminist Jurisprudence, Legal Consciousness, and Law Mobilization**



This diagram shows the relationship between feminist jurisprudence, legal consciousness, and law mobilization. Feminist jurisprudence is the overarching theoretical framework of this study and within it is legal consciousness. Law mobilization is a part of or product of legal consciousness, which is girded by Ewick and Silbey's (1998) description of legal consciousness: "Consciousness is not merely a state of mind. Legal consciousness is produced and revealed in what people do as well as what they say" (p. 46).

If legal consciousness is comprised of multiple variables, such as beliefs, attitudes, culture, law, structure, experiences, knowledge, power, and so on, the below diagram depicts the focus on my study as it relates to Japanese women and workplace sex discrimination:

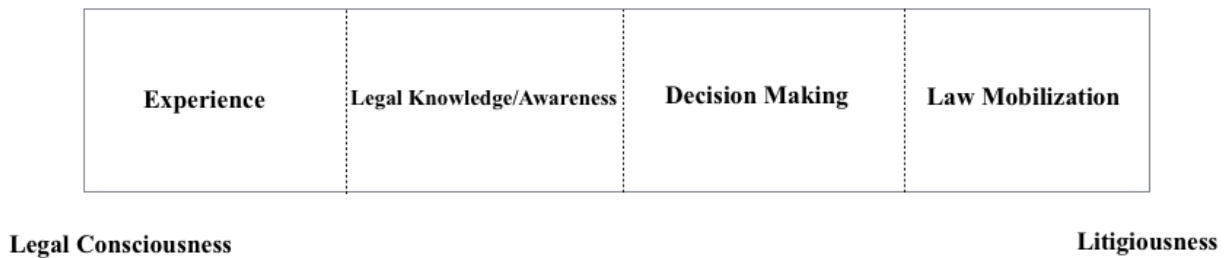
**Figure 2.2 Multiple Variables of Legal Consciousness Related to Law Mobilization**





Within the space of legal consciousness, the nameless circles within legal consciousness are the numerous variables that are *not* the focus of my study. That is, they may be confounding variables but not independent variables or drivers and, thus, not being measured or studied within the scope of this project. However, I am interested in how legal consciousness transforms into law mobilization and thus litigiousness.

**Figure 2.3 Litigiousness: Moving from Legal Consciousness To Law Mobilization**



To do this, I study how and why Japanese mobilize the law in the following ways. First, I conduct a thematic analysis of the interview data as a whole to discern key themes and patterns that emerge using a hybrid inductive-deductive approach. The approach is inherently inductive, as I am not testing a theory or hypothesis and the study is exploratory, but also deductive in that I allowed the literature to inform the interview protocol and overlay that questionnaire to illuminate the following categories for which I was seeking information: experience, legal consciousness as legal knowledge, law mobilization, and perceptions. For the three participants who litigated and one who filed a grievance, my approach is more inductive to see if there are linkages

and patterns between their stories. Their answers to the protocol categorical questions are included in the aggregate data, but I also parse out their narratives as a particular, special subset to analyze. To investigate the movement from legal consciousness, I then apply a scale measuring experience, response, and legal consciousness to measure and perhaps predict a Japanese propensity to mobilize the law or file suit—litigiousness. This directly addresses the first two research questions: **How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace, and why do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

To address and understand the third and fourth research questions—**How do Japanese women perceive grievance options and law mobilization, and what barriers do Japanese women perceive to mobilizing the law?**—I still draw from the thematic analysis to see how the participants responded to questions about litigiousness and perceptions about the law (and the women who mobilize the law). I then apply two additional categories in the scale, which include **litigiousness (are Japanese women willing or unwilling to sue or file a grievance) and perceptions (how do Japanese women perceive other women who mobilize the law)**. I explain further in the “Data Analysis” chapter on whom the thematic analysis is conducted and the functions of the scale.

## **Grounded Theory**

While feminist jurisprudence is one of the central theoretical frameworks for this study, grounded theory is also a critical theoretical framework guiding the research, particularly with the data analysis to derive meaning and identify patterns. Qualitative research must fit the re-

search problem, and, in this instance, determine how and why Japanese professional women decide to mobilize the law in instances of sex discrimination, which is exploratory at this point in time. According to Corbin and Strauss (1990), “Qualitative methods can be used to uncover and understand what lies behind any phenomenon about which little is yet known” (p. 19). Rather than leaving the data collected during interviews with Japanese professional women in a descriptive narrative format, instead, I will code, interpret, and identify patterns in the data. According to Strauss and Corbin, “The grounded theory approach is a qualitative research method that uses a systematic set of procedures to develop an inductively derived grounded theory about a phenomenon” (p. 24).

As there are no studies available about why and how Japanese professional women decide to mobilize the law when they encounter workplace gender discrimination, grounded theory is appropriate as a theoretical framework coupled with feminist legal theory. Although sexual harassment litigation was studied in the Western context by Gleason and Morgan (Stambaugh) in the aforementioned subsections, it is unclear if those theories are a universal fit in the Japanese context and may inevitably stifle any patterns or nuances that might emerge during semi-structured interviews with Japanese professional women about their thoughts and experiences. In other words, it would be inappropriate to select one those theories to frame this particular study. Through open and axial coding, I will identify and analyze patterns that emerge from the interview data, which will be described in more detail in the subsequent methodology section.

### **Section Summary**

This chapter presented feminist jurisprudence and grounded theory as the theoretical framework used in this study to explore the research questions of why and how Japanese women

decide to mobilize the law when they have encountered workplace sex discrimination. Feminist jurisprudence, or feminist legal theory, is appropriate for this study as “feminism is a movement that professes the desirability of social change” (Bartlett, 1998, p. 33). According to Bartlett, the feminist method entails “asking the woman question, feminist practical reasoning, and consciousness raising” (p. 35). Bartlett succinctly addresses why feminist thought (of which feminist jurisprudence is a subset) is not neutral or objective *as it attempts to identify ways in which women are disadvantaged by the law* (p. 39). According to Bartlett, “Feminist method looks for gender bias, based on the hypothesis that gender bias exists” (p. 40). Bartlett, citing the work of Martha Fineman, essentially says that feminist scholarship and, in essence, feminist jurisprudence, solely focuses on women and their experiences rather than ideals (p. 44). Fineman, according to Bartlett, is seeking to connect ideals with truth. Thus, feminist jurisprudence is a fit for this study, as interviewing Japanese professional women about how they interact with institutions (both governmental and societal) draws upon those lived experiences.

Grounded theory is also appropriate and fitting for an exploratory study, as it seeks to establish a theory about phenomena previously unstudied through systematic procedures and data analysis. Rather than imposing Western theories about sex discrimination litigation motivations onto a Japanese context, grounded theory allows the researcher to identify which themes emerge from the data through coding methods (in this instance, open and axial coding). This lends a more structured approach instead of merely presenting a descriptive study consisting of narratives.

In addition to summarizing discussions and debates within feminist legal theory and grounded theory, I also introduced theories about litigiousness and sexual harassment and theo-

ries about Japanese litigiousness. Absent from these theories is a discussion about litigiousness and sex discrimination in Japan. This gap in the literature serves as the impetus to execute this study to explore this question. In the following section, I will discuss my methodology and data collection to discover why and how Japanese women mobilize the law if they have experienced workplace sex discrimination.

In the following “Policy, Legality, and Case Law” chapter, I will set up the foundations of the Japanese legal system and customs. By doing so, I will expand the previous discussion about legal consciousness in Japan so that it is more well-rounded. This information will be revisited in the “Data Analysis” chapter, as it relates to the data and participant’s responses. The “Literature Review” chapter will also discuss the development of Japanese labor law as it relates to gender, specifically focusing on the Labor Standards Act, Working Women’s Welfare Act, and the Equal Employment Opportunity Law with subsequent amendments. Finally, the “Policy, Legality, and Case Law” chapter will close by illuminating pivotal sex discrimination court cases. It is important to note that there are some key concepts contained within the next chapter that should be considered an extension of this chapter, particularly as it relates to Japanese legal culture and legal consciousness on the aggregate, macro-level. Concepts, such as *giri* and apology, will be interwoven and revisited in the “Data Analysis” chapter, as they fit with the interview data. Individual laws mentioned within the “Policy, Legality, and Case Law” are also referenced in the interviews. However, specific cases that are discussed in the next chapter are not addressed in the interviews. This would not be so dissimilar as asking the average American woman if she could discuss *Rabidue v. Osceola Refining* or *Ledbetter v. Goodyear Tire & Rubber*

*Co.* Rather, my purpose for including a cursory overview of the cases is to demonstrate the interplay of policy and law with implementation in the courts.

### CHAPTER 3: POLICY, LEGALITY, AND CASE LAW

This chapter intends to provide pertinent information about Japanese employment law as it relates to sex discrimination in Japan and sample cases that have addressed various types of discrimination, including hiring, promotion, retirement, and firing; wage gap; and sexual harassment. While the theoretical framework chapter deals extensively with the rule of law, components of Japanese institutions, feminist jurisprudence, and litigiousness, this chapter will open with a discussion about Japanese legal culture and legal consciousness as it pertains to Japanese legal structures and how the Japanese relate to the law. The chapter will explore briefly Japanese labor law and then focus on specific laws that have been instrumental in addressing sex discrimination.

With the passage of the 1986 Equal Employment Opportunity Law in Japan, much literature was devoted to the topic of workplace discrimination and the potential efficacy of the law. American scholars, such as Frank Upham, Linda Edwards, Lorraine Perkins, and Alice Lam, published early books and articles on the law, serving as pivotal and still oft-used literature today (especially Upham and Lam). In the mid-to late-1990s, the literature on the EEOL increased in volume again; the resurgence of interest was attributed to evaluating the efficacy of the law a decade after implementation. Scholars, such as Barbara Maloney, Kiyoko Kamio Knapp, and Joyce Gelb, reflected on the passage of the 1986, honing in on the political process. Immediately with the passage of the 1997 amendments, to take place in 1999, the literature expanded once more, mostly in law journals, describing the history of the 1986 EEOL, provisions of the 1997 amendments, and speculating, perhaps prematurely, how effective the amendments would be in

curbing workplace discrimination. This literature is heavily cited and circulated in U.S. circles and includes the work of Joyce Gelb, Robbi Louise Miller, M. Christina Luera, Robert Laursen, and Galen Shimoda. The most recent scholarship is devoted to the anticipated and passed 2006 amendments and includes the writing of Charles Weathers, Chika Shinohara, Megan Starich, and Kristina Geraghty.

Most of the Western literature available includes a heavy focus on the initial 1986 EEOL and some attention to the amendments, offering analysis and then suggestions on ways in which the law could improve. However, the literature emerges from varying disciplines, ranging from sociology, history, political science, economics, and law. The literature is informative, but the quality varies immensely, with mostly descriptive analysis of employment law and speculative policy recommendations. It is rare to find a robust study with solid methodology and data collection to support claims and arguments, relying more on anecdotal evidences, hearsay, media reports, or individual interviews.

The general message from the literature is that, while Japan has come a long way in its quest to end workplace discrimination, it has not come far enough, and that employment law is impotent, weak, and difficult to enforce. In order for it to be effective, the literature suggests that enforcement must be greatly enhanced. Enforcement would include punitive features that hold corporations and organizations accountable for discriminatory behavior rather than voluntary compliance, which was deliberately drafted by legislators.

But what is the real reason workplace equity has not been achieved? In Shinohara's (2008) work, she makes the claim that attitudes and beliefs, as well as legal consciousness, have shifted over time in Japan but that workplace equity is not realized. Shinohara points to a struc-



tural gap, which is that, while the population is ready for change, the institutions are not there to support it. The focus of my research is on governmental institutions and how policy is implemented, namely the judiciary.

Even though the laws and system promote mediation and voluntary dispute resolution, since the 1960s, women have turned to the courts for justice. While litigation has proven to be an effective tool, it is still a difficult medium to access, with women encountering cultural and institutional barriers. This is not unique to gender discrimination suits but to most civil issues in the judicial system.

Many of the scholars briefly touch on barriers to judicial relief via litigation in sex discrimination cases. The overarching tenor to these mentions focuses on how women are wary of litigation and that culturally, it is discouraged. These claims are made while simultaneously acknowledging that, since the 1990s, litigation rates for gender discrimination cases have risen.

### **The Law in Japan: Japanese Legal Culture and Legal Consciousness**

After years of extensive and exhaustive research searching for articles about Japanese law and workplace sex discrimination, most of the literature focused on the passage and effectiveness of the 1986 EEOL and its subsequent amendments (as mentioned above), with the general conclusion that the law was “toothless,” as it was nearly impossible to enforce due to a lack of sanctions. Indeed, the law did lack stringent enforcement sanctions, but this type of criticism seems to reflect an inherently Western lens to viewing Japanese law. That is, it is indisputable that the law lacks a strong enforcement mechanism, but I would argue that this does not necessarily mean that the law is weak or ineffective. Furthermore, the way that the law was promulgated, and sub-

sequently implemented, is aligned with Japanese legal customs and practices. Indeed, Meryll Dean (2002) opens her book, *Japanese Legal System*, with a discussion about Japanese legal culture, looking at the very topic of legal consciousness and behavior. She cites how scholars, both Western and Japanese, have framed the debate over Japanese litigiousness (which is discussed for the purpose of this study in the “Theoretical Framework” chapter).

It would be remiss not to discuss legal culture in more depth. During the interviews with the participants, I tended to frame my questions from my legal consciousness and asked for their response. For instance, I might say, “In my country, if men and women are treated differently in the workplace, we call that sex discrimination. Do you have a term for that in Japan?” or “In my country, that is illegal. Is that illegal in Japan?” This way, my worldview was not necessarily imposed on their response, which would threaten validity. It also suffices to say that how I relate to the law and the specific laws in the United States is different from how my Japanese participants related to the law and the specific laws in Japan.

## **Giri**

According to Ruth Benedict (1967), “Giri to one’s name also requires that one lives according to one’s station in life” (p. 14). *Giri* is a difficult to define word; indeed, even Japanese dictionaries do not adequately define the concept, which is almost untranslatable in English (Seki, 1971; Yoshida, 1996/2002; Noda, 1976/2002). Benedict describes it as “hardest to bear” in relation to repayment (p. 14), while Seki (referring to a dictionary entry) describes it as “righteous way” (p. 106). The “gi” in *giri* means “right” and the “ri” means behavior (Noda, 1976, p.

17). Yoshida describes how *giri* is depicted in film and theater, eliciting strong emotions from audiences. According to Yoshida:

In a *giri* relationship, there is no explicit request by one party that the other act under an obligation to do, or refrain from doing, something. Indeed, a large part of *giri* is for parties so obliged to act in advance of the need arising to ask for any particular favor.<sup>32</sup>

Benedict distinguished between two functions of *giri*, which includes the idea of repayment and honoring one's name. She pulls the concept of *giri* into a discussion about "shame culture" versus "guilt culture."

Yoshida also relates *giri* to law and states, "In a *giri* situation law and morality do not ignore personal considerations and are not clearly separated. It is necessary to consider how *giri* impacts on social rules, such as rules of law. Social rules are generally regarded as obstacles to a *giri* relationship."<sup>33</sup> Laws and social rules, in Yoshida's description, are considered a barrier to *giri*. Noda (1976/2002) describes six characteristics of *giri*, which include: 1) obligation or duty to another person based on standing; 2) voluntary fulfillment of the obligation or duty; 3) a *giri* relationship is one that is never ending; 4) involves affection or the appearance of affection (*giri-ninjo*); 5) social hierarchy; and 6) *giri* is self-imposed honor. On the last point, Noda states:

The rules of *giri* are not imposed by means of a system of public constraint but are sanctioned simply by a feeling of honor. Those who fail in their *giri* are seriously dishonored in the eyes of those around them.... Everyone in Japan is very sensitive about his honor; there is an effort to save face at any cost. (author's italics) (p. 19)

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<sup>32</sup> This is a direct quote from "Giri: A Japanese Indigenous Concept". Typically in APA, if there is no page number, paragraphs are counted. However, the paragraphs are not clearly defined on Yoshida's webpage. Thus, for the text, please visit: <https://academic.csuohio.edu/makelaa/history/courses/his373/giri.html>

<sup>33</sup> From Yoshida's "Giri: A Japanese Indigenous Concept". No page or paragraph number. Please visit <https://academic.csuohio.edu/makelaa/history/courses/his373/giri.html>.

As it relates to *giri*, Noda states that, in general, the Japanese are reluctant to litigate because: 1) they feel that exercising rights is like extortion; 2) they do not wish to damage the honor or relationship with the opposing party; and 3) the Japanese are desensitized to their own suffering (p. 20). On the last point, it is worth noting such phrases in the Japanese language as *shikata ga nai* (“it can’t be helped”) or *gaman* (suffering through, the equivalent of the British “stiff upper lip”) that attest to this sensibility, although I am cautious about asserting such a claim. Noda indicates that generally disputes are resolved by the aggrieved party to “renounce his right to indemnity” (p. 20), which typically results in the offending party offering an apology and a monetary settlement. Noda also states, “It is not the amount of the indemnity but the sincere attitude worthy of *giri-ninjo* on the part of the offender which is the important thing to the victim” (p. 20). For example, Kawashima (1963/2002) recounts receiving a parking ticket in California due to an expired meter, which he was forced to pay. The same scenario in Japan would have resulted in Kawashima apologizing profusely for the offense, which would be dismissed, unless he was rude or arrogant (p. 31).

## **Apology**

There are numerous examples of how apologizing in Japanese culture ameliorates and resolves disputes and is a central tenet in the criminal justice system. To Westerners, this is indeed a troubling concept as apologies are conceptualized differently. In terms of apologies and the legal system in Japan, Hiroshi Wagatsuma and Arthur Rosett’s (1986/2002) article “The Implications of Apology: Law and Culture in Japan and the United States” is the leading piece of literature on the subject. An apology contains five elements: 1) acknowledgment of the harm and

wrongdoing; 2) expression of fault and regret; 3) offer of compensation; 4) promise that the behavior or problem will not happen again; and 5) restoration of relationship (pp. 469-470). A central feature of Japanese apologies is disassociation; that is, while an offending party may express remorse, offer compensation, and express a desire to refrain from the behavior or act so that it does not happen again, the party offering the apology may not admit wrongdoing. The reason for this phenomenon is the penchant to maintain relationships. In the Japanese judicial system, parties may be required to resolve a dispute through conciliation or compromise (Wagatsuma & Rossett, 1986/2002, p. 479); in fact, a court may order a party to issue an apology, which is perfectly legal and constitutional as upheld in *Oguri v. Kageyama* (Lee, 2005). Apologies may be public and ceremonial or written, which is called *shimatsucho*. In the more public apologies, which may be publicized or televised, the apologizer often uses the phrase *taihen moshiwake gozaimasen deshita* (“I/we are terribly sorry”) and offers a deep bow for several seconds (Ito, 2015). Oftentimes, the *shimatsucho* absolves the offending party from legal consequences (Wagatsuma & Rossett, 1986/2002). While the public apology or *shimatsucho* is a particularly effective tool to resolve conflicts, it goes without saying that the inability or unwillingness to apologize also arise. In Ito’s article, she discusses several public relations blunders perpetuated by major corporations and even the government in crisis that became situations that angered the public due to a lack of transparency and apology. An apology, according to Haley (1982 and 1991), is one way in which social order is maintained without sanctions.

### **Authority, Sanctions, and Rights**

Haley (1991) contends that, while Japanese law holds “authority,” it is also weak in terms of enforcement, thus lacking “power.” He states:

The result is a dependence on extralegal, informal mechanisms of social control as a means for maintaining societal order with a concomitant transfer of effective control over the rules and norms that govern society to those who are able to manipulate these informal instruments of enforcement. (p. 14)

Part of this has stemmed from the *mura*, or village, system which predated the advent of modern law in Japan. During the Tokugawa Era, the government was decentralized into feudal states, and, as such, if the villages under these states remained conflict-free and harmonious, then they could expect little interference and oversight from the administrative state (Haley, 1991). Under this system, the community enforced community standards and norms, which was a type of law making, and according to Haley, “What mattered was outward behavior, not private thought” (p. 62), which is consistent with the Japanese concepts of *tatemaie* (outward face) and *wa* (harmony).

When the legal system shifted during the Meiji Restoration to a Western legal system, it imposed private law and rights on the “sinicized” legal constructs and institutions, putting the legal norms and customs at odds with the new codes and structures (Haley, 1991). This extended into the postwar period and new constitution, creating what Eric A. Feldman (2000) describes as a “narrow paradigm” (p. 141). Feldman argues that Japan has a unique legal culture, which was perpetuated with metaphorical legal transplants from China, Europe, and the United States. This extends to his discussion about the origin of rights in Japan for which there was no word for until the Meiji Restoration (p. 148). Along with private rights comes the odd use of judicial tools to invoke those rights, creating some disruption. According to Haley (1991):

For a potential litigant a lawsuit often meant the invocation of not only protective official powers but also official scrutiny and oversight of otherwise concealed affairs. It entailed

a submission to those who ruled and concomitant loss of autonomy over matters being litigated. (p. 84)

There are a number of reasons structurally and culturally why the Japanese are averse to litigation, which include social shunning (a type of community-enforced social ordering), certainty of results, registry system, mediation, and interdependence (pp. 114-116).

In order for rights to be exercised and the legal process to be invoked, the aggrieved party must initiate the lawsuit, which they may be reluctant to do as informal apologies and customs supplant the legal process (p. 117). That is, an apology may ameliorate the sense of being wronged. This brings this subsection back to the adequacy and importance of apologies during legal disputes. Haley cites Upham's pivotal work on the law and social movements in Japan, using women's rights as an example of the aforementioned phenomenon and indicating that many women (until the two works were published in the late 1980s and early 1990s) did not exercise their rights, accepting the unfair treatment. It is important to note his quote on the matter:

Inasmuch as private law orders depend upon the initiative of the parties not the state to enforce legal rules, the extent to which the potential litigant has a sufficient sense of grievance to invoke state protection—or, as the case may be, desire for revenge to seek state-imposed sanctions—becomes a determinative factor. (p. 117)

Indeed, in the account of Takanori Goto's book *Japan's Dark Side to Progress: The Struggle for Justice for Pharmaceutical Victims of Japan's Post War Economic Boom*, Goto (1991) details the long road for victims seeking justice in the Chloroquine Case. Victims of prescribed chloroquine experienced devastating health effects, including vision impairment, and pursued a legal campaign against the government. In their case, the victims and Goto argue that the government was aware of the side effects of the drug but required no warning labels or notification to patients. The account details the long, arduous legal process, but in giving accounts of some of the victims

who sought his legal counsel, one man stated continually from the onset, “Please don’t take the hospital to court” (p. 7). This one line was striking, as it demonstrates the conflicted feelings of some Japanese when they seek judicial relief and exercise their rights (as we will see in the “Data Analysis” section of this study). In the Chloroquine Case, the legal situation escalated only after the victims were inadequately addressed and compensated for their suffering. At the time of publication in 1991, the case had been ongoing for nearly 20 years. The case was ultimately decided by the Supreme Court in 1995. The victims lost their case and the government, despite overwhelming evidence that they knew of the dangerous side effects, was absolved of responsibility with the court determining that the drug company was actually responsible (Hadfield, 1995). This Chloroquine Case is a classic example of the lengthy legal battles victims encounter in seeking redress through their judiciary with sometimes marginal or no gain. Goto wrote the book to spread information about the case and, according to the postscript, gave the following message: “For those of you who may be facing a similar battle in your own community, I urge you not to give up, and I hope that this story may serve in some way to encourage you to continue your struggle” (postscript). One can only imagine that, if the government had taken the appropriate steps to acknowledge the victim’s suffering and offer appropriate redress, the outcomes could have been better for both parties. But, however reluctant the litigant, one cannot underestimate the power of righteous anger for a sense of justice (or what Haley might call “revenge”). Furthermore, Feldman found in his pivotal scholarship about rights in Japan that litigants tend to assert their rights when they come forward in groups. He states, “Because the cultural myths about rights powerfully suggest that asserting rights is a sign of selfishness and con-



ceit, people are understandably reluctant to individually and in isolation assert their rights” (p. 163).

## **Administrative Guidance**

Much of the aforementioned subsections regarding Japanese legal culture speaks to how the Japanese relate to the law, Japanese legal thought, and informal forms of sanctions. There are six types of laws in Japan: The Civil Code, Commercial Code, Code of Civil Procedure, Criminal Code, and Code of Criminal Procedure, and the Constitution (Dean, 2002). Although the scholarship is not expansive, there are several books available to Western scholars about the law in Japan. Administrative guidance, or government agency or local government authority, is another legal institution. It is not a source of law but instead an “informal instrument” to influence behavior, so it is aligned with a particular law or policy (Oda, 1999, p. 54). Administrative guidance is not legally-binding nor requires a legal basis; instead, it is a recommendation that may be written or oral (Oda); that is, it is based on facts, but not legality (Dean, 2002). The term for administrative guidance, *gyosei shido*, does not have a precise definition nor is it contained in any written law (Dean, 2002; Haley, 1991). Administrative guidance consists of regulatory, promotional, and conciliatory types. The most important to this study is the conciliatory administrative guidance that is typically used to resolve disputes.

Many Western scholars find Japanese administrative guidance unique and peculiar based on its lack of sanction and force, a point that Haley acknowledges. After all, it is curious that the law is enforced so informally merely by requesting a particular behavior or resolution. Administrative guidance places a lot of discretion in the hands of bureaucrats who have “bureaucratic aims” and can even be considered a threat to the rule of law (Haley, 1991, p. 163; Dean, 2002).

Indeed, the lack of enforcement mechanisms was routinely cited as a deficiency of the EEOL. Another issue is whether or not a party will buy in to the determination of the administrative guidance. For instance, if there is no coercion to comply with the guidance, what would compel a party to adhere to and heed the guidance? Haley, citing Wolfgang Pape, brings us back to the concept of *giri* and that community standards or social order will guide compliance.

Indeed, we should consider that the Equal Employment Opportunity Law of 1986 was written to encourage alternative remedies and relies on administrative guidance for enforcement (as discussed below in-depth). One enforcement mechanism introduced in the 1999 amendment to the law was public shaming, which indicates that, if a company engages in sex discrimination, they could be publicly shamed in the media. According to *The Foreign Worker's Handbook*, which is published by the Tokyo Metropolitan Government:

The Minister of Health, Labor and Welfare and the direction of Prefectural Labor Bureau, when they find it necessary with regard to the enforcement of the Equal Employment Opportunity Act for Men and Women, may request reports and give employers advice, guidance and recommendations, and if an employer has not complied with the law, they may make a public announcement of such violation. (2017, p. 78)

Employers could also be subjected to a ¥200,000 (\$2000) fine. The feature was criticized in some of the literature focusing on the amendment; however, when I spoke informally with one of my participants several months after our interviews, she mentioned that many companies do actually try to resolve sex discrimination issues in the workplace, as they want to protect their image, particularly if their products or services are geared toward families. I asked why, then, her company was not similarly interested in protecting their image by meeting her demands and also correcting the many discriminatory issues within the company (which goes beyond sex discrimination). Her answer? Their main client was the government. Thus, underscores critics' point

about administrative guidance, bureaucratic discretion, and rule of law, but, in my assessment, it speaks volumes about the true intentions (*honne*) of government policy initiatives aimed at addressing sex discrimination (*tatemae*).

## **Labor Law in Japan**

Labor law in Japan is intended to regulate the labor market, which includes the contractual employer and worker relationship (Sugeno, 1992, p. 3; Oda, 1999). While some labor laws and regulations developed prior to the Second World War, such as the 1911 Factory Law, modern labor law as it is observed and practiced in Japan today developed after the end of the war (Oda, 1999). Civil law is the basis of labor law in Japan and addressed the following deficiencies prior to the implementation of a more robust labor policy: 1) the voluntary contractual relationship that balances the power imbalance between employers and workers; 2) a basis for compensation in the event of negligence or injury; 3) the freedom to enter or exit employment contracts; and 4) the ability to unionize (Sugeno, 1991, pp. 3-4). In postwar Japan, the Labor Standards Act of 1947 is still the central law regulating employer and employee relations (Oda, 1999, p. 358).

### **Labor Standards Act 1947**

With the industrialization of Japan during the Meiji Restoration in the late 1800s and early 1900s, families flocked to urban centers for the prospect of work. While Japan did not heavily rely on female workers until World War II (Lam, 1992, p. 8), debates arose regarding the safety of women and children in precarious working conditions. Motherhood protections (*bosei hogo*) was a concept that developed in labor policy starting in 1910 and lasted well into the 1980s,

changing alongside the construct of motherhood. Meanwhile a feminist debate ensued between Raicho Hiratsuka and Akiko Yosano regarding independence and relying on state involvement. In short, Hiratsuka believed that women, particularly mothers, must be given special considerations and concessions, while Yosano argued that women must refrain from relying on both men and the state to ensure independence. Male contemporaries, on the other hand, believed that a woman's body must be "safeguarded" to protect future motherhood (Maloney, 1995, p. 277).

Thus, the Factory Law (1911) was enacted as Japan's first protective legislation (Maloney, 1995). According to Maloney (1993), "Concern about the moral and physical compromise of the future maternity of young women works lay behind many bureaucrats and reformers' arguments for the Factory Law" (p. 125). The law espoused the following elements for women and individuals under the age of 20:

- No working hours between 10 p.m. and 5 a.m.; thus, no "night work"
- No termination of employment within five weeks of childbirth
- Six weeks of post-birth maternity leave (Maloney, 1995, p. 278)

As military conflicts ensued and led to the Pacific War in the 1930s, Japan began to rely more often on female labor. In order to do this, the government eliminated motherhood protections from the Factory Law (Maloney, 1995, p. 132). However, once the war ended, the government was interested in refashioning labor laws to reflect traditional gender roles. By December 1945 women were urged by the Welfare Ministry to leave their positions in the workplace and return to the home. However, this push back into the home neglected that women still sought to earn an income, so in spite of praise for the government policy, some women ended up becoming prostitutes (Maloney, 1993, p. 133).

Eventually, a debate emerged pitting pay equality with motherhood protections. The new, post-war Constitution stipulated equality between men and women in Article 14. However, this only addresses behavior between the state and citizens and “unreasonable discrimination” (Geraghty, 2008, p. 506). However, given the substantial post-war poverty, unions and women were more interested in “quality of life,” so the concept of workplace equality was not at the forefront of their agendas (Maloney, 1993, p. 136).

The Labor Standards Act was created and implemented to enhance workplace protections (Geraghty, 2008; Maloney, 1993). According to Lam (1992):

In the field of employment, the Labour Standards Law of 1947 provided equal pay for equal work and grant women a series of protective measures in the areas of working hours, night work, underground work, menstruation leave, maternity leave, holidays and restrictions on dangerous work. (p. 9)

Article 1 states, “Working conditions shall be those which should meet the needs of workers who live lives worthy of human beings.” It further states, “The standards for working conditions fixed by this Act are minimum standards. Accordingly, parties to labor relationship shall not reduce working conditions with these standards as an excuse and, instead, should endeavour to raise the working conditions” (Labor Standards Act, *National Laws on Labour, Social Security and Related Human Rights*). The law addresses many aspects of labor relations for men, women, and children, including labor contracts, wages, working hours, leave, safety, health, children, training, accident compensation, employment rules, dormitories, and supervising.

Regarding the equal treatment, Article 3 of the law states, “An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed, or social status of any worker” (Labor Standards Act, *National*

*Laws on Labour, Social Security and Related Human Rights*). Article 4 states, “An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman” (Labor Standards Act, *National Laws on Labour, Social Security and Related Human Rights*)

According to Lam (1992), the law “was mainly aimed at protecting women from the hazards of poor working conditions” (p. 90). Provisions of the law include:

- Pregnant women and women who recently gave birth (within one year) were forbidden from performing underground work
- Women were also forbidden from performing excavation work deemed harmful by the Ministry of Health, Labour and Welfare
- Pregnant women and women who recently gave birth (within one year) were forbidden from handling heavy objects or harmful gases
- Pregnant women may request leave from work six weeks prior to childbirth (14 weeks for multiple births)
- Women received up to eight weeks of maternity leave, unless she wanted to return to work within six weeks with a doctor’s approval
- Pregnant women reserved the right to request a transfer to a job with lighter activities
- Pregnant women and nursing mothers were restricted in the number of hours they could work
- Pregnant women and nursing mothers could request not to work overtime or night shifts

- Nursing mothers with a child under the age of one could request two 30-minute breaks to nurse and for other rest time
- Menstruating women were entitled to time off (Labor Standards Act, *National Laws on Labour, Social Security and Related Human Rights*)

However, despite guaranteeing worker protections and equality, the law did not specifically address equality between men and women (Oda, 1999). That is, the objective of the law was to protect all workers and not intended to address sex discrimination. However, the law did contain provisions to protect women, which is found in a section that also deals with children. While the Labor Standards Law specified that men and women would receive equal pay for equal work, it offered many special protections to women. If a woman received special motherhood protections, such as maternity leave or menstruation leave, that men did not receive, then a woman could not inherently receive equal pay for equal work. The law only stipulates equal work for equal pay (Saso, 1990; Lam, 1992; Geraghty, 2008). Specifically, the “Labor Standards Law’s major shortcomings that it fails to address gender discrimination outside of wage considerations. The law does not prohibit gender-based discrimination with respect to hiring, firing, promotion, or any other part of the employment relationship” (Starich, 2007, p. 554). This shortfall led to employers finding ways to skirt the law and engage in discriminatory practices. Thus, the law’s inadequacies were addressed in the 1960s and 1970s with pivotal lawsuits brought under Article 90 of the Civil Code (Lam, 1992; Geraghty, 2008; Starich, 2007; Maloney, 1995).

## **Equal Employment Opportunity Act**

With the economic boom of the 1960s and also a decade of gender discrimination cases in the court, the Working Women's Welfare Act was passed in 1972. In the years leading up to the passage of the act, there were frequent discussions about part-time and home workers and how to best use them in the burgeoning economy. A number of policy proposals were born during this period, such as the "Proposals Concerning the Effective Use of the Middle-Aged and Older Female Workforce" (1966) and "Proposals Concerning Female Part-Time Employment Measures" (1969), stemming from Women's and Young Workers' Problem Council, which was the Minister of Labour's advisory board on these matters (Iki, 2013, p. 109).

In 1970, the Home Work Act was enacted to address the issue of piecework, and in 1972, the various proposals and discussions regarding women and the labor market coalesced into the Working Women's Welfare Act. The Working Women's Welfare Act was the precursor to the Equal Employment Opportunity Law, created in 1972 and revised and renamed in 1986 (Iki, 2013). According to Keller (1980), "The enactment of the Working Women's Welfare Act in 1972, which is intended to allow women to harmonize their work with their home life, provides measures to promote vocational guidance and training and time off for childcare" (p. 97). Lam (1992) contends, "It manifests the government's fundamental attitude and policy on women workers which has remained unchanged until the present day" (p. 93). The law was enacted in an attempt to ameliorate family and work demands in order to create a work/life balance (Keller, 1980; Lam, 1992).

However, while the law was a step in a better direction for gender equality in the workplace, it still largely emphasized protections rather than equality, and furthermore, there were no enforcement mechanisms, a feature that would persist into its revised form under the Equal Em-



ployment Opportunity Law (Keller, 1980; Lam 1992). The law relied on voluntary compliance through the Women's Bureau of the Ministry of Labor. It essentially stressed the traditional family system and women's roles as mothers and remained unchanged with the passage of the EEOL.

## **Summary of the Equal Employment Opportunity**

### **Law in Current Form**

Before discussing the history of the law and its progression of provisions, this section will cover the basics of the law. The Equal Employment Opportunity Law was passed in 1986 with subsequent amendments in 1999 and 2006. Discrimination on the basis of sex is illegal in Japan. This includes: recruitment; role, promotion, and training; benefits; change of job; and retirement, firing, and contract renewal. Indirect discrimination, such as a dual-track hiring system, is also prohibited. Indirect discrimination may also include physical "requirements" that are not related to the job and location transfers. It is also unlawful to discriminate or give disadvantageous treatment for maternity and childrearing, which includes mandatory or forced retirement during pregnancy or after childbirth, and offering reasonable accommodations to pregnant or new mothers. Finally, sexual harassment is expressly illegal. However, it is worth noting that, while sex discrimination is unlawful in Japan, there are different types of provisions within the law that are prohibitory and hortatory. Some provisions are enforceable while others are merely aspirational. That is, the employer should "endeavor" to prevent or address certain behaviors (*The Foreign Worker's Handbook*, 2017).

### **History of the Law**

The discussion about women in the labor market continued into the 1970s, gaining momentum after the passage of the 1972 Working Women's Welfare Act. By the mid-1970s, women's rights were at the forefront of international political agendas, with 1975 being designated as the U.N. International Women's Year (Fan, 1999). The United Nations dedicated the ensuing decade as the U.N. Decade for Women, and conforming with such international pressure, Japan committed itself to achieving gender equality by 1985 (Upham, 1989; Fan, 1999; Geraghty, 2008). In 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Yamada, 2013; Upham, 1989; Fan, 1999; Gelb, 2003; Geraghty, 2008; Starich, 2007).

Japan signed the convention in 1980 (Starich, 2007), having developed a five-year plan in 1977 to end discrimination in the workplace, which was ratified in 1981 (Larsen, 2001). When Japan signed the CEDAW treaty, it agreed to eliminate workplace discrimination by 1985. According to Lam (1992), "The idea for introducing a law providing for equal employment for women was first proposed in 1978 but the law was not passed until May 1985" (p. 95). The Tripartite Advisory Council on Women's and Young Workers Problems established a committee of 15 members to develop standards. This committee, the Experts Group on Equality between the Sexes, was comprised of management and "neutral" women's groups, academics, and lawyers (Lam, 1992, p. 95; Upham, 1989, p. 148).

During this time, a debate ensued over motherhood protections (*bosei hogo*). At the time the Standard Labor Act was passed in 1947, a similar debate occurred. While the American Occupation prescribed policies that contributed to equality between men and women, various stakeholders paid lip service to these dictums. Unions and women were concerned about work condi-

tions worsening under such efforts. One of the central protections under scrutiny was menstruation leave (Maloney, 1993).

The *shingikai*, or deliberative council, upon reviewing the not-yet-passed Labor Standards Bill, expressed concern over the menstruation leave, particularly when examining the language of how “menstruation difficulties” interfere with jobs. The *kotokukai*, or citizen group, which was comprised of management, was unable to agree on what those difficulties might be. Another advisory group comprised of working women specified the issues that might be encountered while menstruating on the job, some of which were related to sanitary conditions (Maloney, 1993). Finally, the matter was brought before the American Occupation who, unfamiliar with the type of policy, agreed to its implementation (Maloney, 1993).

Nearly some 40-odd years later, the issue of special protections was up for debate yet again for the 1985 Equal Employment Opportunity Law. According to Maloney (1995):

...The framers were attempting to balance conflicting interest, including demands for absolutely identical treatment of men and women, retention of motherhood protection, and preservation of the privilege (and stresses) of managerial-track male employees that may companies insisted had guided them to international success. (p. 286)

There were two main sources of contention with the development of the new law: repealing special provisions contained in the Labor Standard Law and equality measures (Lam, 1992; Upham, 1989). According to Lam (1992), management believed that, if women wished to achieve equality in the workplace, “they should renounce special protective measures in exchange; they agreed that to offer women special ‘privileges’ other than maternity protection would be a form of discrimination against men and was inconsistent with the call for equality” (p. 96). Countering this concern, labor worried this would contribute to poor working habits for both sexes. They wor-

ried that women would inhabit even more part-time and temporary positions while men would be unable or unwilling to contribute to running the household due to their work obligations. Thus, they argued, it would be better to raise the working conditions for everyone with fewer work hours and other working conditions (Upham, 1989).

Other concerns that dominated the debate included how the legislation, however it was decided, would impact post-war economic growth and Japanese culture. However, between the official stakeholders present to debate the law and the unofficial masses commenting upon it, there was little consensus on how to address the problem of workplace equality and discrimination in the new law (Upham, 1989). In the end, management won the debates. The law was passed in May 1985 and became effective in 1986 (Lam, 1992; Upham, 1985). According to Lam (1992), “In reality, the EEO Law was not an independent new law, but basically a revision of the Working Women’s Welfare Law (1972) with a number of new measures introduced to eliminate discrimination” (p. 101).

According to some scholars, the Equal Employment Opportunity Law of 1986 that emerged was weak, flawed, and virtually unenforceable with no enforcement mechanisms. According to Gelb (2003):

...EEO Law was bureaucratically driven through the vehicle of the *shingikai* (advisory council, which makes policy in advance of its submission to the Diet. This process involves a kind of neo-pluralist representation by interest groups in a structured fashion; while bureaucrats play a central role, ministries are contained by politicians and their own clienteles. (p. 49)

Furthermore, the law that was passed sent a strong message to the UN Convention, indicating that Japan had found their recommendations and policies too idealistic (Lam, 1992, p. 99).

## **Provisions of the Law**

The Equal Employment Opportunity Law is actually called the *Danjo Koyou Kikai Kintohou*, or “The Man-Woman Equal Treatment Law” or Equal Employment Opportunity Act for Men and Women. The law is primarily divided into five areas of employment issues to include recruitment and hiring, job assignment and promotion, education and training, benefits, and retirement, dismissal, and mandatory retirement age (Parkinson, 1989, p. 606; Maloney, 1995; Yamada, 2013). The provisions are divided into prohibitory (“shall not discriminate”) and exhortatory (“shall endeavor”) provisions (Lam, 1992). According to Lam (1992), “Basically, the hortatory provisions have no legal effect. Enforcement of the hortatory provisions is not within the scope of the judiciary; the major responsibility for interpretation and implementation of these provisions lies with the Ministry of Labour” (p. 103). To summarize the provisions, please follow the below subsections.

### ***Prohibitory (Kinshi Kitei)***

The hortatory measures in the law specify actions and behaviors that are prohibited in the workplace.

- Restrictions on overtime and holiday hours were removed for managers and specialist experts, thus amending the Labor Standards Act
- Discrimination in mandatory retirement age and lay-off (Article 11)
- Discrimination in fringe benefits, such as loans, housing, and health benefits (Article 10)

- Discrimination in training and education programs (Article 9) (Lam, 1992, p. 104; Shimoda, 2007)

### ***Hortatory (Doryoku-gimu kitei)***

The exhortatory provisions contained in the law specify actions that an employer “shall endeavor” to do and thus have no real enforcement mechanism.

- Recruitment and hiring (Article 7)
- Placement and promotion (Article 8) (Lam, 1992, p. 105; Shimoda, 2007)

### **Grievance Procedure**

In regard to the provisions of the law, Articles 13-21 delineated a resolution system to address complaints that relied heavily on voluntary compliance (Upham, 1989; Lam, 1992). The standard grievance procedure followed the pattern below:

Company grievance committee—> director of prefectural Women and Minor’s Bureaus  
 —> Equal Opportunity Mediation Commission—> Minister of Labor (Maloney, 1995, p. 288)

Specifically, a complainant could follow these steps:

1. First, internal complaint resolution is encouraged with labor-management apparatus within the company (Article 13)
2. If the internal resolution is unsatisfactory, the Women and Minors Office can issue guidance, advice, or recommendations (Article 14)

3. The director of the Women and Minors Office can arrange for an Equal Opportunity Mediation Commission to mediate if both parties agree (Article 15). This committee can draft a settlement (Article 19). (Upham, 1989, Lam, 1992)

It is important to note that, under the 1986 Equal Employment Opportunity Law, mediation can only occur if both parties agree to it. If one party does not consent, then mediation will not occur (Lam, 1992). Of course, this makes an easy out for any employer accused of discrimination; the firm can simply refuse to participate, and the complaint would receive no action. By the 1999 amendment, however, this loophole was amended so that mediation could occur even if only one party requests or agrees to it.

## **Impact of Law**

Even when it was implemented, the Equal Employment Opportunity Law was considered weak and toothless, leaning heavily in the favor of management (Lam, 1992; Upham, 1989; Gelb, 2003). It also sent a message to the United Nations that Japan would not be rushed into rapid change, buckling to international pressure, but would change at its own incremental pace (Lam, 1992).

Aside from the reliance on a voluntary settlement with both parties, complainant and respondent, participating in a grievance process, the language of the law was incredibly weak, particularly with the exhortatory provisions encouraging employers to “endeavor” to treat men and women equally. There is absolutely no way to enforce these provisions, so the lack of consequences and punishment gave employers no incentive to comply (Maloney, 1995). The law was so toothless, in fact, that only one case was mediated in a ten-year period (Miller, 2003).

Japanese feminists were disappointed too with the lack of attention to motherhood protections, which included changes made to:

- Menstruation leave eliminated
- Sick leave for serious problems related to menstruation granted instead
- Fertility protection “abandoned”
- Maternity leave increased from six weeks before and six weeks after to six weeks before and eight weeks after (restricted from returning to work for 6 weeks) and receive 60 percent of their pay (sometimes 80 percent or 100 percent)
- Some restrictions in overtime work (Maloney, 1995)

The most damning consequence of the Equal Employment Opportunity Law was the dual-track system that was created (Maloney, 1995; Gelb, 2000; Gelb, 2003). Under this system, a mommy-track and a management-track emerged. Because employers were not compelled to eliminate discrimination, only prodded, they were under no obligation to offer any sort of job flexibility to managerial women. Thus, companies offered “managerial track” and “general track” career options and created indirect discrimination that did not violate the law (Maloney, 1995, p. 292; Gelb, 2003). Women reserved the right to select jobs from either track, but if they intended at any point to start a family, the managerial track would be impractical due to the unique and inflexible qualities of jobs in the *nenko* system. According to Gelb (2003), managerial-track jobs required “complex judgment, involuntary rotation and transfers and unlimited access to promotion” (Gelb, 2003, p. 52). Conversely, clerical or general-track jobs were less pressured, forced no transfers, and entailed short hours.



## **Equal Employment Opportunity Act Amendment 1999**

With the failures of the 1986 Equal Employment Opportunity Act, including its lack of enforcement, dual-career track establishment, and inability to curb discrimination in the workplace resulting in an “ice age,” the government decided in the mid-1990s to revisit its efforts. In 1994, the Office of Gender Equality was established to re-evaluate legislative efforts related to gender issues (Starich, 2008). A general dissatisfaction with the 1986 EEOL persisted, and the government was pressured to revisit it by labor groups, feminists, and scholars. Eventually, a proposal for amending the law was submitted by Japan’s Council of Issues of Women (Shimoda, 2002; Fan, 2001). The law was amended in 1997 and implemented in 1999.

The 1999 Equal Employment Opportunity Law made several important changes to the 1986 version of the law:

- The name of the law was changed from the “Law Respecting the Improvement of the Welfare of Women Works Including the Guarantee of Equal Opportunity and Conditions for Men and Women” to “Law Respecting the Guarantee of Equal Opportunity and Conditions for Men and Women in the Field of Employment.”
- This name change also reflects a change in the language of the document. The exhortatory provisions of the 1986 law (“...shall endeavor”) became prohibitory (...“shall not). Thus, discrimination in recruitment, hiring, promotion, and assignment were prohibited (Articles 7 and 8).
- Article 2 was eliminated, as were special protections afforded to women, thus amending the Labor Standards Act once more.

- Mediation could be granted at the request of one party and employers could not retaliate against women who filed complaints (Article 13).
- Equality was to be achieved between men and women (Article 9).
- Sexual harassment was codified for the first time (Article 21).
- A “public notice” sanction was implemented to address the toothlessness of the previous iteration of the law; that is, if an employer violated the provisions of the 1999 amendments, the company would have its name published in the media. (Miller, 2002; Fan, 2001; Geraghty, 2008; Starich, 2008; Laursen, 2007)

While the amendment was certainly a step in the correct direction in addressing the ongoing discrimination that the 1986 EEOL failed to correct, it was still flawed and fundamentally weak. The law provided a fundamental shift away from the special protections for women; that is, it moved away from welfare and focused more on equality (Miller, 2002). Furthermore, the law served the interest of the bureaucracy, the most powerful branch of government in Japan, but placed more emphasis on access to administrative mediation and advice rather than avenues to judicial response. As Laursen (2007) points out, allowing mediation to go forth with only one party requesting it implied that mediation was still the preferred method of dispute resolution, even though litigation remained the same in the decade following the implementation of the 1986 law (Gelb, 2000). This retention and preference of mediation over judicial relief allows the bureaucracy to set the tone for cultural change.

## **Equal Employment Opportunity Act Amendment 2006**

In 2003, international pressure via CEDAW mounted against Japan again for its lax anti-discrimination policies and inability to minimize gender discrimination. Furthermore, the birthrate continued to decline, and there was an increase in gender discrimination litigation, which were all signs that the 1999 Equal Employment Opportunity Law still failed to pass muster in eradicating workplace inequality (Starich, 2007; Geraghty, 2008). Employers still engaged in indirect discrimination due to weak enforcement mechanisms and the 2006 Equal Employment Opportunity Act Amendment sought to correct this issue (Assmann, 2014; Geraughy, 2008).

The 1999 Equal Employment Opportunity Law made several important changes to the 1986 and 1999 versions of the law.

- The language is all gender inclusive—it is intended for both men and women
- Although it remains undefined, indirect discrimination is prohibited [left to MHLW/ministerial ordinances]
- Expands prohibition on demotion, retirement, and contracts
- Amends the Child Care and Family Care Leave Law (Starich, 2007; Geraghty, 2008; Assmann, 2014)

The sparse literature available on the 2006 EEOL amendment mostly focuses on how the law attempts to address indirect discrimination without defining it. The Ministry of Health, Labor, and Welfare proposed height and weight requirements, management track transfers, and promotion transfers as indirect discrimination (Assmann, 2014; Starich, 2007).

There is hardly any literature available about the efficacy of the 2006 EEOL and its impact. There is much media attention on Prime Minister Abe's "womenomics" policies; however, those policies have largely been lip service up to the point of this literature review, and gender discrimination still persists in the workplace. No further proposed amendments are presently being considered.

### **Prominent Sex Discrimination Case Law in Japan**

The Equal Employment Opportunity Law was designed to facilitate disputes with mediation (Gelb, 2000). The voluntary compliance components of the law are the very reason it is considered weak and ineffective by many Western scholars. Frank Upham's *Law and Social Change in Postwar Japan* is an acclaimed, oft-cited work in Japanese legal scholarship, and a portion of this title is devoted to gender discrimination in Japan. According to Upham (1987), "Japanese women...have pursued a litigation campaign reminiscent of the civil rights and environment struggles in the United States, using the courts to press for basic social reforms not easily attained solely through political means" (p. 5).

Equal employment law is only one chapter in Upham's book, which was published in 1989, a mere three years after the 1986 EEOL was passed. Multiple law reviews have published papers on the Equal Employment Opportunity Law and subsequent amendments; however, these articles are largely descriptive and lack any sort of data collection and methodology. Weathers (2005) aptly points out the dearth of literature regarding policymaking on the topic of gender discrimination and criticizes the narrow scope of those studies. He explains that Joyce Gelb's *Gender Policies in Japan and the United States* is one such work that focuses mostly on feminist

activism. He states, “This approach may enable researchers to gain close access to both oral and written sources, but tends to narrow the perspective” (Weathers, 2005, p. 71). There has been no study since Upham’s pivotal publication that looks at how Japanese law and the judiciary is used as a vehicle for social change.

Litigation, of course, continues to be a key resource in combating gender discrimination in Japan. In discourse regarding workplace gender discrimination, litigation is described as “waves” or “litigation campaigns.” The first wave or campaign started in the 1960s and focused on wage and workforce reduction discrimination, while the second wave or campaign in the 1970s and 1980s centered more on “discriminatory promotion, job rotation, and tracking that attempt to accomplish indirectly the goals of early retirement and unequal compensation attained directly by earlier practices” (Upham, 1989, p. 129). It is unclear under which “wave” or “campaign” that litigation is grouped after Upham’s publication; some of the literature points “toward the next wave,” but no scholars in recent publications have specified it precisely.

### **A Note About Case Law and Precedent in Japan**

When I first met with Louis Carlet and Hifumi Okunuki of Tozen Union on January 21, 2018, for an informal conversation about my study, it was unclear to me, based on our discussion, the role of legal precedence in Japanese legal proceedings. Mr. Carlet indicated to me that case law was indeed important in Japanese legal proceedings but struggled to describe in technical detail why it was different from my conceptualization based on my scholarship and teaching in the United States.

According to Dean (2002), “In strict civil law theory the only sources of law are statutes, regulations and custom” (p. 135). However, legal decisions are important, especially for com-

mercial and civil law (which this study focuses on, as victims of workplace sex discrimination rely on civil codes to seek judicial relief). However, case law is not legally binding in the way that we understand it in the United States. Dean (2002) indicates that, typically, an attorney will research the standing statutes and codes related to their case and then find relevant case law to support the legal claims (pp. 135-136); however, these cases are not legally binding. Instead of serving as a source for a law, they instead provide context on how to apply the law (p. 137). Both Oda and Dean contend that judge-made law is critical in Japanese law. However, judges are not bound to cite case law in their judgements; they are only required by the Constitution to apply the law. In other words, there are instances in which the Supreme Court did not heed its prior precedents, and it is has happened that lower courts did not follow Supreme Court precedents (Oda, 1999, p. 52).

To illustrate how this may work, in recounting my conversation with Mr. Carlet, he discussed a lawsuit that the labor union had pursued. He had requested the union attorney to argue their case a particular way, even if it meant losing the case. The point was for the judge to render an opinion that would provide clarification for other cases that would be coming forward. So, what was most important to the union was an opinion, not a settlement or resolution. Instead, the attorney argued the way with which he preferred to win the case, and the plaintiffs won a settlement; but it was a personal loss for Mr. Carlet who wanted an opinion for the long game. This introduction serves to provide context for presenting some of the seminal cases as they relate to workplace sex discrimination.

In each section, a major case is presented, as well as the names of related cases. Initially, this section was to contain detailed summaries of critical cases referenced in legal texts based on

primary documents. However, this plan was modified based on the availability of resources and the feasibility of completing the study. In order to access judicial opinions, one can visit the Supreme Court of Japan webpage or use a legal database. As for the Supreme Court database, in my personal experience, I have not had fruitful attempts to obtain summaries. In terms of legal databases, Westlaw Japan is the source for judicial opinions. However, while many institutions subscribe to Westlaw, few subscribe to Westlaw Japan. Robert Britt, the Coordinator of East Asian Library Resources at the University of Washington Gallagher Law Library, graciously looked up cases for me on a few occasions. However, despite his generosity, I did not want to inundate him with too many requests. The cases, of course, were in Japanese, which led to issues with translation. Thus, I decided to present summarized cases to give the reader a sense of the litigation progression.

## **Cases**

### **Dismissal and Retirement**

#### ***Sumitomo Cement (1966)*<sup>34</sup>**

Plaintiff Setsuko Suzuki was hired at Sumitomo Cement in 1960 after the company adopted a set of internal employment policies regarding hiring qualifications and mandatory retirement. In particular, the policy:

- Required women graduates to be at least a high school graduate and that any women with less or more education would not be considered for employment
- All women would start with entry level positions

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<sup>34</sup> 17 *Roshu* 1407 Tokyo District Court. Adapted from Upham (1987).

- All women would be relegated to support positions
- Women would be retained until retirement
- Retirement would happen upon marriage or at the old age of 30

The defendant, Sumitomo Cement, defended the company policy by explaining that women are hired equally, but, when women marry or age, their productivity declines, which necessitates the mandatory retirement. Furthermore, they argued, the mandatory retirement was chosen in lieu of wage differentials. That is, the defendant chose mandatory retirement as a means of circumventing the Labor Standards Act, which forbids discrimination in the form of wage (“equal pay for equal work”). According to Upham (1987), “To them, sex discrimination seemed entirely natural and consistent with Japan’s laws and customs” (p. 132). Sumitomo Cement argued that the practice was common in other companies.

The court took exception to Sumitomo Cement’s argument. First, they considered the economic hardship that the policy caused. It seemed to place restrictions on marriage, which Article 24 of the Constitution forbade; however, the Constitution only applies to state action and, thus, was not germane to the lawsuit. The Labor Standards Act only addressed gender discrimination in terms of wage discrimination, which the company successfully circumvented with their policy. The Court then turned to Article 90 of the Civil Code.

Under Article 90, which pertains to “public order and good morals,” the court can make determinations regarding actions and interactions of private parties. In this instance, Article 90 prohibits unreasonable contract discrimination. The question then became whether or not the Sumitomo Cement contract was unreasonable. The court ruled that it indeed was. They concluded that a woman’s productivity was due to company policy, not marriage or age, and that any



loss of money due to the seniority that Sumitomo Cement was trying to prevent was their own fault. This case started a precedent of using Article 90 for gender discrimination cases.

***Watanabe v. Furukawa Mining (1971)***<sup>35</sup>

Furukawa Mining was an unusual court ruling to come out of the first litigation campaign. Furukawa Mining, the defendant, was sued over its singling out of women for mandatory retirement. In a series of layoffs, the company targeted a group with a high concentration of married women, who acquiesced with their request to retire. Watanabe, the plaintiff, refused and was terminated instead. The company admitted they conduct layoffs in such a manner but denied that it was discrimination. They argued that, of the 15 employees asked to retire, eight were women, and they were selected because they were not in a production capacity and no suitable job alternative was available. Furthermore, the company argued that married women did not need the extra income. In this instance, the court sided with the company, as did the union.

***Matsuro v. Mitsui Shipbuilding (1971)***<sup>36</sup>

The plaintiff in the Mitsui Shipbuilding case sued the company when she was forced to retire. Matsuro was hired in 1964, after a company policy was implemented in 1960 pertaining to female employment provisions. The policy stipulated mandatory retirement for women upon marriage. If the female employee desired to retain her job, she could do so through a service extension or employment extension. Service extensions were granted to nurses and operators while

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<sup>35</sup> 21 *Roshu* 1475 Maebashi District Court. Adapted from Upham (1987).

<sup>36</sup> 654 *Hanji* 29 Osaka District Court. This opinion was published in Milhaupt, Ramseyer, and West's (2006) *The Japanese legal system : cases, codes, and commentary*. Page numbers correspond with this volume.

employment extensions were offered to employees with all other jobs. The jobs that these employees performed remained the same with the same rate of pay (that is, same work, same pay). Female employees were to be terminated upon the birth of their child.

The plaintiff in this case married and was “retired” in 1968. She continued working for Mitsui Shipbuilding on an employment extension. It is important to note that her status changed from a permanent to temporary employee. The plaintiff was denied a subsequent extension after the birth of her first child. She alleged that this was gender discrimination, as it targeted women specifically.

The court searched the company policy to determine if it violated Articles 13, 14, 25, and 27 of the Constitution. However, as indicated previously, the Constitution only regulates state action. The court expounded on this matter, acknowledging that, while the Constitution is intended for state action and its citizens, rarely extending to private parties and matters, there are instances in which the Constitution is applicable to private matters when it comes to a larger scale public impact and *human dignity*. The court looked to Article 14, which prohibits discrimination based on “race, creed, sex, social status, and family origin” (p. 574). The court also looked into the Labor Standard Act and concluded that the act only bars wage discrimination and offers protections for women and that sex discrimination on the basis of certain characteristics is permissible. The court then asserted that, while “immutable distinction determined at birth” exists between the sexes, “human dignity does not truly exist without respect for both sexes.” Finally, the court found that “markedly unreasonable sexual discrimination does result in a denial of human dignity” (p. 574).

With that premise in mind, the court found that the company policy requiring mandatory retirement upon marriage violated Article 90 of the Civil Code, as it restricts freedom of marriage. The court addressed the company's defense arguments:

- That the jobs women were relegated to holding were menial and easy to master, thus contributing to no significant increase in productivity. The court rejected this argument stating that there is "ample room to display intelligence and originality even in the general office work category" (p. 577).
- The company assumed women would refuse any overtime work in an industry that often required it. The court countered that should be handled case-by-case.
- Regarding maternity leave, the court stated that an employer who tries to avoid offering it is in violation of the law.
- That young women are "more enthusiastic" about their jobs and older women become less efficient. The court poked at the holes in this argument, indicating, "This plan, however, is not one which causes women workers to retire because they have grown older. Even very young women are dismissed upon marriage and conversely, older women are allowed to remain as long as they do not marry" (p. 578). Furthermore, there was no evidence to support that this statement was even true.
- Wage and seniority, based on the fact of women's productivity declines, was debunked by the court due to a lack of proof.

For these reasons, the court ruled in favor of the plaintiff and ordered her former position recognized plus wages lost.

## **Wage and Promotion Discrimination**

***Sasaki v. Iron and Steel Federation (1986): “Iron and Steel Federation”<sup>37</sup>***

Plaintiff Sasaki was the main plaintiff out of several in the Iron and Steel Federation case, which was decided in 1986, the same year that the Equal Employment Opportunity Law was enacted. The plaintiffs in the case alleged wage discrimination regarding a wage increase and bonus coefficient between 1975 and 1977. The plaintiffs demanded the difference between what the men were awarded, which was higher, and what the women were awarded, which was lower.

The company claimed that the wage difference did not occur due to the employees’ sex but rather their job classification, which categorized employees as “key” or “other” and that supervisory promotion is not automatic after the passage of a certain number of years (as one plaintiff complained). The plaintiffs challenged the defendant on the validity of their labor agreements and wage/bonuses for the period contested, the wage differential, and discrimination.

The court cited how Article 14 of the Constitution related to the matter once again and specified that, while Article 3 of the Labor Standards Act does not apply, as sex is excluded from protected categories (which include nationality, religion, or social status), Article 4 does provide protection from sex-based discrimination in wages only. So, the court again turned to Article 90 of the Civil Code. They explored two issues—whether or not discrimination occurred, and if so, whether or not it was unreasonable.

The court found that the defendant did employ a dual-track system that categorized the sexes into “key” and “other” categories, which is unreasonable under the Constitution but does

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<sup>37</sup> 156 *Zeimu soshō shiryō* 2202

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not apply to private parties. The court then asked if “gender discrimination in recruitment and hiring violates public order under Article 90” and determined that, during the period of time in which the plaintiffs were hired, the “failure of an employer to grant an equal opportunity in recruitment and hiring was not a violation of public order” (p. 587). They did so citing Article 3 of the Labor Standard Act, as the Equal Employer Opportunity Act only requires an employer to “endeavor,” and employers are allowed to enjoy discretion in hiring.

For these reasons, the plaintiffs were denied payment for the same wages as their similar male counterparts but awarded the difference between the wage increases and bonuses as the labor agreements were found in violation of Article 90 of the Civil Code in that particular matter.

### ***Sumitomo Electric, Metals, and Chemical (2004)***

In 1995, nine female employees of Sumitomo Electric, Sumitomo Metals, and Sumitomo Chemical sued Sumitomo for pay and promotion sex discrimination, which in some of the cases started as early as 1965 (Barr, 1995). The Sumitomo Electric case and two plaintiffs took the case all the way to the Supreme Court in 2000 (Minamino, 2013). Initially, the women lost their lawsuits because, while the behavior was illegal, the societal standards during the 1960s and 1970s were different. Therefore, the court determined that the women had no claim to the money and promotions they were seeking. The decisions were appealed in 2003 and in 2004, the women were awarded ten million yen and the associated promotions (Minamino, 2013; The Japan Times, 2004).

On February 19, 2018, I had the opportunity to meet with the plaintiffs of the Sumitomo Electric case, Katsumi Nishimura and Eiko Shirafuji. I was invited that day to Tokyo High Court by one of my study participant’s, A-san, to a hearing for her case and also invited by Hifumi

Okunuki to a different court hearing to meet with members of the Working Women's Network (WWN). I attended that court hearing, as well as a case that was not related to sex discrimination. There were a number of attendees at the court hearing, including many coming from an association with WWN and other academics supporting the plaintiff. The group graciously invited me to sit down with them for coffee in the court cafe to speak with the plaintiffs and the president of the Working Women's Network. Due to the volume of people present and lack of interpreters (and thus, a very rough bilingual interview), our interview was not included in the data collection, as the interview was impromptu, impersonal, and informal. When I asked why they decided to sue, one of the women quickly answered, "I was angry!"

## **Sexual Harassment**

### ***Kono v. [Company X] et. al. (1992): "Fukuoka Sexual Harassment"*<sup>38</sup>**

Known as the Fukuoka Sexual Harassment Case, it was the first major sexual harassment case in Japan and included multiple defendants. The female plaintiff was hired as a writer in 1986 at the company, which published a magazine. During her employment, she became romantically involved with a man who worked at a travel agency and was also the friend of another employee, listed as one of the defendants, and also an advertising client. The company experienced financial troubles in 1987, and upon hearing that another publisher was interested in hiring

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<sup>38</sup> Shizuoka District Court, 745 *Hanrei Taimuzu* 238, 580 *Rodo Hanrei* 17

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the plaintiff, the defendant asked that she resign. This deteriorated their working relationship and communication.

Although the company tried to convince the two employees to improve their professional relationship, the defendant demanded that the plaintiff quit, explaining that her terminating the romantic relationship with the man from the travel agency cost the publisher his business. Furthermore, he accused her of embarking upon other romantic relationships, which were becoming disruptive to the company. The plaintiff demanded an apology for the accusations and appealed to several higher-ups for support, which was declined. She then discovered that the defendant was circulating malicious rumors about her to other employees, claiming she was sexually promiscuous and would be “better suited to work as a bar hostess/prostitute [*mizu shobai*] than at the firm” (p. 596).

A supervisor at the company failed to allay her concerns about the disparate treatment and urged the two parties to resolve their conflict, finally telling the plaintiff that, if the conflict remained unresolved, she would be forced to resign. She eventually separated from the company and was offered a severance fee.

The plaintiff won the suit and was awarded monetary damages. In this instance, the defendants violated Article 709 of the Civil Code (bearing tort). The court concluded that the work environment deteriorated due to the defendant’s gossip and continual demand that she quit due to her alleged personal sexual relationships and that the plaintiff “suffered considerable mental anguish as a result of the Defendant’s actions” (p. 599). The court did, however, make note of her recalcitrant behaviors.

***Kono v. Shimizu Construction (1997): “Yokohama Sexual Harassment”<sup>39</sup>***

The Yokohama Sexual Harassment case was heard on appeal at the Tokyo High Court after the plaintiff, a woman who claimed she was molested by her superior, appealed the lower court’s decision that said she did not fight back against the man’s advances. In 1991, the appellant claims that she was embraced, kissed, and touched in intimate places by the defendant, who “violently used his strength” when she resisted his advances (p. 603). Out of fear, she stopped resisting and convinced him to stop by citing the time. She subsequently called in sick for several days to avoid the defendant. The defendant denied her version of events.

The company urged the defendant to apologize to the plaintiff, and he complied. However, the plaintiff formally complained with written letters to the company. The president of the company rebuked the defendant, who initially conceded that inappropriate events occurred, but later denied misconduct upon reading the plaintiff’s written complaint. The plaintiff quit her job several months later citing the harassment as the reason.

The appellant (plaintiff) was awarded damages by the court. The individual defendant was liable under Article 709 of the Civil Code, while the company was liable under Article 715 of the Civil Code. The court also concluded that the defendant suffered mental anguish and

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<sup>39</sup> 728 *Rōdō Hanrei Jihō* 12.

This opinion was published in Milhaupt, Ramseyer, and West’s (2006) *The Japanese legal system : cases, codes, and commentary*. Page numbers correspond with this volume.

Also see Parker, C. and Wolff, L. (2000). “Sexual Harassment and the Corporation in Australia and Japan: The Potential for Corporate Governance of Human Rights,” *Federal Law Review*, vol. 28, no. 3: p. 509-548.



awarded damages and attorney's fees on that issue as well. However, the court denied the motion that the individual defendant and company offer a public apology.

### *Prada (2012)*<sup>40</sup>

One case that grabbed the attention of the U.S. media was the “Prada” case, presumably due to the notoriety of the label. Rina Bovrisse, a Prada executive based in Tokyo, endured what her attorneys described as sexual harassment and power harassment over her appearance. It is important to note that, in the United States, this would be classified as gender stereotyping. Bovrisse was reprimanded, harassed, and ultimately fired because she was not deemed attractive. In particular, executives admonished her hair color and style, saying that she needed black hair because she is Japanese (a behavior that her legal team describes as racial discrimination). She was also frequently pressured to lose weight, and told that she would not be able to meet with Prada executives from Milan unless she lost weight. In contrast, men working for Prada were not required to have black hair or maintain a particular weight.

After she was fired, Bovrisse decided to file a lawsuit and went to the media. She recounted other women who worked at Prada who were harassed, including one woman who was stressed to the point that she lost her hair. The company also discriminated against “older” women—older, as in over 30 years old. According to Bovrisse, “They were normally demoted to and transferred to some countryside outlet from top No. 1 salesperson as manager, to entry-level salesperson at an outlet. They used to call outlets ‘garbage bins for old ladies’” (Eidelssohn,

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<sup>40</sup> Tokyo District Court #2013(WA)24879  
Tokyo High Court, # 2013(NE)6849, #2014(NE)1040  
Supreme Court appeals, 2018, No. 439 and No. 510

2013). Even Bovrisse's firing was convoluted, with her being fired and also told that she was not fired and so on.

Bovrisse ultimately lost her court case with the presiding female judge stating that it was standard for a high-label fashion brand to expect its female employees to look a certain way. Bovrisse was then countersued by Prada for nearly \$800,000 for defamation. Undeterred, the case went before the U.N. High Commissioner of Human Rights Committee on Economics and the then-U.S. Ambassador to Japan, Caroline Kennedy, was notified of the violation. On August 18, 2014, two appeals were filed with the Supreme Court of Japan, citing that the ruling was unconstitutional. At the time that this dissertation was submitted, the status of the case was unknown. Bovrisse now runs a preschool in Tokyo (I considered contacting her but did not think it would be appropriate to email her at her new business). She also considered running for governor of Tokyo, but the status of that intention is unknown at this time (Pesek, 2016).

### ***Osaka Aquarium (2015)***

The Osaka Aquarium case is unique for several reasons. In 2012, two male managers were suspended from the government-run Osaka Aquarium for sexually harassing behavior, which included lewd jokes and remarks. The men received suspensions for 10 days and 30 days, along with a demotion, over the verbal remarks. They subsequently filed a lawsuit in Osaka District Court claiming that the punishments were too severe. The case made its way to the Supreme Court, which deemed the punishments appropriate (*Japan Today*, 2015; Okunuki, 2015). The Supreme Court ruling was important for two primary reasons. First, in a country in which it is actually difficult to impose punishments upon employees, especially suspensions, demotions, and dismissals, employers do not actually owe offending employees warnings. Sec-

ondly, it established that verbal sexual harassment was indeed a punishable offense (Boggs, 2015).

## **A Note About Power Harassment**

This initial intent of this study was to only focus on sex discrimination in Japan, which includes wage, hiring/firing, and promotion discrimination; sexual harassment; and maternity harassment. However, during the course of the interviews with participants, a different type of harassment cropped up consistently: power harassment. This brief subsection will cover a quick summary of the definition, related media stories, and how the law treats power harassment.

These paragraphs are not exhaustive and only intended to provide cursory information so that the reader may better understand the study findings.

“Power harassment” is the term for workplace bullying or moral harassment (Yoshikawa, 2014). According to the Ministry of Health, Labour, and Welfare via Philip Hsiao (2015), power harassment behaviors include physical abuse, emotional abuse, social ostracization, excessive demands, demeaning demands, and intrusive interference (pp. 186-187). There are no specific laws or policies addressing power harassment; instead, parties bringing suit rely on tort law (Naito, n.d.; Hsiao, 2015; Yoshikawa, 2014).

Power harassment and the associated occurrences of *karoushi*, or death by overwork, are frequently found in the media lately. One of the more prominent cases is the Dentsu case, in which a young woman who was power harassed and overworked eventually killed herself. On Christmas Day of 2015, a Dentsu employee, Matsuri Takahashi, committed suicide and her death was determined as *karoushi* (Kikuchi, 2017). In one month, Takahashi worked over 100 hours of

overtime; at other points, she worked an additional 100 hours of overtime (*The Asahi Shimbun*, 2018). Dentsu as a corporation was subsequently prosecuted and ultimately paid a meager ¥500,000, or \$4000, fine for illegal overtime of four employees, including Takahashi (Kikuchi, 2017; Kyodo, 2017). Although the Dentsu president offered an apology, Takahashi's mother was dissatisfied and took further action to file an objection looking into why individuals were not prosecuted. The move was unusual, as the Labor Standards Law does not stipulate punishment for individuals, and such prosecutorial decisions are not challenged. Furthermore, the mother, Yukimi Takahashi, believed that the company did not honor an apology and agreement to implement preventative measures within the company to address harassment (Chiba, 2018). Yukimi Takahashi has also turned to political activism, openly criticizing Prime Minister Shinzo Abe's new legislative initiatives to address *karoushi* (Niekawa & Chiba, 2018).

It is worth noting, which will be demonstrated in the data analysis portion of this dissertation, that I typically would ask my participants what their impression would be of a woman who sued her employer over sex discrimination and if they could recall any cases in the media. I often did not receive detailed answers regarding prominent sex discrimination cases, although, if I brought up Shiori Ito, they might have recognized her. However, whether it was in an official interview, off-record, or an exchange with an acquaintance, the Dentsu case was often brought to my attention, thus underscoring a significant and unexpected finding in this research.

## **Section Summary**

In this section, I again discussed Japanese legal culture with more emphasis on informal dispute resolution, the role of apology, and administrative guidance. I then discussed key labor laws as they related to workplace sex discrimination in Japan, including provisions in the 1947

Labor Standards Act and 1986 Equal Employment Opportunity Law, as well as subsequent amendments. Then, I introduced the reader to key workplace sex discrimination cases in Japan. The purpose was to acquaint the reader with the laws and court cases that led up to the research questions presented in this study.

In the following “Methodology” chapter, I will discuss the methods and data collection techniques used while conducting field work in Tokyo and Kyoto, Japan, during January and February of 2018. In this chapter, I will also give an in-depth accounting about the data collection, including creative interviewing and empathetic interviewing. I conclude the chapter with a discussion of the data reduction and analysis.

## CHAPTER 4: METHODOLOGY

In this chapter, I will discuss the methods I used in this study and detail the fieldwork and data collection, interviewing techniques, limits and delimitations, data reduction, and data analysis. While this study is exploratory and qualitative, making the results difficult to generalize, my hope is to provide not only information on how I executed the study but also provide a blueprint or “recipe” for anyone wishing to duplicate or expand the study. First, I believe it is important to revisit the study intent and research questions.

This dissertation seeks to explore litigiousness as it relates to workplace sex discrimination and women in Japan. There are no studies available for English-speaking audiences about this topic, although there is a modest body of scholarship debating Japanese litigiousness in general. This study seeks to answer the following research questions:

**Q1: How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q2: Why do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q3: How do Japanese women perceive grievance options and law mobilization?**

**Q4: What barriers do Japanese women perceive to mobilizing the law?**

Litigiousness is described as a propensity or willingness to litigate, and measuring it is multi-dimensional and complex (Moog, 1993). General scholastic discourse about litigiousness examines it as a cultural phenomenon. In those instances, it is not uncommon for scholars to use

litigation rates as a determinant of litigiousness, even if it is not expressly conveyed in the study literature (Ginsburg & Hoetker, 2006; Yates, Tankersley, et. al., 2010). According to Deborah Hensler (1988), “Most researchers would agree that measuring litigiousness requires relating the number of claims or suits filed (or some other measure of litigation) to the number of opportunities for litigation that arise” (p. 56). However, she keenly notes, “By themselves, such data do not show much about the propensity to sue” (p. 56).

Tanase (1990) also acknowledges that litigation rates are the “most obvious measures of litigiousness” (p. 657), but he points out how relying on rates alone is faulty. Litigation rates do not measure a considerable amount of legal activity, as most cases never reach the courts. Individuals may also mobilize the law without resorting to the courts, such as through grievance procedures and mediation channels.

To reiterate, Moog (1993) in his study of Indian litigiousness describes it as “a propensity or willingness to litigate” (p. 1138). Haley (1978) argues that litigation rates are not synonymous with litigiousness or legal consciousness, or how individuals understand the law (*New Oxford Companion to Law*, 2008). However, as mentioned previously, litigation rates are not synonymous with litigiousness nor legal consciousness, two concepts that are linked (Haley, 1979). Attitudes have previously been used to measure non-litigiousness, the lack of propensity to sue, which was used in Kawashima’s (1963) controversial theory about Japanese non-litigiousness (Tanase, 1990). Miyazawa (1987) contends that more research should focus on studying legal culture than attitudes, articulating that culture is related to the aggregate while attitudes are related to individuals. Shinohara’s (2007) research focuses on women’s legal consciousness, but that does not necessarily indicate a woman’s intent to mobilize the law.

In order to answer **how** and **why** women decide to mobilize the law, we must understand the decision-making processes women must consider. Litigation rates may explain legal behavior and one way the law is mobilized en masse, but litigation rates do not explain attitudes and decision-making processes. Litigation rates, especially with the understanding that “women are reluctant to litigate,” also do not adequately capture any activity that falls short of a lawsuit in which the law is mobilized or the reasons law mobilization is absent. Finally, litigation rates do not capture the movement from legal consciousness through law mobilization. Thus, conducting qualitative interviews with Japanese professional women, while not generalizable, is appropriate for exploratory research attempting to explain why and how women decide to mobilize the law and their levels of litigiousness. In other words, litigiousness in this study will focus on law mobilization rather than rates of litigation and on individual decision-making processes and attitudes rather than aggregate cultural behavior. Sex discrimination in this study will constitute as wage discrimination; discrimination in hiring, firing, retiring, and promotion; sexual harassment (*sekuhara*); and maternity harassment (*matahara*). With these factors in mind, this dissertation seeks to discover what attitudes Japanese women hold toward workplace gender discrimination mediation and litigation and how they approach their decision-making processes.

Given the limited amount of literature available on the topic of litigiousness and workplace sex discrimination in Japan, this dissertation will be a qualitative study. Qualitative research is ideal for studies and projects that explore social problems and the meanings ascribed to them (Cresswell, 2009, p. 4). Qualitative research is best to “uncover and understand what lies behind any phenomenon about which little is yet known” and “can give intricate details of phenomena that are difficult to convey with quantitative methods” (Strauss & Corbin, 1990). Ac-



According to Frankfort-Nachmias and Nachmias (2008), “Scientists must gain an empathetic understanding of societal phenomena, and they must recognize both the historical dimension of human behavior and the subjective aspects of the human experience” (p. 256). They further contend, “Qualitative researchers attempt to understand behavior and institutions by getting to know the persons involved and their values, rituals, symbols, beliefs, and emotions” (p. 257). Qualitative research data collection is flexible and adaptable for complex data (Ormston, Spencer, Barnard, & Snape, 2014).

Strauss and Corbin (1990) indicate three major components of qualitative research: data (typically interview or observational data), interpretive procedures (how the data is conceptualized), and reporting (either verbal or written) (p. 20). “Qualitative” refers to the type of research design that is buttressed with the philosophical worldview, strategy of inquiry, and methodology (Cresswell, 2009). This dissertation falls under social constructivist worldview. That is, the researcher’s role is to interpret meanings ascribed to a phenomenon by the subject(s) and determine a pattern of meaning or theory (Cresswell, 2009, p. 8).

## **Methods**

### **The Road to Cross-National Research is Paved with Good Intentions**

Typically, the methodology section includes what the researcher *does*, not what the researcher *intended to do*. The purpose is to provide a simple yet detailed enough account, or a “recipe” as it has been described, so the study can be replicated. However, I decided to open the crux of my methodology chapter with my good intentions because the road to cross-national research is paved with them. Plenty of researchers have conducted their data collection in Japan,

yet there are few frank and candid accounts about that experience beyond the proscribed elements of a methodology chapter or section. When we write, we write for the reader, and in research, the reader could be that person who wants to replicate the study or learn the “recipe” for their own. It would be acceptable to simply write what I did, but I want to go further and tell the reader *how I got there*. This in and of itself is a contribution to the literature, as it provides insights on how to better design a cross-national research study. I think this is especially important for a researcher who conducts research on a limited budget and/or with limited time or perhaps becomes stuck in a phase of their data collection.

Ideally, a study requiring international fieldwork and data collection is conducted over an extended period of time. This gives the researcher time to become acclimated to and ingratiate themselves into the field. During this time, the researcher has an opportunity to forge relationships with academic host institutions, cultivate relationships with key informants, and pursue additional language study. Relationships and proper introductions are essential in Japanese etiquette, especially as it relates to business and research (Culter, 2003; Bestor, Steinhoff, and Bestor, 2003). Universities, businesses, and individuals tend to avoid or ignore cold contact methods, such as sending email introductions or telephone contact, without the proper introduction through a third-party intermediary.

However, while extended time in the field is optimal, my study was self-funded, and this limited the length of time feasible for me to stay in Japan to execute the research. Over the course of my doctoral coursework and dissertation writing activities, I have applied for several funding opportunities. As one can imagine, these opportunities, including the Fulbright U.S. Student Program, are highly competitive, and rather than delaying data collection activities even

further, I eventually made the decision to use my own funds to embark upon my field research. With the decision to proceed as a self-funded researcher with no formal ties to a university in Japan, it was essential that data collection activities be well-planned in advance before arriving in the country. With time and budgetary considerations in mind, in addition to the importance of establishing the necessary relationships for contacts and introductions, pre-planning activities took nearly 18 months prior to departure.

Although the pre-planning activities led to a number of dead ends or leads that would go cold, eventually I was led to a professional contact in the Washington D.C. metropolitan area who was able to help me gain traction. We first met in Northern Virginia during July 2017. This individual was a consultant who provided translation services to corporate and governmental clients. We quickly discerned that her typical rate might be untenable for a self-funded doctoral candidate. Nonetheless, we discussed the possibility of her serving as a consultant *a la* research assistant on the study, even with her potentially accompanying me to Japan. This individual also translated my initial interview protocol. We met twice to discuss the study, and her role remained open-ended depending on the timing of my departure.

Initially, I planned to leave for Japan in August 2017 for approximately three weeks. However, the consultant advised against this time period due to *Obon* (Festival of the Dead, which occurs in August). I also still needed to receive Institutional Review Board (IRB) approval for the study, so I decided to wait until after the Christmas and New Year holidays, important both in the United States and Japan, to commence field research activities.

During the autumn semester, the Washington D.C.-based consultant indicated that she was no longer available to provide her expertise and services. She referred me to an acquaint-

tance of hers in Japan who was qualified as an interpreter and similarly situated professionally. This individual initially agreed to participate, but as the time drew closer to depart, she notified me that, while she still planned to participate with the study, she also accepted a full-time position in customer service and that the research activities would need to be scheduled around her work hours. However, she still seemed eager to provide services, and her schedule seemed conducive to interviewing working women, many of whom would be available in the evenings and on weekends.

I departed for Japan on January 10th, 2018, with a return ticket booked for February 5th, 2018. My research assistant/consultant agreed to complete CITI Training per IRB requirements, recruit 12 professional Japanese women (initially seven to eight women who would provide further contacts *a la* snowball sampling), and interpret those interviews that were conducted in Japanese.

I arrived in Tokyo on January 11th, 2018, and was scheduled to stay in a business hotel for the duration of my three-week stay. I was initially scheduled to meet with the research assistant, considered an “independent investigator” by IRB, on Saturday, January 13th, 2018. However, the flu season was particularly widespread and brutal in Tokyo at that time, and the research assistant took ill, rescheduling the meeting for Monday, January 15th, 2018. Each day in the field was valuable, particularly given the limited duration of the stay, but I took this as an opportunity to reacquaint myself with Tokyo and get settled in. We first met in Shibuya that Monday evening to discuss in person the research study activities, rates and fees, and go over any other details related to the study.

Between the first meeting that Monday and the subsequent meeting on Wednesday, January 17th, 2018, I began to have concerns about the role of the research assistant. First, she suggested that the interviews be conducted in the restaurant at which we first met. The setting was unsuitable for a recorded interview session, as it was particularly loud and busy. She also notified me at that time that I should compensate the research participants, which I was unprepared to do and had not written into my research plan. At first, she suggested ¥1000 (approximately \$10.00) for transportation costs, but then she altered the amount to ¥2000 and then ¥3000. Her rationale was that national survey respondents typically receive about ¥2000. While compensating study participants for their time or transportation is not uncommon, this was a new development that I would have expected her advice on prior to arriving in Japan. I sensed that, if I did not accommodate her recommendation, I might encounter resistance to study enrollment as her proposed contacts (and potential participants) were personal acquaintances. I acquiesced and submitted an urgent IRB amendment for approval. Finally, during these meetings, she expressed interest in sharing the protocol instrument with potential participants. Although I would later learn that this is not uncommon in Japanese field research, I advised her against this indicating that the interview protocol was meant to serve as a guide. Based on our conversation at the first meeting, I sensed that there was some sort of impediment to recruitment, but I was unable to discern the precise reason for my hunch. The research assistant assured me that she had about seven or eight women who were interested in being interviewed.

However, by our next meeting, it was clear that she was encountering difficulty recruiting participants. The exact issue was still difficult to pinpoint, but she indicated that many of them were “busy” and the subject and questions were “difficult.” She still wanted to disseminate the

interview protocol questions. I advised her strongly not to do this because doing so could bias initial responses to the questions, and some questions on the protocol may not even be asked depending on participant's responses. I coached her on what to say to potential participants to give them insight into the types of questions that would be asked without giving out the protocol in advance, which could bias their responses to in-person questions. We also attempted to work on the required CITI Training together; however, before we started in kind, she expressed interest in completing the training at home. I again advised her that per my university's policies, she needed to complete the training prior to research activities, specifically the first interview.

In the ensuing days, the research assistant did not complete the CITI Training as advised and meetings with potential participants were cancelled. The reasons for the cancellations were always some sort of variation between feeling sick, cold or snowy weather, or changing schedules. I started to sense a negative pattern emerging and ramped up my recruitment efforts independently. By January 23rd, 2018, I received an email from the research assistant who stated:

I tried to have an interview with in total 20 people, but only a few said yes. Today and tomorrow are busy for me as well as my potential interviewees. It is because of the bad weather and schedule. I am sorry that I am not so helpful to your research. I wanted to introduce you to my friends, but failed so much.

With my departure looming, I decided to extend my stay and consulted with my chair to determine an alternative course of action. Prior to the January 23rd, 2018, email from the research assistant, I had already started pursuing additional contacts on my own, including a contact at Doshisha University and a contact via a U.S. university president with whom I am personally acquainted. In addition to this, I also emailed a contact at Robert Morris University and also

cold-contacted a professor, Dr. Akiko Yoshida, at the University of Wisconsin. Dr. Yoshida's doctoral dissertation was similarly designed to mine, studying unmarried women in Japan (which, like workplace discrimination, is a taboo subject). I also re-initiated contact with Tokyo General Union ("Tozen") and was scheduled to attend a meeting on January 21st, 2018, to meet Professor Hifumi Okunuki.

On Friday, January 19th, 2018, I met with Torkel Patterson, former Special Assistant on Asia to the U.S. President (George H. W. Bush, Bill Clinton, and George W. Bush). Mr. Patterson, a U.S. Naval Academy graduate, served as a Member of the Board for the Japan Rail Central and was a former Olmsted Foundation Scholar. Over lunch, we discussed his career, and he offered to help me find several contacts. He also provided feedback about my questions and consent form, which he described as "too legalistic" for the Japanese. He also indicated that perhaps my direct approach to asking about "sexual harassment" and "sex discrimination" may be too off-putting for some potential participants. After this meeting, I immediately consulted with my dissertation chair to reconfigure my research approach, interview protocol, and consent document.

I noted in Dr. Yoshida's study about unmarried women in Japan that she did not immediately delve into her topic. Instead, she approached the interview like a conversation, generically discussing issues related to marriage in Japan before revealing at the end of the interview the intent of her study. She found that, by approaching the topic "crablike" (author's words) that her participants wanted to open up more. I sensed that VCU IRB would not be amenable to this approach given my extensive interactions with them, so I wanted to attempt an approach that would

embody Dr. Yoshida's successful approach while honoring the advice of my university's Institutional Review Board.

I recalled Dr. Phoebe Morgan's dissertation and our conversation about her dissertation research. Dr. Morgan opened her interviews with one question<sup>41</sup>: Tell me your story. She then listened to the participant tell her story. I would be unable to follow this approach purely as her participants had actually filed a lawsuit and my participants may or may not have mobilized the law (or experienced sex discrimination at all).

However, in considering Dr. Yoshida and Dr. Morgan's respective approaches to their research, I also reviewed an article by Dr. Levi McClaughlin (2010). I refashioned my recruitment strategy, interview protocol, and consent document with these considerations in mind. The interview would start with one question: **Tell me what it is like to be a working woman in Japan.** As interviews progressed, there were some variations of this, sometimes starting with the participant telling me about her job instead. Nonetheless, the interviews were all started with the participant telling me about her position and how she related to work as a woman in Japan. The interview question avoided directly asking the participant about sex discrimination or sexual harassment until it seemed appropriate and/or the participant brought it up on her own. Many times, she brought it up on her own, focusing on one particular type of discrimination.

In terms of recruiting, my informants would simply tell their acquaintances that there was a researcher who wanted to learn about working women in Japan. Recruitment came in several forms, which included an informant reaching out to contacts and providing me with a list of po-

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<sup>41</sup> This is not technically a question but I refer to it as one as it is an invitation for the respondent to tell her story.



tential participants and their contact information, actual in-person introductions, and individuals reaching out to me with information disseminated by informants on social media (chiefly, Facebook).

Regarding the consent document, I consulted with VCU IRB with a proposed, abbreviated document. This was consistent with ethics advice and caution found in Kirsten Martinus's and David Hedgcock's (2014) article. According to Martinus and Hedgcock, "Indeed, the consent forms appeared to stand in conflict with an underlying implicit Japanese cultural philosophy of a binding code of conduct and trust" (p. 379). Initially, VCU IRB was hesitant to approve this shortened document. However, they suggested changes to satisfy their concerns, and the new consent document was implemented.

In sum, by the time research activities concluded on February 26, 2018, I had interviewed a total of 26 women, conducted several informational interviews, attended four labor commission hearings and two court hearings, and participated as an observer at one labor protest. My interviewees came from diverse backgrounds, including university professors, television reporters, salaried corporate employees, entrepreneurs, teachers, writers, and several members of an expat community. Several participants were engaged or had been engaged in labor disputes and two were litigants in ongoing lawsuits. Although the study was headed off by two failed starts, the final results were more than I could have hoped for.

## **Bounding the Study**

### **Setting**

This study examines a contemporary phenomenon, sex discrimination and litigation, in Japan. The semi-structured interviews were conducted in Japan during January and February of 2018, primarily in Tokyo and a rural community near Kyoto (referred to as “Kyoto” throughout the rest of the manuscript). Given the limited amount of time during which I was staying in Japan, videoconferencing and telephonic conferencing was also an option. However, even in this virtual setting, the potential participant herself was still located in Japan. This option was never utilized but mentioned, as it was an approved and available option.

Qualitative research is optimally done in the “natural world.” In fact, according to Gretchen B. Rossman and Sharon F. Rallis (1998), “...qualitative researchers work in the field, face-to-face with real people. They try to understand how people make sense of their worlds through multiple methods that are interactive and humanistic...” (p. 8). Field research provides a researcher (or researchers) insights into the daily lives and perspectives of their participants (Bailey, 2007, p. 2). While Bailey classifies field research as longitudinal research design, to the contrary, my study falls under cross-sectional design. I typically met participants only once with the exception of A-san, whose extended interview about her court case required an additional formal interview session and with whom I also met for three other social and observational activities. We still remain in contact via email; she sends me updates on her case and news about culture and work in Japan, and we met informally during a follow-up visit to Japan during the summer of 2018. Nonetheless, even with this exception, data was only collected at one point in time with no further study of phenomena over a course of time.

Bailey refers to field research as “naturalistic inquiry” because the participants are observed or interviewed in their natural setting in accordance with their daily routines. She states, “Data collected in this way provide a more holistic picture of people and their lives than what could be obtained from asking them to participate in an experiment or complete a survey about everyday events” (p. 2). Indeed, while a survey could have been administered either digitally, on paper, or orally, it simply would not have captured the nuanced responses given by the participants, which leads to what Bailey says: “field researchers derive understanding from the larger, complicated, multifaceted, social and historical contexts within which people’s lives unfold” (p. 3).

By entering the field, the researcher ingratiate themselves in it, becoming a part of it, which contributes to their understanding of the phenomena they are studying (Bailey, 2007, p. 3). Three questions must then be addressed by the researcher regarding culture, the relationship between the researcher and subject, and comparison (Stephens, 2009, p. 25). In his discussion about culture, David Stephens (2009) defines it as “...both what people think and do and how we describe and evaluate those beliefs and actions” (p. 27).

Geography presented some challenges mostly due to the unsuccessful recruitment strategy of employing a research assistant. Initially, the participants were to meet with me at a restaurant or cafe in Shibuya per consensus with the research assistant who was tasked with recruitment and scheduling. However, when the research assistant was unable to facilitate with recruitment, I took charge of recruitment and reached out to a variety of sources. Given the time limitations and urgency, my recruitment approach was to meet the participant at any location they preferred. Most of my participants lived in Tokyo or a surrounding area (such as Saitama).

The end result was that interviews were conducted in Tokyo and Kyoto during January and February of 2018. The precise interview location was at the discretion of the participant, but the interviews typically took place in cafes, restaurants, or their place of employment (personal office, conference room, or cafeteria).

## **Participants**

The target population was Japanese professional women who fit the following criteria. Participants were recruited via snowball sampling. The recruitment criteria were as follows:

- Japanese women (including transgender women)
- Preferably a working professional
- A baccalaureate degree holder
- Between the ages of 25 to 55
- Citizen

However, I took some discretions as necessary, particularly when there was difficulty recruiting participants to the study. For instance, two participants do not hold college degrees. However, their experiences were unique and added value to the study. Practically speaking, one of those women was my first interview participant, and I honestly did not want to turn anyone down at that point. Some participants challenged the recruitment criteria. I decided to keep an interview with Keiko in the data analysis. Keiko is a transgender Japanese woman. She teaches at a secondary school near Tokyo. However, Keiko was born a white male in the United States. At the time of our interview, her citizenship was being processed and at the submission of this study, she should be a Japanese citizen. She took a Japanese name, which is a citizenship re-

quirement, and also graduated from a Japanese junior high recently. To someone outside of Japan, that seems odd, particularly given that Keiko holds a master's degree and is well into her 30s. But in terms of becoming a Japanese citizen, it is a remarkable milestone. I included Keiko because this begs the question of what does it mean precisely to be a Japanese woman? Keiko is a Japanese woman. Other participants spent the better part of their childhoods in the United State or the United Kingdom while others were multiracial, yet they all identified as Japanese.

I was also flexible with the work status, as there are many work situations in Japan (full-time, part-time, contract, temporary, freelance, self-employed, etc.), and some women may in fact be unemployed but have significant contributions for the study. For instance, there could very well have been a situation in which a woman had encountered workplace sex discrimination and that may be the reason for her unemployment. However, my intention was to interview professional women with at least a baccalaureate degree. It was my assessment that this type of population would be the easiest to reach based on my contacts and possibly mitigate any language or cultural barriers.

As the research assistant proved to be unreliable, I set out on my own to recruit participants. To locate participants, I relied on the following strategies, individuals, and parties for assistance:

- Re-establishing contacts I made prior to departing for Japan. This included:
  - Tokyo General Union (Tozen) via Professor Hifumi Okunuki
  - A contact at Doshisha University in Kyoto (I circumvented my third-party contact and directly reached out to him)
  - Academic contacts in Japan including previously contacted

- Academic contacts in Japan cold-contacted
- Academic contacts within the United States
- Professional contacts within the United States
- Showing up at a university gender equality office

In observance of the popular advice in methodology literature about data collection in Japan (Martinus & Hedgcock, 2014; Bestor, Steinhoff, and Bestor, 2003; McLaughlan, 2010), I do not recommend cold-contacting individuals in Japan. However, this method did yield some successful results. The strategies in which I successfully recruited participants:

- Tokyo General Union (Tozen) via Professor Hifumi Okunuki and Louis Carlet
- A contact at Doshisha University
- Academic contacts within the United State
- Professional contacts within the United States
- The research assistant (two individuals)

Introductions and/or meetings with participants occurred in the following ways:

- A key informant arranged for an in-person meeting.
- A key informant gathered permission and email information from their contacts and passed on that information to me. I then emailed those individuals explaining the study and inviting them to participate.
- A key informant expressed interest in my study and posted my contact information on social media. Then, interested potential participants directly emailed me.

- A previous participant posted my contact information on social media or possibly mentioned my study via word-of-mouth.
- The research assistant recruited and scheduled an individual.

These methods constitute a snowball sampling. In snowball sampling, researchers use research participants and key informants to assist them with identifying and recruiting other study participants (Boise State IRB, n.d.; Oregon State IRB, 2012). The advantage to this method is that it gives the researcher access to a population that may be difficult to identify or penetrate. The disadvantage to the snowball sampling technique is that the participants may not be representative of the larger population. Snowball sampling is appropriate in this instance due to the geographic, cultural, and linguistic barriers.

### **Research Instrument: The Semi-Structured Interview**

To learn more about how and why Japanese women mobilized the law when they believed they encountered workplace sex discrimination, I conducted semi-structured interviews in person. Participants also had the option to participate via videoconferencing. Prior to each interview, I would establish the preferred location and time with the participant, generally via email. If I was directly recruiting a prospective Japanese participant on my own, I would write a message introducing myself and the study in Japanese and English, as to allay any discrepancies in my Japanese communication. I asked the participant if she wished to conduct the interview in Japanese or English. I would also ask if she wished for an interpreter to be present. In some interviews, we communicated bilingually and/or the participant could understand the questions in

English but felt more comfortable replying in Japanese, as they were able to provide more detailed and nuanced responses.

At the interview site, I would greet the participant and briefly introduce myself. In many instances, this was already done via email or in person. If an interpreter was present, she would also introduce herself and explain her role. While I set up my recorders, I would give the participant the consent document. I explained that this document provided information about the study and their rights as a participant. I would then ask, “Do you agree to participate?” and they would say “yes,” which would be notated in my interview notes.

Also provided with the consent document was a basic demographic survey that I asked the participant to fill out. Occasionally, I orally recorded the responses in my interview notes. One participant did not fill out the demographic survey. She did not provide an explanation, but due to her occupation as a renowned television commentator, I did not inquire further.

I would then briefly explain the study again and clearly state that their participation was voluntary, they could withdraw at any time (even after the interview concluded), and they could also refuse any question. I asked if they had any further questions or concerns. I then asked for permission to audio-record. Typically, I ran two digital audio-recorders simultaneously to capture the interviews. The primary reason was in the event that one recorder failed. Another benefit to running two recorders at once was audio quality. At some interviews, there was quite a bit of background noise or the participant or interpreter spoke softly. I would then rearrange the recorder position closer to the individual who was speaking.

In general, I started the interviews with one question: “Tell me what it is like to be a working woman in Japan.” I then would ask her to tell me more about herself including her edu-



cational background and career, particularly her current position. In later interviews, I sometimes would begin a little softer by asking the participant to tell me about herself and her job first then ask, **“Tell me what it is like to be a working woman in Japan.”**

By opening the interview in this manner, it gave the participant a casual opening to discuss her experiences and what was on her mind in an “off the cuff” way. This approach also toned down the researcher’s assumptions, which is apparent in the abandoned interview protocol, about the participant’s knowledge on the topic. In some instances, the participant was quite knowledgeable about their legal consciousness, sex discrimination, and the law, particularly those participants who had engaged in a grievance process or litigation. In other instances, participants demonstrated only a vague awareness about the laws, legal process, or current events about the topic. I raise this as an example to demonstrate that, by stepping back as a researcher and letting the participant initially lead the discussion with a broad question, they revealed themselves and patterns emerged on their own.

Based on the participant’s responses, I would follow with appropriate prompts or probes. Often times, participants would immediately start talking about working conditions or a type of sex discrimination or general harassment that was on their minds. For instance, she may start talking relatively quickly about maternity harassment. Occasionally, a participant may need gentle probing, such as, “Are men and women treated differently in the workplace? Okay. Tell me about that.”

Rather than directly ask about discrimination or harassment, based on their discussion about men and women being treated differently in the workplace, I might then probe by saying, “In the United States, when men and women are treated differently in the workplace, we could

call that gender or sex discrimination. Is there something like that in Japan?” In some interviews, we had already started a discussion along those lines or it was clear that we had a mutual understanding about sex discrimination or harassment, so we could immediately and directly start down that line of questioning.

As the participant opened up more, I would begin probing whether or not she had ever been treated differently in the workplace based on her gender. In almost all instances, the answer was “yes,” and I would follow-up by asking her to tell me more about that experience or experiences. I could then delve into her decision-making processes and legal consciousness from that point. Sometimes I might ask, “So if I encountered this, what could I do?” Other times, I might try to compare my legal knowledge about the United States to what the participant was telling me. For instance, I might start by saying, “In the United States, if I encountered [X], I know I could go to my supervisor or human resources. I could file a complaint. In some instances, I could even file a lawsuit against my employer. Do Japanese women do that?” At other times, I would reveal my knowledge about the topic but asked for their opinion so I could learn. For instance, I would say, “Based on the literature I’ve read in the United States, it says that Japanese women are reluctant to litigate. Is that true?” In general, with the exception of one respondent, almost all said “yes” to which I would reply, “Why?” I couched questions this way to 1) mitigate language barriers and legal conceptualization and 2) balance the power differential between the researcher and the participant.

I advised participants in advance that the interview would last about an hour or longer if they wanted to talk more. Most interviews lasted longer than an hour. The hour timeframe informed the participant of the potential length of time and gave them the agency to end the inter-

view when they found it appropriate for them. However, again, in most instances, the interviews lasted longer than an hour. Interviews tended to end 1) naturally in that the protocol had been exhausted and there were no further topics to cover, 2) either the participant or the researcher had a time constraint, or 3) the researcher ended the interview when conversation started to veer off topic after the protocol was exhausted. To end the interview, I might say, “Okay, thank you for your time and responses. I’m going to go ahead and stop recording now.” This allowed for a natural conversation to continue without capturing it on the recording. In one case—the participant involved in the sexual harassment lawsuit—we did meet an additional time to continue an extended interview. We spoke for approximately 90 minutes the first time and about an hour the second time. At the second session, I made the decision to stop recording, as she had indicated that she had another commitment prior to the resumption of the interview. However, in our cordial closing conversation, she started to speak about her case and the topic again, so I resumed recording. Of course, part of the conversation is missing, but I felt it was important to capture where the conversation was heading.

It is important to note that this approach was significantly modified from my original plan. Initially, I had developed a tightly crafted interview instrument to address the four research questions in a very regimented fashion. While the interview instrument was semi-structured and inherently open-ended, I envisioned its administration in a highly technical and precise way. However, in the process of quickly determining what was not working with participant recruitment, I learned that not only was some of the terminology too technical and intimidating, but that my line of questioning was too direct. Even though discussions about sex discrimination had become more prevalent in Japan, the topic was still taboo for conventional conversations. Prior

to my departure, when I discussed my research in casual conversations with Japanese women living in the United States, my pitch was generally viewed favorably, and I was frequently advised that I had selected a timely and relevant topic that warranted examination. However, in one interaction with a Japanese female professional who worked in a neighboring university, I was mistakenly advised that all “gender discrimination” or “sex discrimination” was called *sekuhara* (sexual harassment). Thus, when I crafted my interview instrument, consent document, and other materials, I simply lumped “sex discrimination” in as *sekuhara*. As I would come to realize in the field, there was a very pointed difference not only between sex discrimination and sexual harassment but other types of discrimination as well, and this inaccuracy was making recruitment more difficult. Furthermore, I received feedback that my consent document was too “legalistic”—a point that I spent a significant amount of time negotiating with IRB based on my understanding of Japanese research ethics (which is detailed above).

As previously mentioned, after consulting with my dissertation chair, we agreed that a new approach should be undertaken. The consent document was shortened; while it still captured the essential elements of consent required by my university, it was abbreviated and in more simplistic and inviting language to lessen any confusion or concern. But the major shift was transitioning the interview protocol and administration to an approach that was more ethnographic in nature.

### **Creative Interviewing: Ethnographic and Empathetic Interviewing**

In response to the initial unsuccessful attempt to recruit participants to the study, I decided that a different approach, not only to recruitment activities but the interview itself, would be

necessary to execute the study. My educational experiences and professional training were grounded in social science techniques. In addition to this, I received instruction in documentary making strategies with particular emphasis on oral history. Thus, my general orientation was to remain strictly neutral, like a camera lens, when interviewing subjects. I found that my quiet, direct approach was generally favorable for recruiting participants to a study, making them feel comfortable enough to speak with me about their experiences, and collecting relatively clean data. However, this approach was also too direct, legalistic, and “surgical” when attempting to do cross-national field research on a sensitive topic. Thus, I needed to develop an alternative method.

Jack D. Douglas (1985) encourages researchers to resort to “creative interviewing” when unanticipated issues crop up in qualitative studies. In the chapter entitled, “Don’t Use Steamrollers to Catch Butterflies: Or, Fit Your Methods to Your Goals and Your Situation,” he states, “Creative interviewing, as we shall see throughout, involves the use of many strategies and tactics of interaction, largely based on an understanding of friendly feelings and intimacy, to optimize cooperative, mutual disclosure and a creative search for mutual understanding” (p. 25). Given the difficulties I was encountering, I decided to alter my approach after a discussion and recommendation from my dissertation chair. I decided to use a more ethnographic approach to the interview.

While qualitative research may indeed be ethnographic, it may also be grounded in many other methodological disciplines. Ethnography is distinguished by its focus on the “lived experience” in context. The approach encapsulates response and meaning, as well as contextual elements including biography (Warren, 2002, p. 85) and the “every day location” of the participants

(Stephens, 2009, p. 50). Informants are generally chosen for their proximity to the setting and access to information (p. 88). Stephens states that the following attributes constitute ethnographic research: 1) a natural versus experimental design; 2) various data collection strategies including informal conversation; 3) unstructured data collection; 4) small-scale setting; and 5) analysis focuses on interpreting data (pp. 50-51). Stephens stresses the “total research orientation” of ethnographic research and states, “It is the essential anthropological concern for cultural context that distinguishes this ethnographic orientation from other strategies, though ethnography shares many of the characteristics of the case study with its concern for ‘bounded meanings’ and exploration in depth” (p 51). Furthermore, ethnographic interviewing allows the informant to share what they consider to be important with the researcher rather than the researcher imposing what they believe is important (Leech, Baumgartner, Berry, Hojnacki, & Kimball, 2013).

So, rather than saying I wanted to interview Japanese women about *sekuhara* or sex discrimination, I instead said that I wanted to learn more about working women in Japan and gender issues in the workplace. A delicate balance had to be struck between transparency and the indirectness necessary to access the participation. Admittedly, I was concerned that by starting the interview with “tell me what it is like to be a working woman in Japan” would not exactly lead me to the answers I thought I was seeking. However, to my surprise (relief and delight), the participants immediately opened up, and sometimes immediately discussed their experiences without prompting. As the interviews progressed, I felt more and more comfortable with the conversational approach. In sum, by taking a more discreet approach, which was no less transparent, the participants were more willing to engage and shared richer experiences, thoughts, and opinions with me.

But the ethnographic approach itself does not naturally invite more intimacy and trust. With particular regard to interviewing, the techniques and skills of the interviewer are critically important. Douglas (1983) expresses disdain for a purely scientific approach with interview subjects, as it is not only impersonal but will likely stymie intimacy and information sharing. He states:

The creative interviewer, sensing something a touch inhuman in all of that mechanism, and suspecting himself of being humanely impure anyway, does the opposite. He is drawn irresistibly toward creating bonds of intimacy with his real individuals, up to a point beyond which yawn the abysses of absurdity and dishonesty. He does everything he can to build this constrained intimacy as quickly as he possibly can.... (p. 94)

Part of this method is done by “exuding warmth” (p. 105), or in other words, employing empathy.

According to Andrea Fontana and Anastasia H. Prokos (2007), empathetic interviewing is a postmodern interviewing technique that approaches the interview as a collaborative process. Although Douglas’ creative interviewing provides a basis for empathetic interviewing, Fontana and Prokos criticize his as a technique and tool to acquire more information from subjects. On the other hand, Fontana and Prokos argue that:

The new empathetic approaches take an ethical stance in favor of the individual or group being studied. The interviewer becomes an advocate and partner in the study, hoping to be able to use the results to advocate social policies and ameliorate the conditions of the interviewee. The preference is to study oppressed and underdeveloped groups. (p. 90)

They further contend that “Researchers have strongly emphasized the removal of barriers between the interviewer and the interviewee in the process of interviewing women. Many female researchers advocate a partnership between the researcher and respondents, who should work

together to create a narrative—the interview—that could be beneficial to the group studied” (p. 92).

As a technique, I found empathetic interviewing to be successful. I found that the participants wanted to share more information, opinions, and experiences with me than the initial reluctance I encountered in the recruitment activities. After the interviews, though, I was plagued with self-doubt. I questioned whether or not I had overstepped some invisible boundary between the “researcher” and “subject” and thus compromised the study’s objectivity. However, unlike Fontana’s and Prokos’ criticism of using empathetic interviewing as a tool to pry for more information, I did care about the participants and felt a responsibility for their stories. In some instances, the empathetic technique was used to mirror what the participant was sharing. For instance, with two of the litigating participants, they would commonly say things to me like, “Can you believe that?!” or “It was crazy!” To sit there completely emotionless or to simply continue to probe with a bland “tell me more” would have been utterly inappropriate and chilling. I interpreted those expressions as an invitation into their story and experience. In many instances, I was actually surprised, excited, dismayed, or upset with what was being shared with me. By reacting in an appropriate, conversational way, I also established trust with my participants, giving them an assurance of sorts. It was also important to be empathetic given the sensitive nature of their stories.

With empathetic interviewing, I also engaged in reflexivity with the participants as part of the collaborative process. Ellis and Berger (2002) urge researchers to view interviews as a collaborative process and in doing so make the interview interactive, an exchange between the researcher and participant. They state, “As a result, interactive interviewers explore sensitive



topics that are intimate, may be personally discrediting, and normally are shrouded in secrecy” (p. 852). While many interviews included stories about harassment and discrimination, some cases were more intense than others, creating an emotional experience for the participant. As part of the interactive interview process, I would sometimes share my own experiences and emotions. For instance, one participant shared with me the awful treatment she endured while working at a “black company.” She would go into the narrative describing the horrifying conditions under which she worked, but would then emotionally “resurface” in the present, minimizing the intensity of what she described by focusing on her current situation or, in some instances, taking the blame for her previous situation. I shared with her an experience I had with workplace sexual harassment and the emotions I felt during that period of discrimination, which included shame, humiliation, and secrecy. I was also able to talk about the law with her, as she seemed unaware that the behaviors she had encountered were legally prohibited in the workplace. As we departed from the interview, she asked to hug me and expressed appreciation for being able to share her experiences. The sexual harassment litigant also shared many personal details with me, and, in her case, this disclosure was risky. Her identity in the media is still concealed and anonymous even though her story is in the press. I felt intense emotions over the sheer injustice of her account. She often spoke of her anger, which had transformed from fear, and these emotions resonated deeply with me due to my own experiences. I was able to share these experiences with her as a way to connect. As Ellis and Berger state:

In this case, the researcher’s disclosures are more than tactics to encourage the respondent to open up; rather, the researcher often feels a reciprocal desire to disclose, given the intimacy of the details being shared by the interviewee. The interview is conducted more as a conversation between two equals than as a distinctly hierarchical, question-and-an-

swer exchange, and the interview tries to tune into other interactively produced meanings and emotional dynamics with the interview instead. (p. 854)

In this instance, I became acquainted with this particular interviewee and, as I mentioned previously, we still remain in touch. While in the field, this became a “friendship as methods” of sorts (Tillmann, 2015), with the participant inviting me to her court hearing, a protest, and even lunch with her acquaintances, with me introducing her to University of Tokyo professor and now mayoral-candidate Dr. Ayumu Yasutomi. This empathetic interviewing process also impacted the emotions of the researcher, which is not uncommon during these types of interviews (Johnson, 2009), as emotional reactions are a type of reflexivity. Indeed, the depth and nature of these stories brought to mind how they would be analyzed, formed, and disseminated (Kiesinger, 1998). Particularly in the case of A-san, the sexual harassment litigant, I felt a strong sense of responsibility in handling her story and data.

At times, the burden of framing the story and delivering it to audiences has felt daunting. I often felt frustrated, which led to abbreviated interruptions in my writing progress. One weekend, I decided to attend the keynote address at the Pennsylvania Writer’s Conference at Wilkes University. The conference itself was intended for writers of various genres, including fiction, poetry, playwriting, screenwriting, and creative nonfiction, to commence for a weekend and attend workshop sessions with established authors, so I was not exactly their target audience. However, Andre Dubus III was the scheduled keynote speaker, and I am a fan of his work; so I attended just his speaking engagement on the last evening of the conference. I also thought that, perhaps, being in the presence of writers and listening to such a prominent author discuss his process may give me insights into my own writing practices.

To my delight, Andre Dubus III was joined by Jacquelyn Mitchard, whose flight-delay that morning brought her to the keynote address to deliver her talk. After both authors spoke and read, they engaged in a discussion that included a question and answer session. I spent so long crafting my question that I missed my opportunity to ask it before the session ended. However, I bought several copies of their books and joined the line for a book signing, prepared to address them when I approached the table. I patiently waited toward the end of the line.

During his conversation with the audience, the affable and approachable Dubus asked the audience, “Who do we write for?” Some members of the audience gave the prescribed “the reader” response that all creative writing students are taught. “I think it is for the sacred character,” he replied. I immediately connected this to Kiesinger’s work and my dilemma about handling, disseminating, and reporting the participant accounts.

When I approached the table and introduced myself, I asked if I could ask the two authors a question, and they kindly obliged. I said, “I am not a writer, but I am finishing a PhD and doing ethnographic research. I tell other people’s stories. When you said the purpose of writing is for the ‘sacred character,’ I thought of my participants’ stories. My participants, of course, are not characters. But I feel such a tremendous responsibility toward their stories that I feel paralyzed in my work. I’m just worried—”

“You’re going to tell it wrong?” Dubus replied.

“Yes!” I said.

Both authors paused and said it was a good question. Dubus said that my retelling of the stories was through the lens of my own memory, so even if my recollection is through that truth, the participants had trusted me enough with their stories. I was encouraged by both to trust my-

self and present the narratives in a way that honors the participants. Mitchard recalled the work of another author and a quote about the basis of fact and truth. Dubus then said, “Truth over facts.” That is, aim for the truth rather than getting stuck on the facts. And then he signed my book, “Truth over facts.”

This accounting of this interaction, of course, is through the lens of my own memory, so the quotes are not precise nor is the conversation even precisely depicted. This is a common dilemma in creative nonfiction. However, for the purpose of a doctoral dissertation, I do have audio recordings, transcripts, and field notes, so the analysis is predicated on these tools, mediums, and accounts. The point here is that, through my experience and memory, I am serving as an instrument of the study. As such, this must be a consideration, particularly for any qualitative research.

## **Other Field Research Observation Activities**

### **Labor Union Meetings**

While writing earlier chapters of this dissertation and composing my literature review, I encountered a news article on *The Japan Times* website authored by Hifumi Okunuki. It was over a year before I departed for Japan to collect data, and I cannot recall the article’s title, but I contacted Professor Okunuki and Tokyo General Union (Tozen) to see if they might be able to facilitate with recruiting participants. I resumed contact with Tozen for my field research trip, and they were amenable to assisting me with my project.

I was first invited to attend a seminar given by Louis Carlet about the “five-year rule,” which was an information session for Tozen’s current members. After this meeting, I spoke one-

on-one with Louis and Hifumi. Our conversation, detailed in various parts of this dissertation, centered on Tozen's mission, labor issues, and workplace sex discrimination.

I was also invited to attend the Tozen Winter Meeting a week later. At this meeting, I was introduced to A-San, the plaintiff in the sexual harassment case. Although we talked for quite a while in the back of the room, we scheduled our first formal interview for the following week.

### **Labor Commission Hearings and Court Hearings**

Through my interactions with Tozen, I was invited to attend a strategy meeting among expat teachers who had filed a complaint against their employer for retaliation and attend their labor commission hearing. One of these expats I subsequently interviewed about her sex discrimination encounters in the workplace. Ex-pats were not included in my target population. However, as I embarked upon recruitment and data collection activities, I found myself challenging my own recruitment criteria. For instance, one potential interview participant was described as Japanese-American and worked at a Japanese company for a number of years. So, while her actual citizenship was unknown, she was a "Japanese woman" working in Japan, but she was also American. If I interviewed her, what really was the difference then in interviewing a JET teacher from Quebec, Canada, or *eikawa* instructor involved in a lawsuit from Australia?

I ultimately decided not to include the three ex-pat interviews, even though one of those women was participating in a lawsuit against her employer. However, there were three important benefits to interviewing the ex-pats. First, they provided their thoughts, opinions, insights, and experiences as working women in Japan. One participant, "Stephanie," spoke with me for over

two and a half hours, giving me frank insights into gender relations in the Japanese workplace. Secondly, and more importantly, those ex-pats were able to refer more participants to me, many of whom fit the recruitment criteria. The leads were more solid because these women actually met with me in-person rather than just passively communicating my contact information around on social media. The final benefit to becoming familiar with the ex-pats was that they welcomed me to their meetings and labor commission hearings. I attended labor commission hearings for two other *eikawa* (English conversation schools), which gave me insights into one type of grievance process.

A-san invited me to a hearing between her attorneys and opposing counsel at the Tokyo High Court. The meeting was intended to be relatively short to go over documents submitted by opposing counsel, and she had invited me, a fellow union participant, and another friend who had experienced workplace sexual harassment. However, there was some concern about the extra observers in the room and seemed as though there was particular attention paid to me as a foreign researcher. The clerk's office expressed no qualms about my attendance; however, opposing counsel reacted strongly to the extra attendees, and the exchange became heated between A-san and their attorney when she explained why she wanted me to be present at the hearing. Ultimately, I was asked to leave along with her acquaintance from the union. We met up after the hearing for lunch.

That same day, I was invited by Hifumi to attend another hearing for a professor who had filed a lawsuit against her university for power harassment. Hifumi asked me to attend because members of the Working Women's Network (WWN) and the two plaintiffs from the Sumitomo

Metals case were there for support. Afterwards, we all gathered in a café, and I proceeded with a very informal interview with the president and two plaintiffs from this landmark case.

## **Protests**

I was invited by A-san to attend labor union protests against several companies, including the subsidiary and parent company for whom she worked. The parent company was recently embroiled in a transnational lawsuit over Korean forced labor. I wanted to be cautious about my participation and attendance at demonstrations. However, I attended and marginally participated in their visit to the parent company headquarters, gaining valuable insights into how unions mobilize the law and collaborate for justice. I was also invited by Tozen to attend a different protest, but I was unavailable that day.

## **Key Informant Meetings**

As mentioned above, I attended key informant meetings with individuals, such as Louis and Hifumi from Tozen and Torkel Patterson. Some participants also served as key informants, such as Keiko. It was not uncommon for people to informally discuss the subject with me. For instance, one acquaintance in Tokyo with whom I casually spent time discussed my study with her academic colleagues at a conference. When we met for lunch early in my stay, she relayed their thoughts and impressions to me. While I cannot include that as “official” data, those thoughts and opinions helped frame my understanding of workplace sex discrimination in Japan and the Japanese workplace in general.

## **Ethical Considerations**

Human subjects research requires careful consideration regarding the ethical treatment of participants. My study was approved by the VCU Institutional Review Board (referred to as “IRB” in aforementioned sections) prior to departure with subsequent amendments during data collection. Each participant was given a consent script, and the study was described in detail. The participant would then give verbal consent to participate in and for me to record the interview. The consent was written down as a “Y” for “yes” in my notes. The participant could decline to answer any question and/or terminate the interview at any time.

One issue about which I had to be careful and IRB was concerned was regarding what was communicated to the study participants in terms of the topic. This is discussed in-depth above, but in particular, I found being too frank and honest about a taboo topic was thwarting any successful effort to recruit participants to the study. Thus, I decided to reframe the interview as learning about working women in Japan and gender issues in the workplace. I started each interview by either asking what it is like to be a working woman in Japan or having the participant tell me about her job. Then I would start to pull out information about sex discrimination and law mobilization. This way, the participant could stay superficial and neutral on the topic, or they could relate to me their own experiences. The participant could also decline to answer any question she did not feel comfortable answering, which happened occasionally.

There were several other issues regarding ethical considerations in my study. In the previous text, I detailed different ways in which I address ethical considerations. But to consolidate the crux of those considerations for this summary, Japanese women were sharing personal and often sensitive information with me about discrimination. That information, if improperly handled or shared, could potentially cause the participants severe repercussions, such as strained so-



cial relations or even the loss of a job. In the case of two of the litigants, their identities had to remain concealed due to the ongoing lawsuits and the threats of counter lawsuits. Furthermore, A-san's family did not even know she was engaged in a high-profile lawsuit, and her name is not used in media reports. She did not even want me to include the company name in this report; this presented some challenges, as I relied on news coverage that did contain the company name. To protect their identities, I protected audio files and transcripts with password protected media. Each participant was assigned a pseudonym, and in the cases of the women who filed lawsuits, I did not even use a pseudonym. I simply refer to them as A-san, B-san, and C-san, so that there is no guessing as to what their names might be. Two participants said it was okay to use their names; one in particular was an independent scholar of sorts and seemed to want the acknowledgment. Another was a television correspondent who wanted her identity concealed until she came up with a unique quote. In all instances, their pseudonyms are used.

Another consideration was the nature of the interviews and the affects they had on the participants. For the most part, the interviews were uneventful, but some participants shared traumatic experiences with me. I was mindful to keep an eye out for any signs of distress during the interviews, as well as the impact the interview might have on the participant. For instance, during my interview with Ayaka, she shared a number of horrifying experiences with me. She would go into quite a bit of detail, drawn back into her own memory, but then seemed to come out of it by minimizing certain things. Below is an exchange we had in which I 1) try to gauge her level of discomfort and 2) share information that may help her.

**Kristen:**        **You're telling me these really personal stories about your workplace. Looking back on them, how do you feel telling me about this?**

**Participant:** Just bringing that up is definitely not a good feeling because, especially since I'm leaving this company. I just want to put everything in the past. I do feel part of me feels like I could've dealt it in a different way, but then at the same time, I know that nothing was really going to change, and no one was really going to step in, or...

When I went to my managers, and then they just kind of blamed me...I know that it was just going to always be the same way, but I'm more of an optimistic person, I think, so telling you this or me telling these stories to people, I don't really think about how it affected me or anything like that, but more I hope that this story would help other people, or if I go to a different company, I hope that it will not happen again, or I hope that it will just be different and get better.

**Kristen:** What if I told you this was prohibited by law?

**Participant:** I don't think I will do.... Are you asking if I would actually file a lawsuit?

**Kristen:** No, I'm saying my understanding about the law is that this behavior's illegal.

**Participant:** Right. I don't think I'll do anything. I won't do anything different. I think, deep down, even if I don't know every single law or all the company rules or anything, I know that whatever those people did, it's just not right, but when I think about it, I'm just more like, 'It happened, and I don't want to go back there. I don't even really want to think about it.'

If I have to think about that again or go to a manager or maybe file a lawsuit or something, I don't want to deal with it anymore, so, yeah, I just want to move on. Don't want to really think about it.

**Kristen:** I understand. If you need to take a break from telling me some of this, let me know.

**Participant:** I'm okay.

One consideration we typically do not discuss in this kind of research is the impact on the researcher. This is because we consider the researcher the conduit or instrument of the research.

But researchers are not inanimate objects void of their own experiences, feelings, and thoughts.

As I will discuss below in "Reflexivity," it is both a limitation (in that it could result in bias) and delimitation (in that it could lead to deeper interactions and responses, as was the case in my

study). After administering an interview during which sensitive or traumatic information was shared, or experiences that I could readily identify, it was not uncommon for me to feel deflated and emotional on the subway ride to the next destination. In particular, I felt a great sense of duty to make sure that I maximized the data in the reporting as a type of justice.

Finally, I had a professional contact, Dr. Matthew Dubroff, at Hampden-Sydney College to serve as an area expert and consultant should I have encountered any sort of problem during the study. For instance, if someone reported something illegal (in the criminal sense) or expressed suicidal thoughts or self-harm, Dr. Dubroff would have been the first person I would have contacted for next steps and guidance.

## Limitations and Delimitations

### **Reflexivity**

Reflexivity, according to Silverman and Marvasti (2008), "...is the self-organizing character of all interaction so that any action provides for its own context" (p. 510). In qualitative interview research, it is generally preferred that the interviewer or researcher remain neutral and objective, simply acting as a collector of the data that is given. This neutrality is to refrain from influencing the participants' responses. According to Gubrium and Holstein (2002), "Interviewers are generally expected to keep their 'selves' out of the interview process" (p. 14). Indeed, in my earlier interview protocol, I tried to construct and structure the questions as sterile as possible so as to be neutral and objective. At times, I received feedback that the instrument was well-crafted, yet, too "surgical." As mentioned in the previous sections, I discovered just how "surgi-

cal” the interview protocol was when I initially encountered difficulty recruiting participants to the study.

In thinking about how to reframe the interview protocol and recruitment approach, I decided to take a more reflexive approach. I not only studied Japanese labor policy and workplace sex discrimination for several years but also feminist theory. At the point of the field research trip, I also had taught an undergraduate section of a course titled “Women and the Law.” To me, the questions seemed logical and functional. But then I reconsidered the questions and general approach from the standpoint of being a woman. In my experience, I had indeed encountered workplace sex discrimination. Some of those instances were mild and inconsequential, perhaps even unintentional, in my personal experience. But there was at least one situation in which I had been sexually harassed in a previous work environment. To this day, I still have not fully disclosed the details to even my closest confidants; the experience was simply too humiliating and shameful. As I reviewed my interview protocol, I kept this incident in mind, reflecting on not only how I would answer and how much I honestly would share with the interviewer but how I would feel and reflect upon the experience. While the interview instrument was technically sound, it was far too mechanical to expect a near stranger to share her most intimate and personal thoughts with me. Thus, I recrafted the instrument.

Sandra Harding (1991) challenges neutrality and objectivity in the social sciences. Knowledge, according to Harding, is culturally situated and that “[t]he distinctive features of women’s situation” are used in research. She states, “It is these distinctive resources, which are not used by conventional researchers, that enable feminism to produce empirically more accurate

descriptions and theoretically richer explanations than does conventional research” (p. 119).<sup>42</sup>

Not only am I doing feminist research, I am also conducting cross-national or international research. Stephens (2009) states that, in terms of international qualitative research:

The questions concern culture, both in relation to the what and how of the research process; the relationship between the researcher and the researched, which takes us into issues of positioning identity, and ‘voice’; and finally the nature of comparison and work across a number of settings. (p. 25)

As previously mentioned, I was cognizant of the power dynamics between me as the researcher and my Japanese participants. Maclean (2013) discusses two approaches that the researcher can take during interview research in political science: 1) a “god-like” and “detached” stance or 2) a position in which “power can and should be eliminated through an erasure of all distance, where the interviewer endeavors to become socially, culturally, economically, or politically embedded with his or her research subjects” (p. 67). She indicates that a collaborative process levels power between the researcher and participant (p. 70). Not only this but, by working together, the researcher and participant can explore differences, sameness, and meaning (p. 78).

I tried to straddle both dichotomies by administering a semi-structured, in-depth interview instrument. Leveling out the power differential between researcher and participant allowed me to gain better entry with my interview subjects. As I previously mentioned, the Japanese are acutely aware of in-group/out-group dynamics, and I had to rely on established relationships to gain access to the participants. I next had to earn and establish trust. Again, framing the inter-

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<sup>42</sup> Harding further states, “A notion of strong reflexivity would require the objects of inquiry be conceptualized as having back in all their cultural particularity and that the research, through theory and methods, stand behind them, having back at his own socially situated research project in all its cultural particularity and its relationships to other projects of his culture...” (p. 163).

view squarely as an “interview” is somewhat intimidating to Japanese participants, who responded more favorably when it was described as a conversation, and the consent process was softened to sound less legalistic and distant.

I believe that establishing a closer, more friendly relationship with the participants and engaging in a reflexive discourse during the interviews allowed me to mine better and richer data. Stephens states, “Several scholars suggest that a more collaborative approach would facilitate a closer and ongoing critical feedback on the researchers’ position from the participants themselves” (p. 78). By subordinating my power and knowledge, I allowed the participants to “teach” me about their situation, experience, and knowledge. By exchanging ideas or experiences, we were also able to bridge conceptual and linguistic barriers by establishing trust and rapport, which was particularly important given the sensitive subject matter. Stephens also acknowledges that the outside status also helps a researcher gain entry to a subject or population, which I found to be true.

## **Interpreter**

According to Lee Ann Fujii (2013), “...language proficiency should not be the criteria for deciding whether or not to conduct interviews in a given place” (p. 144). While language fluency is the gold standard in ethnographic research, sometimes it is not always possible for a researcher to acquire fluency to conduct a study. In my case, I have a decent background studying the Japanese language. I studied four years in high school, receiving several awards, and attended a cultural immersion and language training at Princeton University in the High School Diplomats Program. I completed one year of independent study under the guidance of a tutor during

my first year of college as Japanese was not offered at that institution; this course and my progress was evaluated by a native speaker. I resumed formal study for an additional three and a half years after I transferred. This included a nearly two-month study abroad in Japan with a host family where I conducted a research project in Japanese. This project, part of an independent study to fulfill the requirements for a Japanese minor, consisted of conducting ten interviews in Japanese, writing a paper in Japanese, and presenting the results in Japanese. On my own accord, I subsequently presented the results in English at an undergraduate research conference. My topic was about gender politics in Japan. Upon graduating with my bachelor's degree, I used the Japanese language intermittently. Professionally, I worked in a healthcare and financial setting in which I used the language, usually written, to translate and/or communicate. I also taught beginning high school Japanese for a year and a half. I participated in a variety of community and volunteer events and programs in the Richmond, Virginia, area. Finally, when possible I traveled to Japan for leisure.

Nonetheless, despite Japanese language coursework through an advanced level and exhausting the courses available, I had concerns about my language skills. I contacted the University of Virginia about enrolling in one of their Japanese language courses and, while not discouraged from attending, was advised that perhaps there was not much to offer based on my history. This advice, combined by my limited funding, informed my decision not to enroll. I was also advised by a scholar with whom I consulted that I could perhaps conduct the interviews on my own. Still, I had reservations.

As Fujii states, “The decision to work with an interpreter is usually based on a researcher's own assessment of her proficiency in a particular language—whether she feels suffi-

ciently fluent to conduct interviews in that language” (p. 147). She cites two considerations when making that determination: degree and context. Theodore Bestor, Patricia Steinhoff, and Victoria Bestor (2003) similarly state, “But it is important to note that the ability to do fieldwork and linguistic fluency are by no means the same thing. One challenge of fieldwork is evaluating the fit among research topic, research techniques, and the linguistic requirements of the project. Even the most fluent researcher—foreign or native speaker of Japanese—must learn to evaluate the linguistic environment of a particular topic” (p. 9). They also cite data analysis as another consideration. In my case, I did not believe that the curriculum I had studied and my textbook proficiency would be sufficient to conduct such sensitive and nuanced interviews. I also do not possess a specialized legal vocabulary nor the proficiency to transform through ideas that have no direct translation. For instance, as I noted above, I was advised that all sex discrimination was *sekuhara*. This is not so.

Furthermore, some legal terminology and constructs as they relate to sex discrimination are imports from the United States and other Anglophone countries, creating a paradox between Western jurisprudence and legal thought pitted against Japanese jurisprudence and legal thought. Finally, while I can somewhat easily express myself in Tokyo and follow what is being said to me, in other regions of Japan, dialect and accent present challenges. My American accent also makes listening to me a challenge when I speak Japanese. These are all issues Fujii identifies when discussing the reasons to use and not to use an interpreter.



I ultimately decided to use an interpreter.<sup>43</sup> This decision was met with some surprise; one participant (a professor) remarked to me before the start of an interview that she was surprised that a graduate student was using an interpreter. I was somewhat self-conscious about the remark and asked her to explain. She said that interpreters are usually quite expensive, and it was the type of assistance she did not anticipate a graduate student could afford. She then inquired about my funding. Fujii acknowledges this impediment, and I could not agree more—using an interpreter was incredibly expensive. But it was also worth it, especially given the time, distance, cost, and project completion. I explained to her that I was self-funded and expressed the reasons why I was using an interpreter. She then expressed how impressed she was with my “passion,” particularly given the distance traveled and the effort expended to learn more about my subject.

Many of the participants were able to communicate in English, so an interpreter was not necessary. Of those participants, many had spent part of their childhood, adolescence, or early adulthoods in an English-speaking country (primarily the United States or England). While some of these participants were fluent to the point that you could not tell they were not native-level English speakers, other participants had a little more difficulty communicating. Some of their responses may not have been “smooth,” per se, but the point of their speech was understood to the researcher and Japanese could be used to clarify (or in some cases, commiserate).

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<sup>43</sup> In her chapter, “Beginning Trials and Tribulations: Rural Community Study and Tokyo City Survey”, Suzanne Culter similarly made the decision to use an interpreter, citing that as an adult learner of Japanese and the fact that what is taught in the classrooms is not what is necessarily used in the field. According to Culter (2003), “. . . thus the use of an interpreter permitted a smoother completion of the process” (p. 218).

For this study, I employed the use of two interpreters—one based in Tokyo and one based in Kyoto. The Tokyo interpreter was a referral from the first consultant with whom I worked in Washington D.C. She came highly recommended, and the consultant, who held a graduate degree and was interested in gender studies, indicated that she was similarly qualified. This interpreter provided freelance and temporary interpretation services. Shortly after she agreed to help me on the study, she accepted full-time employment at a popular department store in Shibuya. The Kyoto interpreter was found using a basic internet search. She held a master's degree in literature and provided interpretation for tourists, researchers, filmmakers, and television producers.

Both interpreters' credentials were reviewed by me and submitted to IRB. Fujii states:  
Good interpreters do much more than simply render spoken words from one language to another; they also can play a vital role 'interpreting' in the methodological sense—in helping the researcher make sense of what people say by calling attention to background knowledge that give meaning and context to people's words. (p. 149)

In a sense, both interpreters attempted to do this. Fujii lists seven qualities of good interpreters: ability to navigate relationships, makes interviewees feel comfortable, provides interpretation without bias, ability to embrace the type of research, ability to give and take directions, her positionality in the triangulated researcher-interpreter-interviewee relationship (which is less skill and more a quality at the researcher's discretion), and professionalism (pp. 152-155).

The Tokyo interpreter was also my research assistant. I already addressed in the previous section the limitations with the research assistance who provided in terms of recruiting participants for the study (in toto two participants). I still relied on her, however, for participants who indicated that they wanted an interpreter present in Tokyo. In many respects, I found her qualified; she would have met Fujii's first three criteria (navigation, comfort of participants, and unbi-

ased interpretation). However, while I considered her interpretations relatively accurate, our interactions and her interpretations raised concerns. The first issue I noticed early on was that she did not provide what I would consider a “direct” interpretation. One habit she exhibited from time to time was interpreting the participant’s responses in the third-person. For instance, if a participant said, “*Haha wa hatarakimashita*” or “my mother worked...”, the interpreter would then say, “She said her mother worked.” That is, the interpreter interpreted the responses as more of a personal relay rather than a direct interpretation. I discussed the issue with her, and the interpretations improved (although she would revert back to the habit occasionally).

There were also concerns about her professional behavior. While I wanted the interpreters to provide feedback about the content or any cultural cues I may be missing, as the researcher, I did not want them to direct the interview. With this interpreter, though, she frequently overstepped her bounds as an interpreter. There were instances in which she inserted herself into the interview so that it was unclear if the idea she was conveying was hers or the participant’s, and another time she stopped an interview to order dessert. She occasionally would engage with the participants in conversations that excluded me; those were opportunities for me to establish rapport with the participants as a team. She also disrupted recruiting by abruptly changing her availability without communicating it to me, which ultimately cost me interviews.

Finally, while the interpreter provided fairly accurate interpretations, occasionally, she was unable to find the right phrase or words and had to pause the interview to consult with an electronic dictionary. This contributed to the length of the interview considerably and disrupted the flow. In at least one interview, with C-san, it is still unclear to me if C-san arbitrated or litigated (based on the interview context, it seems as though she filed suit but settled). While I was

frustrated with this interpreter's behavior, I was also dependent upon her for those interviews that required an interpreter.

In contrast, the Kyoto-based interpreter generated a completely opposite experience. While she was quite a busy freelancer, she was always accommodating of the interview schedule. She commuted to a relatively rural area outside of Kyoto on a college campus, and our communications were clear and polite. These interviews were done with university professors whose research and teaching interests were diverse. For instance, one of those interviews was with an art curator who worked in a Buddhist monastery prior to becoming a professor. Despite these vast and diverse career subjects, the interpreter never seemed to have any trouble conveying difficult concepts or terminology. At times, the interviews were bilingual, and she never missed the rhythm of the interview. I found her demeanor and engagement with the interview participants to be appropriate and balanced; I never felt excluded from those casual conversations, and they were mutual conversations between all parties. She indicated at the conclusion of those interviews that she found the interactions quite interesting. We are still in contact through professional social media.

Despite the issues with the Tokyo-based research assistant and interpreter, overall, I believe the interpretations were sufficient for the study. I was able to gauge by comparing the two interpreters, and, while the Kyoto-based interpreter was more at ease with the task, more professional, and provided more fluid interpretations, my sense was that the interpretations themselves were about equal. Furthermore, I did not feel that the participants responded more positively or negatively depending on the interpreter, which is important to note.

## **Data Preparation and Reduction: Transcription**

As data collection consisted of semi-structured, in-depth interviews, I decided to transcribe the interviews into a written record. According to Blake D. Poland (2002), “Many qualitative researchers, it would appear, do not give transcription quality a second thought. If they do, their concern is most often with ensuring the accuracy of verbatim accounts by minimizing sources of error in the transcription process” (p. 630). For my study, careful consideration went into deciding how the transcriptions would be executed and the rationale for doing so, particularly given the cross-cultural and international aspects of the study. Elizabeth J. Halcomb and Patricia M. Davidson (2006) state:

Although details regarding the management of interview day and the process of transcription are often poorly described in published research, many investigators report that they audio record interviews for subsequent analysis and they somehow transform these audiotaped data into written text. (p. 38)

Indeed, while making decisions regarding the logistical aspects of transcription, I found little literature available that was suitable to the dilemmas I encountered, yet I knew I could not be the only researcher who had encountered them.

In general, verbatim transcription is the gold standard in qualitative research. In verbatim transcriptions, everything that is heard on the recording is transcribed exactly as it is heard. This includes all utterances by the individuals in the recording and could include additional notations to denote pauses, sighs, emotional expressions, and the like (Halcomb & Davidson, 2009). In some industries, every sound that is heard, even background noise, is transcribed (Legal Language Services, 2016). However, Halcomb and Davidson (citing Poland) indicate that transcrip-

tion itself is an interpretive activity and Poland (2002) contends that there are numerous challenges to verbatim transcription. For my study, I decided not to employ verbatim transcription.

To begin with, I decided to outsource the task of transcribing the interviews. While I have transcribed interview data in the past as a research assistant, going back to Poland's aforementioned point about quality and while it would have been a good reflexive exercise to personally listen to and transcribe each interview, the fact is that I am not a professional transcriptionist. Thus, the question of accuracy and quality could potentially overshadow the data. Given that I am not a professional transcriber nor own the appropriate equipment to do efficient transcriptions, I needed to consider time management. I decided that, while again transcribing my own interviews would be a great reflexive activity, I could better use my time doing other data analysis activities, particularly given the large volume of interviews. I decided to use a small business that specialized in transcription services.

The next decision made was on what type of transcription I would use. There are several types of transcription, and theory should guide the decision (Paulus, Lester, & Dempster, 2014; Strauss & Corbin, 1990). I decided to do a type of gisted transcription called condensed transcription. Condensed transcription is when "[t]he transcript is condensed by removing unnecessary words and phrases, leaving a simplified version but with exact words. No additional text is added" (Paulus, Lester, & Dempster, 2014, p. 98).

## **Language and Interpretation**

Interviews were either conducted in English, Japanese through the use of an interpreter, or bilingually. Bilingual transcriptionists, in this case Japanese-English transcriptionists, would

be difficult to procure at a reasonable cost for a doctoral dissertation; thus, the transcriptionist would only be transcribing the English heard on the recordings. For this reason, the transcription would inherently not be verbatim.

During my interviews, I decided to use consecutive interpreting rather than simultaneous interpreting. My reason was three-fold. I had to take into consideration the skill and ability of the interpreters; one could have handled simultaneous interpretation while I assessed the other was not qualified to do so. More importantly, though, is that I am hearing impaired in one ear. It simply would have been too challenging to discern the interpreter's voice pitted against the participant who was speaking at the same time and any other background noise. Finally, having decided ahead of time that the interviews would be transcribed, I believed that two voices speaking at once would be impossible to accurately transcribe.

Interpretation and translation are never exact or precise. During interpretation, the interpreter would listen to the speaker and notate their speech, then interpret that speech for the listener. However, this messaging is never precise due to the linguistic characteristics of the languages used. Take, for instance, this famous scene from the popular film *Lost in Translation*. In the script below, the protagonist Bob is an American actor who is filming a commercial in Japan. The director gives him very specific stage instructions in Japanese (from the *New York Times*, September 21, 2003):

**“Mr. Bob-san. You are sitting quietly in your study. And then there is a bottle of Suntory whiskey on top of the table. You understand, right? With wholehearted feeling, slowly, look at the camera, tenderly, and as if you are meeting old friends, say the words. As if you are Bogie in ‘Casablanca,’ saying, ‘Cheers to you guys,’ Suntory time!”**

However, his interpreter relays in English:

**“He wants you to turn, look in camera. O.K.?”**

Bob senses that he is not being told the full extent of the director’s wishes:

**“That’s all he said?... Does he want me to, to turn from the right or turn from the left?”**

So, the interpreter relays to the director in formal language:

**“He has prepared and is ready. And he wants to know, when the camera rolls, would you prefer that he turn to the left, or would you prefer that he turn to the right? And that is the kind of thing he would like to know, if you don’t mind.”**

The director starts to lose his patience and more colloquially replies:

**“Either way is fine. That kind of thing doesn’t matter. We don’t have time, Bob-san, O.K.? You need to hurry. Raise the tension. Look at the camera. Slowly, with passion. It’s passion that we want. Do you understand?”**

To which the interpreter relays:

**“Right side. And, uh, with intensity.”**

Matoko Rich (2003) explains in the article that the director, Sofia Coppola, drew from her own experiences working on a different film set in Japan during which interpreters seemed to elongate and extend their translations of what she was saying in English. Indeed, I felt the same experience a few times during the interviews (although not nearly as badly as Bob-san). However, as a Japanese speaker myself, I attributed this more to the linguistic structure of Japanese rather than deficiencies in the translation. Grammar, particles, and conjugation can easily add length and nuance to an interpretation. For instance, upon listening to a particular recording again, I heard the participant respond in Japanese with:

***“Eeehh... Nan darou... Hataraki nikui kana...”***

The literal, verbatim translation of this would be:



**“Hm... What is it...? I wonder if it is difficult to work...”**

Her speech style, intonation, and grammar suggested to me that she was giving much consideration to a complex question with some uncertainty. The interpreter relayed (accurately and more polished):

**“It’s a bit hard to work, I think.”**

This brings me to my next point about interpretation. The interpreter herself is making judgments about the way to convey the intent and meaning of the speaker, and this is not verbatim. In the above example, the interpreter did not interpret her utterances (“um” and “what I suppose”).

Conversely, the interpreter may also inject her own utterances that are not made by the participant. In one example, I listened to the response of a participant discussing the role her mother played in her career choices. The interpreter added her own utterances, which were not in the participant’s original speech, and it sounded like this:

**Um, first of all, her mother told them from when she was child, her mother had work, a job. And at that era, at that time, most women got married and after the birth of child, most women gave up the job. So it was unknown to get into think of the family to give up working. But at that time, her mother is kind of exception. She continued working with her um with doing her uh chores at home and she took care of her family and her family and her family had a job as well as her mother. And at that time, it was difficult for her mother to work as equally as men so at that time, she was told from her mother to work to get a qualification for to have the license to work equally. Then, uh, at that time, most of women had a part-time job, at that time, so that is the best opportunities to work in the society. As a participate of the society, then her mother said to her to work to keep on working after getting married so the license or the vocational skill is important. Her mother said, under the circumstances, from now on, the Japanese society would be changing—would change—**

Note how the interpreter adds several “uhs” and “ums” in her interpretation and compulsively injects the phrase “at that time.” Also, it seems as though she repeats herself occasionally, perhaps searching for the appropriate word. Furthermore, this interpreter occasionally had the habit of translating in the third-person; clearly, the participant was not talking in the third-person. This is partly due to the fact that, in general, the Japanese do not frequently use pronouns in their speech, as they are implied.

Finally, in verbatim transcription, sometimes dialect or the way someone speaks is exactly transcribed. For instance, I recall transcribing interviews for another study with dialect and slang to capture the way the participant was responding. A hypothetical example would be:

**“Well... [pause]. I was s’pose I was gonna go to the, uh, doctor but he was sayin’ that you’re betta’ off not goin’ cuz it’s too expensive.”**

With non-native English speakers in the recordings and the transcriptionists inability to adequately read into the speech context and style, this is just unnecessary.

It is also important to note the audio quality of the interviews. Often times, the interviews took place in cafes or restaurants with a lot of background noise, including interruptions from the waitstaff. Obviously, we do not need these interactions and associated noise transcribed. Finally, while I took observation notes during the interview, my goal was not to analyze the context of the participant’s responses or the way she interacted with me or the interpreter but rather the content. That is, I was looking at why and how Japanese working women mobilized the law, not how they spoke about the law or their experiences.

## **Cost**

In the ideal scenario, I could have adequately afforded a bilingual transcriptionist who could do a verbatim transcription. However, leaving the bilingual element aside, verbatim transcription simply costs more (as Paulus, Lester, and Dempster also note). Two transcriptionists I contacted for a quote were too unreasonable; this was before we even discussed verbatim versus intelligent transcription (one quoted nearly \$9000 to complete the project!). The other more reasonably priced transcription companies I contacted charged at least \$0.25 more per minute for verbatim transcription, and one of those vendors added an additional surcharge if there was even mild background noise. In sum, rather than waiting until I had the funding to do it the expensive way or deciding to do the transcribing myself, I decided to heed the dictum, “A good dissertation is a done dissertation” instead of delaying data analysis further.

## **Verbatim Does Not Mean Perfect**

As Poland and Holcomb and Davidson point out, a verbatim transcription can still carry a significant number of errors. Thus, verbatim does not necessary equate with perfection. Halcomb and Davidson contend that, in certain types of research, verbatim is necessary, citing feminist research as one of those areas, as verbatim transcription brings the researcher closer to the data. They cite cost, skill, and theoretical underpinnings as significant factors when deciding whether to use verbatim transcribing. However, audio recordings themselves are valuable tools in data analysis, as are field notes taken during or immediately after an interview. In fact, citing Fasik (2001) and Wengraf (2001)<sup>44</sup>, they state, “The use of written field notes taken either during

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<sup>44</sup> I do not use Fasik and Wengraf directly and thus they are not included in the works cited.

an interview or immediately afterward has been reported as being superior to the exclusive use of audio recordings that are subsequently verbatim transcribed” (p. 40). Indeed, I took copious notes during the interviews to reinforce ideas conveyed, note special words or concepts, underscore important points, and most importantly, in the event the recordings failed, malfunctioned, or were lost.

Holcomb and Davidson propose an alternative data management strategy, which is as robust as verbatim transcripts. On my own, I employed most of this strategy, which included:

1. Audio recording and concurrent note taking.
2. Reflective journaling after the interview.
3. Listening to the recordings and making amended notes.
4. Preliminary content analysis.
5. Secondary content analysis.
6. Thematic review. (p. 41)

Of their proposed strategy, the only step I omitted entirely was Step Two, as I often did not have adequate time to write extended journal entries, especially on days that I had multiple interviews and/or traveled great distances and was confined to a public transportation schedule. I also modified Step Three, reserving that step for the condensed transcription review. In the “Data Analysis” section, I will detail Steps Four, Five, and Six, but to briefly summarize, prior to data collection, I had a general idea of what themes could arise during the interviews; and prior to coding the interview data, I composed a composite list of themes that actually emerged from the interviews. The final data analysis yielded the thematic review.

## Data Analysis

The impetus for embarking upon this project centered on “how” and “why” Japanese decided to mobilize the law when they believe they have encountered workplace sex discrimination. The literature cites the success of litigation as a vehicle of social change and indicates that, after the passage of the 1986 EEOL, litigation rates increased, yet the literature also illuminates the Japanese aversion to litigation and its reputation as a low-litigious society. This, coupled with the social ramifications of filing a lawsuit, would perhaps indicate a reluctance of Japanese women to litigate. This chart may be found in the appendix.

As I illustrated in the table, the literature suggests that women are reluctant to litigate or initiate a lawsuit.<sup>45</sup> The reasons fall into general categories of **general non-litigiousness not specific to gender, non-litigiousness specific to gender, reluctance due to social stigma, reluctance due to barriers and access, and deterrence (predilection or guidance to alternative remedies)**. However, I want to draw distinction to two points, as they relate to my specific study. As mentioned in the “Methodology” section, I operationalize litigiousness as the propensity or intent to initiate a lawsuit, which speaks to individual decision-making processes, emotions, and attitudes (Moog, 1993; Henser, 1988). Splitting hairs with the aforementioned citations, *reluctance* is implied, and the explanation is attributed to external factors or suppositions of women’s thoughts, beliefs, or attitudes. That is, we can conjecture the reasons a woman might be unwilling to litigate, but none of the studies point to a systematic inquiry of the *propensity or*

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<sup>45</sup> I also want to illustrate that while the literature cited is highly valuable and accurate, in terms of the phenomenon I am studying (litigiousness), each article largely relies on a previous article or book rather than firsthand accounts or data collected specifically regarding workplace sex discrimination and litigiousness.

*intent* to file suit. Furthermore, we garner very little knowledge on how Japanese women perceive their options or why they make the decisions they do. As I tell people who ask about my research, “Japanese women may want to *sue the hell out* of their employers but just do not for a myriad of reasons. Wanting to do something is not mutually exclusive from doing something else.” Furthermore, I scale back the operationalization of litigiousness to *law mobilization* because, again, I am interested in examining *intent*, and intent can be demonstrated in significant ways that stop short of filing a lawsuit. Lawsuits evolve, generally emanating from unsatisfactory intermediary steps or interactions. In other words, it is almost unheard of for individuals to file suit suddenly and at random. Having stated all of the above, I do accept the premise of the cited literature but want to look into the individual decision-making processes, perceptions, and ultimately intent.

To date, there are no systematic studies available to Western scholars about Japanese women and litigiousness, let alone litigiousness in relation to workplace sex discrimination. This exploratory study is intended to set the groundwork for further research about how women access judicial relief to inform policy. One can easily imagine the reasons why a woman in any country may be reluctant to litigate in the face of workplace sex discrimination. In a conversation with a mentor in the nascent stage of this study, she astutely asked the “so what?” question. What is the significance of this study when the answers seem so obvious?

A central criticism of the existing literature tends to focus on perceived shortcomings of the 1986 EEOL and its subsequent amendments. “Toothless” and “weak enforcement” are common themes that crop up in these articles. Yet, many of these articles were written at least 10-20 years prior to the completion of this study, and Japanese society has undergone many changes.

While I am not challenging the premise of the conclusions drawn in the literature, I cannot help but wonder 1) what strengthening the laws would actually entail and how it would be successful and 2) what the point would be of strengthening laws if individuals, in this case women, were “non-litigious,” as the literature denotes, or reluctant to mobilize the law. One could argue that the government could force compliances or companies could voluntarily comply in the face of harsher penalties or public shaming, but this would require a deeper exploration of the rule of law in Japan. I am also curious about the criticisms made in the literature that the 1986 EEOL did not “do enough” or make change happen faster in Japan, particularly reflecting on the slow developments that took place in the United States that even still are not fully realized. While many of the Japanese women with whom I spoke lamented the slow progress, which is undeniable, I also believe that passing legislation does not necessarily mean social change is quick to follow. A classic and sobering example of this is the landmark *Brown v. Board of Education* decision. It was not until 2017 that the Commonwealth of Virginia fully complied with *Brown*, which was decided in 1954.

Furthermore, Upham (1987) makes a sensible and strong case that litigation has created social change in Japan, demonstrating that lawsuits can indeed serve as a powerful vehicle. Yet, again, if individuals, in this case women, are non-litigious or reluctant to sue, how powerful can this vehicle be? Would creating clearer and open access to litigation be effective if there is a hesitation to mobilize the law? In what other ways can women mobilize the law, which is acknowledged in the previous chapters, that may also be just as significant as filing or suit? Are these actions sufficient?

For my study, I want to know how Japanese women relate to the law, how and why they decide to mobilize it, and insights into their decision-making process. In doing so, we understand better how women gain access to judicial relief or otherwise use the law to address gender issues they encounter in the workplace. That is, we will better understand not only how women relate to the law but how they gain access to institutions that implement public policy and the law, in this case, the judiciary and bureaucratic structures that monitor sex discrimination.

### Summary of Factors

Before proceeding into the coding section, I would like to briefly and concisely summarize the matrix of factors and determinants related to litigiousness which informed coding:

#### Litigiousness and Sexual Harassment Literature (U.S.)

**Table 4.1 Factors Contributing to Sexual Harassment Litigation**

<b>Cost/Benefit</b>	Gleason	“The benefits from the pursuit of enforcement activities depend on the expected future value of the bundle job property rights as well as on the degree to which the woman is able to capture and enjoy those benefits” (pp. 177-78).
<b>Financial/funding</b>	Gleason, Morgan	Access to financial/monetary resources.
<b>Access to Attorney</b>	Gleason, Morgan	Access to legal advice and guidance.
<b>Gender Roles</b>	Morgan	Women are less willing to bring complaints/suits due to gender socialization.
<b>Retaliation</b>	Morgan	Women are less willing to bring complaints/suits due to fear of retaliation.
<b>Relationships</b>	Morgan	Women will or will not bring complaints/suits based on relationship support or obligations.
<b>Exit, Voice, Loyalty</b>	Hoyman & Stallworth; Schoppa	Based on Hirshman’s “exit, voice, loyalty,” women will fall into one of those three categories when responding to sex discrimination.



**Table 4.2 Source of Factors Contributing to Sexual Harassment Litigation**

Concept/Code	Author	Reference
<b>Cost/Benefit</b>	Gleason	References Anderson and Hill (1975)
<b>Access to attorney</b>	Gleason, Morgan	Part of resource mobilization theory (Morgan references Freeman, 1977; Galanter, 1974; Gamson, Fireman, & Rytina, 1982; Mayhew & Reiss, 1969; Miethe, 1995)
<b>Financial/funding</b>	Gleason, Morgan	Part of resource mobilization theory (Morgan references Freeman, 1977; Galanter, 1974; Gamson, Fireman, & Rytina, 1982; Mayhew & Reiss, 1969; Miethe, 1995)
<b>Gender role</b>	Morgan	Referencing Riger, 1991; Gwartney-Gibbs & Lach, 1992; Lach & Gwartney-Gibbs, 1993
<b>Retaliation</b>	Morgan	Referencing Stambaugh, 1997; Dandekar, 1990; Lenhart & Shrier, 1996
<b>Relationships/Relational Theory</b>	Morgan	Referencing Conley & O'Barr, 1990; Ferraro & Pope, 1993.
<b>Exit, Voice, Loyalty</b>	Hoyman & Stallworth, Schoppa (2006)	Referencing Hirshman

It is important to note that, in light of the above literature, Morgan's (Stambaugh) research seeks to answer why women seek litigation despite factors that should inhibit such action. My study makes no such distinction as it is exploratory. Also, again, my study frames litigiousness in terms of *intent to mobilize the law*, and that may or may not include the decision to file a lawsuit.

### **Litigiousness and Japan**

**Table 4.3 Reasons for Low-Litigiousness in Japan**

<b>Nonlitigious: Cultural; Legal Remedy: Alternative Redress</b>	Kawashima	<p>“Because of the resulting disorganization or traditional social groups, resorting to litigation has been condemned as morally wrong, subversive, and rebellious” (p. 152)</p> <p>“Japanese not only hesitate to resort to a lawsuit but are also quite ready to settle an action already instituted through conciliatory processes during the course of litigation”</p> <p><i>*Author’s note: The above quote would signify some degree of litigiousness to embark in a lawsuit</i></p>
<b>Low-litigiousness; Legal Remedy: Alternative redress; Barriers: Institutional incapacity</b>	Haley	Litigation as last result, time and cost; Alternative dispute resolution methods (informal resolution; Informal resolutions, inability to access courts, lack of impactful resolution
<b>Reluctance: Uncertain outcomes Reluctance: Institutional incapacity</b>	Ramseyer	Unable to predict outcomes; not cost effective
<b>Low-litigiousness: Resources</b>	Ginsburg and Hoetker	Access to lawyers and better civil procedures

## Japanese Women and Workplace Sex Discrimination: Reasons for Reluctance

Table 4.4 Factors Contributing to Japanese Women’s Reluctance to Litigate

<b>Parkinson</b>	Reluctance: Social stigma
<b>Patterson</b>	Reluctance: Barrier/access; Reluctance: Nonlitigious
<b>Goff</b>	Reluctance: Nonlitigious (general); Legal remedy: Alternative redress
<b>Knapp</b>	Reluctance: Social stigma; Reluctance: Nonlitigious (nonspecific gender)
<b>Efron</b>	Reluctance: Social stigma
<b>Fan</b>	Reluctance: Nonlitigious (gender unspecified)

<b>Larsen</b>	Reluctance : Social stigma ; Deterrence
<b>Shimoda</b>	Reluctance: Social stigma; Reluctance: Nonlitigious (gender specific); Reluctance: Nonlitigious (gender unspecified); Legal remedy: Alternative redress
<b>Miller</b>	Reluctance: Nonlitigious (gender unspecified); Reluctance: Barrier/access
<b>Barrett</b>	Reluctance: Nonlitigious (gender unspecified); Reluctance: Nonlitigious (Gender specified); Reluctance: Social stigma
<b>Starich</b>	Reluctance : Barrier/access; Deterrence
<b>Geraghty</b>	Reluctance Nonlitigious (gender unspecified); Deterrence

### ***Japanese Litigiousness (General) Reluctance to Litigate and Japanese Workplace Sex Discrimination***

Again, please note that the literature in the Japanese litigiousness and workplace sex discrimination litigiousness focuses on **reluctance** rather than variables or reasons an individual would litigate or mobilize the law. The reader is advised to keep in mind that these three charts depict a summary of the literature as it relates to workplace sex discrimination in the United States and litigiousness, Japanese litigiousness in general, and workplace sex discrimination in Japan and nonlitigiousness. That is, in the last category, the assumption is that Japanese women are reluctant to litigate based on previous literature and anecdotes. However, in my study, I operationalize litigiousness as *intent to mobilize the law* and make no assumption as to whether women are reluctant or not. Thus, the previous literature serves as a guide for possible variables to consider and look for in the interview data but restrained to allow previously unexplored patterns and themes to emerge.

## Coding Activities

Still, there was enough literature available to at least inform the development of the questionnaire, and there were certain themes and responses I wanted to mine regardless of my worldview. Thus, I had in mind the following themes and concepts that *could* emerge during data analysis. Based on the work of Phoebe Morgan (Stambaugh), Sandra Gleason, and Hoyman and Stallworth, I anticipated that the women may discuss **cost/benefit analysis, access to attorneys, access to funding or finances, relationships, and/or empowerment.**

However, I did not cling to this literature during the questionnaire development. For instance, Americans consider access to attorneys to be cost prohibitive depending on the legal issue they encounter. American attorneys charge an average of \$536 for partners and \$370 for associates (Weiss, 2013). Clients typically pay a retainer and then are billed per statement. This may or may not be the case in Japan, and furthermore, Japanese women may not feel it is cost prohibitive or may not consider this when seeking legal counsel. The Japanese may not even consider the role of attorneys in the same way that Americans do (as a preview, no participant mentioned the cost of attorneys, and they do have a different view of the role of an attorney). The biggest reason, though, for not relying on the American sexual harassment litigation literature was due to the data available to those researchers and scholars, which was based on interviews and surveys conducted with women who sought legal redress. It was unclear to me until I was in the process of data collection and receiving referrals who my participants would be. In short, I believed it would be highly unlikely to interview a woman who litigated due to sex discrimination, and it was even possible, although unlikely, that the participants may not have had

experiences with sex discrimination or be forthcoming about those personal experiences. Therefore, I had to craft my interview instrument with this in mind.

Although coming up with firm *a priori* codes was difficult, I was able to create the original interview instrument based on the literature and questions I wanted answered. After all, I was conducting semi-structured interviews, so there was at least a minimal structure (which was loosened considerably when recruitment hit roadblocks). Specifically, the categories and factors I was looking for were as follows: **definitions, terminology, and conceptualization of workplace sex discrimination (behavior was a key indicator for which I was looking), legal consciousness (do they know the law, regulations, workplace policies, etc.), decision making (had they experienced sex discrimination—yes or no, what kind, their response), and access (did they perceive barriers to law mobilization and, if so, what barriers).**

## **Coding**

As mentioned in the previous “Methodology” chapter, all of the interviews were transcribed (English only) using intelligent transcription by a professional transcriptionist. It is possible, again, to code strictly from the audio, but this presents issues with validity. Once the transcriptions were received, coding activities commenced with **first-cycle coding** or **open coding** (Lewins & Silver, 2007). Assigning codes to text reduces the data for analysis. One function of codes is their ability to retrieve. Coding can be interpreted as analysis or the basis for higher-level consideration of the study findings (Miles, Huberman, & Saldana, 2013, p. 72).

Miles, Huberman, and Saldana discuss how data collection presents challenges with the sheer volume of information collected. They state:

All of this information piles up geometrically. In the early stages of a study, most of it looks promising.... You may never have the time to condense and order, much less to analyze it and write up, all of this material. That's why we think that conceptual frameworks and research questions are the best defense against overload. (p. 73)

Indeed, I felt overwhelmed with not only the research activities but the volume of data while I was in the field. Some researchers argue that coding really begins in the field, and to some extent, this is true (Saldana, 2013). For instance, I started to notice patterns emerging during interviews about which I could ask a future participant in a non-biasing way. However, in terms of formal coding, it was simply too challenging given the short duration of the field research trip to do more than organize files and notes. There were some days during which three or four interviews or activities were scheduled at various points in Tokyo or days when I commuted to Kyoto and needed to return that evening to Tokyo for another set of interviews the following day. So, I prioritized collecting as much data as possible, allowing the research questions, semi-structured interview protocol, and prompts to be my guide. I found this to be fail-proof with the exception of a handful of interviews. There were so much data collected—interviews, court hearings, labor commission hearings, protests, informal conversations, documents, labor union meetings, prefectural gender bureau meetings, and other activities—that I made the decision to strictly analyze the interview data relying on notes, documents, recordings, and other artifacts (such as photographs) to support claims, assertions, and explanations as necessary. It also suffices to say, given my personality, that I was more clinical and structured with the administration of the interview than these other data types.

The first-cycle coding and second-cycle coding (open-coding and axial coding) was done manually. First, I took the first interview protocol instrument and sketched an outline of the

themes and patterns that I was seeking from that protocol, reducing them to **descriptive codes**.

This helped me conceptualize this step for the items and potential codes embedded in the second interview protocol, which was the protocol used in the study, and was slightly less structured and more open-ended (please refer to the “Methodology” chapter for a more detailed explanation).

From there, I created a second set of descriptive codes and subsequent pattern codes. My process was as follows:

Question—> Code—> Sub-codes

These codes were derived from the literature—what I anticipated prior to data collection and was embedded in the protocols, and finally what I actually heard during the interviews. The first-cycle coding began by examining the protocol questions and assigning potential codes, and this is called **protocol coding**. Generally, protocol coding is used in studies in which there is a previously developed coding system (Huberman, Miles, & Saldana, 2014).

Then, I literally started to code the transcripts by hand with a highlighter and pen. Saldana (2013) encourages junior scholars who are less familiar with coding activities to start by hand. After all, software is simply a tool to manage and organize data sets, not actually do the coding. I had previously coded qualitatively for studies. In one instance, a qualitative methods class in which I was enrolled conducted interviews and focus groups for a pilot-program in a local school district and started coding activities before the class ended. In the second instance, I was a research assistant on an AHRQ-funded behavioral health study and was specifically requested to assist the project coordinator and full-time assistant with coding activities (along with a faculty member consultant). In both settings, coding activities started as a group exercise,

meeting at a conference table with a whiteboard to flesh out potential codes, then referencing sample batches of text, and finally “testing” the group-generated codes.

For my study, I am the sole coder. This makes coding a little lonelier and complex without a group of peers with whom to reflect upon the process. However, the advantage is that, unlike the other studies in which I was a group member who only collected some data, I am the sole researcher who collected all of the data. Thus, I am intimately acquainted with the data. This reduces the subjectivity that multiple parties would bring to interpreting. Nonetheless, I found the process of using a whiteboard or oversized poster paper with markers then highlighting and annotating printed text the same whether I participated in a group or on my own. From this first cycle of coding, I was able to derive the following list of codes in the appendix.

I found the first-cycle and second-cycle of coding done manually sufficient enough to generate fairly reliable results and shared them at the ASCJ Conference at International Christian University in Tokyo, Japan in early July 2018. However, while this process sufficed for that audience, I did not think it was thorough enough for the purpose of a doctoral dissertation. Thus, I began **third-cycle coding** or **selective coding**.

It is important to note that, while my study is exploratory and thus inherently inductive, I used a hybrid inductive-deductive approach to coding. The study was inductive in that I am generating theory by answering the four research questions; that is, I am not testing a hypothesis. Furthermore, the inductive approach is one of the reasons I was reluctant to develop and adhere to *a priori* codes.<sup>46</sup> However, while I allowed the data to inform the codes, I also had an inter-

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<sup>46</sup> This was a suggestion made during my proposal defense; however, after seeking counsel with another advisor who did not think it was necessary for an exploratory research, coupled with my own concerns, I decided to refrain from creating a formal list.



view protocol to guide the interview, eliciting particular responses. Thus, I knew the overarching concepts for which I was looking when asking questions and also coding without being so specific that it narrowed my focus on a specific outcome. While some interviews tended to sound to me narrative-like (for example, Keiko tended to have particularly long answers that did not necessarily reflect the protocol order, and I met with A-san several times), most interviews tended to follow a flexible “flow,” so it was easy to pinpoint their responses. This interview protocol overlay informed coding and thus would be deductive in nature. While this was particularly true of most of the interviews, I relied on a more inductive approach for the three litigant interviews as they were outliers. Each of their stories were different while carrying many similarities. The overlay of basic codes based off of the interview protocol questions and the responses informing codes makes the coding both inductive and deductive. This is not unusual for studies, and it is unnecessary to choose (Lewin & Sterling, 2007).

## **Summary**

In this chapter, I discuss the study methodology and methods. As a qualitative, exploratory study, I traveled to Japan during January and February of 2018 to conduct semi-structured, open-ended interviews with Japanese professional women in Tokyo and Kyoto. The interviews were done at a location of the participant’s choosing and could be conducted in Japanese with the assistance of an interpreter, in English, or bilingually. I took an ethnographic approach to the interview by using creative and empathetic interviewing techniques. Other activities that helped inform the study include: participating in union meetings, attending court hearings, going to a

labor protest, and meeting with key informants. All of the interviews were audio-recorded and transcribed using intelligent transcription. Once the data was reduced into transcripts, the transcripts were subsequently coded and analyzed for patterns and meaning. In the next chapter, “Findings,” I will discuss the findings and conclusions drawn from the data, as they relate to the research questions.

## CHAPTER 5: FINDINGS

In this chapter, I will present the study findings. These findings will answer the research questions:

**Q1: How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q2: Why do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q3: What barriers do Japanese women perceive to mobilizing the law?**

**Q4: How do Japanese women perceive grievance options and law mobilization?**

The purpose of this study was to understand **how** and **why** Japanese women mobilize the law when they believe they have encountered workplace sex discrimination. First, I will present the participants to the reader. I provide general information about their profiles as a cohort and then introduce them individually. Each participant was assigned a pseudonym. I want the reader to become acquainted with the participants as women, not just faceless characters. This profile is balanced with the intent of keeping the participants' identities confidential. Then, for those respondents who reported experiences with workplace sex discrimination, I discuss those encounters. In "Responses to Sex Discrimination," I answer Research Question 1: "How" do Japanese women decide to mobilize the law? In "Reason for Law Mobilization," I answer Research Question 2: "Why" do Japanese women decide to mobilize the law? In "Barriers to Mobilizing the Law," I answer Research Question 3: What barriers do Japanese women perceive to mobilizing

the law? In “Perceptions of Law Mobilization,” I answer Research Question 4: How do Japanese women perceive grievance options? Finally, in the “Measuring Litigiousness,” I present a model to measure the process from law mobilization to litigiousness as described in Chapter 2.

Throughout this manuscript, when I pull the purpose of the study into a section or subsection, I place the emphasis on **how** and **why** Japanese women mobilize the law. This relates to Research Questions 1 and 2. Conceptually, Research Questions 3 and 4 are perhaps subsets of Research Questions 1 and 2, as they provide more breadth and depth. They are also more inclusive of the research participants who may or may not have experienced workplace sex discrimination. There is a delicate balance that must be achieved when analyzing the results. When data is reduced and analyzed, it is generalized as much as possible to give meaning to broader implications and recommendations. However, the data started as stories, personal narratives about individual experiences, thoughts, and opinions.

### **Profile of Participants**

To revisit the recruitment and selection criteria, the participants must have been Japanese women (including transgender women), preferably a working professional (or with some work history), a baccalaureate degree holder, between the ages of 25 to 55, and a Japanese citizen. As indicated in the “Methodology” chapter, this criteria was changed during data collection after experiencing difficulties recruiting participants, which jeopardized the completion of data collection before it even began. As a disclosure, there is one outlier in this population and that is Keiko. Keiko in the process of becoming a Japanese citizen, which was just mere months from occurring when we met for our interview. At the time of our interview, she had already graduat-

ed from a Japanese middle school despite holding a master's degree from a reputable university in the United States and seemingly already took a Japanese name. Furthermore, Keiko is also transgender, transitioning in Japan. That is, as was acknowledged in our interactions, Keiko was originally a white male from Texas. Transgender women were included in the recruitment criteria, but the decision to include Keiko's data hinged upon her citizenship. Had we waited to initiate our interview until August, perhaps there would be no question about her having met the eligibility criteria. This would lead one to ask what was the intent of including citizenship as an inclusion criteria, and what does that mean exactly? On my demographic survey, I ask both ethnicity and citizenship questions. Ethnicity was generally met with some questions, but you could very well have an individual who was a Japanese citizen yet not ethnically Japanese. What does it mean to be Japanese? Is a Japanese citizen who is ethnically Korean or ethnically Ghanian who grew up speaking Japanese, received a Japanese education, and practices Japanese customs not "Japanese" simply because of their ethnic heritage? I dare say not.

The purpose of this study is not to answer this question. However, the inclusion of Keiko's data does challenge the recruitment criteria we as researchers pre-determined in designing our studies. In this study, Keiko identified as a Japanese woman, which is the central reason she was included in the project. The larger issue of ethnicity is one that is constantly evolving in research and data. This concept also did not translate well on the demographic survey; most of the respondents did not know how to answer or interpreted it differently.

The average age of the study participants was 44 years old, with the youngest participant at 29 years old and the oldest participant at 55 years old (three participants did not disclose their age). Of the participants, they included the following range of education:

<b>Degree</b>	<b>#</b>	<b>Percentage</b>
<b>HS/Vocational</b>	4	18%
<b>Bachelors</b>	9	39%
<b>Masters</b>	4	18%
<b>Doctoral</b>	4	18%

The breakdown of participant profession or job included:

<b>Profession</b>	<b>#</b>	<b>Notes</b>
<b>Self/Entrepreneur</b>	3	Hair salon, business manager, cafe owner
<b>Academic</b>	6	
<b>Corporate (unspecified)</b>	4	
<b>Corporate (traditional)</b>	4	Started with company upon college graduation
<b>Tourism/Hospitality</b>	1	
<b>Medical</b>	1	
<b>Retail</b>	1	
<b>Television</b>	1	
<b>Clerical</b>	1	Previously worked in television
<b>Secondary education</b>	1	Also an independent academic

The interviews were semi-structured and open-ended, taking a more conversational approach to gain the trust of the participants (as detailed in the “Methodology” section). Thus,

while I made an effort to ask the same type or similar questions during each interview, it was not always possible depending on the interviewee. Also, oftentimes participants would immediately discuss certain topics that were on their minds. For instance, it would not be uncommon for a participant to start sharing her thoughts on gender discrimination in Japan or even share her own experiences before I had a chance to ask: “Are men and women treated differently in the workplace?” or “Have you ever been treated differently in the workplace?” For the participants who had litigated or were engaged in litigation, the semi-structured format deviated, focusing on their individual experiences rather than a formulaic approach to data collection.

## Meet the Participants

I would like to introduce you to the participants. By doing so, the reader is more intimately acquainted with the interviewee as a person and her story. Below is a chart with the participants’ pseudonyms and approximate information.

**Table 5.1 List of Study Participants**

Participant	Age	Education	Occupation	Description
Setsuko	46	High School	Entrepreneur	Quiet and reserved, Setsuko owns her own hair salon in Tokyo. She takes a lot of pride in her business. She is unmarried.
Mizuki	54	MA	Academic	Confident and friendly, Mizuki is a professor whose research specializes in women’s issues, particularly child care. She attended graduate school in the United States. Mizuki invited me to attend a seminar at a local gender bureau in February 2018.

Participant	Age	Education	Occupation	Description
A-san	38	High School	Temporary	Immediately one notices that A-san is unique when they meet her. She is straightforward, friendly, and comfortable around foreigners. In some instances, she eschews traditional Japanese mannerisms. A-san grew up in a rural area and relocated to a major metropolitan area to have a more global career. She enjoys traveling and even though she has only traveled to the United States once, her English is impeccable with a near native fluency.
Masami	54	PhD	Academic	Masami is a studious and conscientious academic who specializes in literature. She is unmarried and has no children; she is taking care of her elderly parents.
Sara	45	PhD	Academic	Sara is a bright and welcoming academic who specializes in Buddhist art. She was eager to share her experiences as a curator at a rural Buddhist temple.
C-San			Company (unspecified)	C-san was an elegant and quiet woman who had taken legal action against her employer for maternity harassment. She engaged in activist work with a maternity harassment center and now has a full-time corporate job.
Risa	55	BA	Medical	Risa is a good-natured medical professional who greeted me with a <i>omiyage</i> (gift). She has held a number of different positions in her career and enjoys working; working means you have money to enjoy things. Risa has one daughter and was previously married to a Chinese man.



Participant	Age	Education	Occupation	Description
Himari	29	BA	Full Time	Himari works in an office and aspires to become a manager. She is a Japanese citizen born in the United States. She is unmarried.
Sumire	52	BA	Retail	Affable and striking, Sumire works at a large retail store. She previously worked as an airline attendant.
Kimiko	52	PhD	Academic	Kimiko is a university professor whose research specializes in Japanese literature. Kimiko is married and had informative insights into gender politics in Japan.
Yoko	54	MA	Academic	Yoko is a professor whose research is focused on artificial intelligence. She is married with one daughter.
Momoka	43	PhD	Academic	Spirited and engaging, Momoka is a pleasant and cheerful professor. She expressed many opinions and observations about gender politics in Japan.
Emi	33	BA	Corporate	Emi works at a large company and holds a degree in law. She is married with no children.
Reiko	54	High School	Entrepreneur	The widow of a famous race car driver, Reiko is an entrepreneur with two adult children. She manages her deceased husband's estate, which was turned into a company. Additionally, she serves on the board of her father's company. For fun, she is an announcer for horse races.
Izumi	41	Vocational School	Corporate (Full Time)	Energetic and unreserved, Izumi was eager to meet and share her story. Her career started in art and fashion. Izumi experienced power harassment at one company and decided to file a grievance. She had many insights into working women in Japan.

Participant	Age	Education	Occupation	Description
Ayaka	29	BA	Corporate (Full Time)	Ayaka was a sunny and good-natured woman who opened up candidly about her work experiences. She expressed much optimism about her future plans. She was easy to relate to and made the interview feel like coffee with a friend.
Tsubame	37	BA	Corporate (Lifetime)	Educated abroad, Tsubame was a chic and professional woman who spoke in delightful British English. She majored in law.
B-San	43	BA	Temporary	Graceful, beautiful, and spirited, B-San is a former television reporter. She received her college degree in the United States, and in an effort to start a career abroad, she quit news broadcasting and took a position with a temp service.
Natsume	41	BA	Corporate (Lifetime)	Easy to talk to, it was difficult ending my interview with Natsume. She was hired in her current job out of college and is the mother of two young children.
Keiko	34	MA	Middle School Teacher (Full Time)	Keiko is an outgoing and knowledgeable woman who approached me at a union meeting. Keiko is originally from the United States and was in the process of becoming a Japanese citizen. Her peers were in awe that she graduated from Japanese middle school as an adult, which is an amazing feat for any foreigner. Furthermore, Keiko is open about her transitioning to a woman in Japan. She previously wrote for feminist website in the United States.

Participant	Age	Education	Occupation	Description
Chieko			Television Correspondent	Chieko is a popular television correspondent for a major broadcasting company. We met at the company broadcasting headquarters in the cafeteria. She said, "And people get this idea that there must be like equal proportion of men and women in the TV business just by looking at the television, but just look around. Most of them are men, and women are usually more junior than men ... But just by looking at the cafeteria. So, I thought it would be good if I brought you here because you see the general atmosphere, the environment of a very conventional, typical Japanese company."
Tamiko	47	MA	Corporate (Lifetime)	Intelligent and career-minded, Tamiko spent her career working for the same corporation. However, she was concerned about her ability to move up within the company. She travels regularly for her job.
Miyu			Entrepreneur	Lively and worldly, Miyu runs her own international coffee shop. She is knowledgeable on many issues and created a special space for her patrons.

## Experiences with Sex Discrimination

Most of the participants had experienced some sort of differential treatment or harassment in the workplace, usually in the form of sex discrimination.

**Table 5.2 Experiences with Sex Discrimination**

<b>Sex discrimination</b>	<b>#</b>	<b>Percentage</b>
<b>No (N)</b>	5	21%
<b>Yes (Y)</b>	10	43%
<b>Yes/No (Y/N)</b>	3	13%
<b>Yes-Oblique reference (Y/O)</b>	1	4%
<b>No response/no mention (NR)</b>	4	17%

(Total comes to 98% due to rounding)

“No” means that the participant indicated that she has not experienced workplace sex discrimination. “No response” or “No mention” (NR) means that the participant either did not respond to the inquiry or was not asked if she had experienced discrimination. For instance, when speaking to Mizuki, she did not mention experiencing sex discrimination; however, our extended lunch conversation and lengthy interview revealed her observations about other women experiencing discrimination and their responses. In other instances, the topic simply did not come up in the interview, such as the interview with Miyu, who owned her own business and previously worked abroad. In the instance of Reiko, she was a housewife until her husband passed away, at which point she created a management company for his estate. She also worked on the board of her father’s company and as an announcer for sporting events for fun, so it did not seem appropriate to ask. Tamiko discussed gendered differences at her company at length, which consumed a large part of the interview, but did not identify experiences she had with differential treatment as “sex discrimination;” even though the informant who referred me to her indicated that she had experienced sex discrimination, Tamiko revealed nothing personal.

Some women clearly indicated “Yes” they had experienced sex discrimination and indicated as much. However, occasionally a woman would indicate she had not experienced workplace sex discrimination yet would go on to give an account that indicated that, perhaps, she had. I labeled these responses “yes/no” (Y/N). A good example describing this disparity is gender stereotyping. Many women with whom I spoke during data collection and at large lumped the question, “Are you married? Do you have a boyfriend?” under sex discrimination or sexual harassment. As an American woman, I admit it was difficult to understand why the women felt this question was discriminatory. However, I suspect it has to do with the societal expectations of a woman’s expected life trajectory in Japan and the stigma associated with being unmarried (Yoshida, 2009). On the other hand, Tamiko, who worked as a television correspondent and producer, indicated she had not experienced sex discrimination but instead prejudice. In the “Yes-Oblique,” I wanted to indicate that this particular respondent did not clearly state that she experienced sex discrimination. However, her response spoke to sex discrimination and I interpreted this answer to be indicative of having experienced sex discrimination.

One thing to note is that the responses given by the participants is only as good as their disclosure. That is, for a number of valid reasons, the participants may not have been fully forthcoming in their responses, as they related to their own experiences with sex discrimination. For instance, one individual who referred me to a participant stated that this woman had been subject to discrimination. I anticipated when I spoke with her that she would bring up what was communicated to me. Yet, during our interview, she never once mentioned the alleged incident. It is possible that the informant was incorrect, but it is just as likely, if not more likely, that the participant felt uncomfortable sharing that information or did not consider it sex discrimination.

Of all the “yes” category responses (Yes, Yes/No, Yes-Oblique), the following is a breakdown of the type of discrimination or harassment.

**Table 5.3 Types of Sex Discrimination Experienced**

Harassment	#	Percentage
General/Differential Treatment	5	36%
Promotion/pay	2	14%
Sexual Harassment	5	36%
Maternity Harassment (Implied)	2	14%
Maternity Harassment (Actual)	2	14%
Power Harassment	4	29%

\*Totals do not equal 100% as many women experienced at least two types of discrimination.

I specified the difference between “Maternity Harassment (Implied)” and “Maternity Harassment (Actual).” This differentiation may not be recognized in Japanese society. However, I received responses indicating that women had been told not to get pregnant, and in one case, the participant actually suffered the loss of a job after giving birth.

### **Differential Treatment and Promotion and Pay**

Of the general and differential treatment, one of the more interesting cases was that of Sara. Sara previously worked as a museum curator at a Buddhist monastery and held a doctorate. She stated:

**This job, in the past, I really liked working as a curator at a museum, but the working conditions, were very bad, and it was a disappointment, and I had to quit... [Temple name] is a world of monks. It’s basically rejected female for man ages, so**

**originally there were no women working there.**

She continued to describe some of the discriminatory treatment women faced at the monastery:

**For example, women only were permitted to wear uniforms. We had to wear uniforms where monk, they wore their monk special attire, and male workers, they could basically wear anything really, but female workers had to wear uniforms. it was such a rural area, so women with higher education were hated pretty clearly, pretty open.**

**I guess as an organization, there was no system to support female workers, but I did work as a curator, but I also was treated as an ordinary staff there. I did reception work, and I cleaned toilets too. I didn't particularly, actively seek for special treatment there, but I did have an awareness that I was working in a special field as an expert, but I don't feel I was treated that way. Compared to the job that I did, I think the salary was rather.... Well, I could not save any money there.**

Sara acknowledged that her discriminatory treatment stemmed from residual Buddhist customs at monasteries. However, although she worked as a curator, she and other female employees were not allowed to touch the relics.

Natsumi, while not explicitly stating she had received discriminatory treatment, discussed that, while she was hired on the “management track,” she had not received a promotion since having children (also coded as **implied maternity harassment**).<sup>47</sup>

**Usually, I mentioned that these management staffs are moved around every two or three years, and they are supposed to experience many things, so they can make judgements as a manager, but I have been just secretary for the longest time. Maybe I'm kind of like, in a way, off the track maybe. Maybe. They never tell me if I'm on the track or not, so I don't know, so I'm still the.... The thing is that I'm paid still as a management track staff, so they pay me a lot of money, the same as management**

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<sup>47</sup> “Implied Maternity Harassment” is not a separate subsection. In Natsumi’s case, my feeling is this would not be considered *mata hara* proper as she retained her job but suspects the reason she is not fast-tracked in her career is due to motherhood. In Yoko’s case, again, this is not *mata hara* proper as she did not have children but rather shaped her career around this decision.

level, but when my [inaudible 00:03:59] retires or something, then I'll lose my job inside the company, so I have to go somewhere else.

I try to feel that I'm still on the track, but at the same time, I see my colleagues, who are hired in the same conditions as myself, experience.... Plus, they are five years ahead of me because I took the leave for my children, so sometimes...I'm doing the fighting, emotional fighting all of the time putting myself on the opposite track I have to.... I'm paid well enough, so I have to keep up.... The longer you stay, there's a promotional ladder, and for our company, there's not much people that climb up the ladder. Of course, there is some difference as you get older. There's not much as difference, so because I had almost five year, actually four year, but I couldn't take the test twice because of the.... They have a fixed date for the test, and we had the promotion, so I could not take the test on the fixed date two times, so that made me miss the test, and I behind my colleagues.

She expressed her frustration at watching male colleagues promoted before her:

I was hired as management staff, so I have to keep up. What's difficult now is that in my team that my chairman has a team of seven people in our team, and she happens to be my same year, so working together with my.... We call [foreign language 00:07:32], same year, but he's a guy, and he's ahead five years. During the last year, the title he had was above mine, so he was like a deputy manager, and I was team staff. Then this year, last July, a year ago, the title became the same, but I try to show respect for him because in the ladder, he's still five years ahead.

Yoko, a university professor, describes how she was told not to have children (also coded as implied maternity discrimination):

**Kristen:** So, the stability in the employment impacted your decision to have children.

**Participant:** Yes, I think the stability affected my decision because when your contract is renewed yearly, the work environment tells you not to have children because it'll affect the work. In that kind of work environment, I think your behaviors are limited. When the contract is done or over, you will not have any job, so that means in that kind of environment, you have to continue to be employed in an unstable situation.

**Kristen:** Was it implied that you shouldn't have children, or were you told not to have children?



**Participant: Yes, it was. They told me clearly.**

Himari, in her 20s, described feeling how her professional input was ignored by older men:

**And they were all men, so it wasn't bad, but I felt very useless. A lot of the things I said, I guess, didn't seem useful, I don't know, so I couldn't really voice out my opinion. Yeah, so I would just have to listen and do whatever they tell me to do. It wasn't a bad job, very comfortable office space, and the people weren't bad. We used to have lunch together every day, but work-wise, I wasn't motivated for sure... I just gave up half-way. I'm just like, "Ugh, they're not going to listen anyways." Of course, I couldn't really help them with their actual work, like IT work, but I wanted to do something that could help the environment of the workspace. I think that's what I was trying to do, but.... I guess it's not just about how they were men, but it was probably just the people I was working with.**

**Yeah, there's one person that was really, really unique, and he definitely looked down on women for sure. It was me and this other girl before, and there's another girl before that, but they all hated him. He was just really, really mean. I don't know what it was, but I actually didn't hate him. Sometimes I hated him. I was like, "Why would you say that?" but most of the time, I was okay. I could understand why a lot of the girls that were there hated him. I don't know why, but you could tell that he looked down on.... Especially women that are younger than him. That was just him.**

Sumire, in her 50s, described working for an airline early in her career and also mentioned not feeling heard.

**Sometimes people, maybe if there doesn't give some importance of the idea of that we are talking about, they never hear you. Maybe they think there is not necessary, or I don't know why, but I thought that the passengers really wanted to do that, and I ask if I could do that. No, because it was company rules. You cannot do it. I think the service, sometimes service, it's not on the rules. You have to pass, or you have to do it another way to give the passenger...How you say...To the passengers stay very comfortable, or sometimes you have to do it another way, or if it's not, you cannot give good services, and the passenger or the client will not come again.**

Many of the women with whom I spoke on the record and casually off the record discussed after-hours socializing and drinking. This type of socializing is expected of company employees, especially those wanting to be promoted. The women I interviewed felt ambivalent about these interactions. It was also often during these after-hours socials that women became the target of discrimination. Ayaka describes an incident that left her seething for years after:

**We usually, from HR, two people go to one country, but one time when we went to China, three people were assigned from HR. It was my current manager and my ex-manager who was a higher manager than my current manager, and it was me. After all of the interviews finished, we all went out for drinks and were very happy because we completed all of the interviews, met all of the great engineers.**

**It was HR, three of us, and they were the technical, the engineer science managers, and we all decided to go out, go for a drink, go to a bar or something like that. The engineer managers there were very nice, and when we were trying to get on the cab, they were like, “Do you want to just get in the cab with us?” I tried to get on the cab, but two of my managers, they stopped me there, so I just said goodbye to the engineer managers. Then I thought that I’m going to be getting on the cab with two of my managers.**

**They were like, “Can you just kind of read between the lines, and can you just kind of see what’s going on?” I didn’t understand what that meant, but they just didn’t want me to get on the cab because they were going to go to a girls bar on a business trip, which I do not personally care.... They could do whatever they want to do, but they left me on the middle of the street in China at midnight, and they were very drunk, but still, that’s not an excuse at all.**

**As a manager, at least what they could’ve done was to bring me back to the hotel lobby, but they just left me there on the street, and they were just smiling, laughing. They just told me, “Okay, we’re just going to go.” They got on the cab. I stood there. That was the first time that I felt like...I feel like I’ve been discriminated, but that was the time that I felt like I was never discriminated that much just because I’m a female.**

**They got on the cab. I just stood there, tears are coming out. That was two of my managers. I think for that incident, I think it’s really just who they are as a person, and I know that that is just them, but it happened, and it’s not only that but all the other stuff that I just told you about, so...**

## Power Harassment

The women also brought up instances during which they encountered power harassment. Please note that “power harassment” which is not gender specific. I did this so as to not diminish the women’s experiences and because this type of harassment appeared so much during my data collection that it is considered a significant finding in my final dissertation write-up, signifying a shift, I believe, in how women perceive inequity in the workplace. I also found gendered aspects to power harassment, as evidenced in Izumi and B-san’s stories. Ayaka, mentioned above, described in harrowing detail the treatment she encountered:

**The company, they don’t treat people like they’re human beings. We had a training because we were in sales. Right after I joined the company, maybe a month or so, we started to sell one house every month, which is impossible for a new grad to do, and if we don’t make it, we have to go to this training. They yell the meanest stuff to you. People were telling me, “Just die!” In Japanese, we don’t have curse words but things like that, and at the very end at the training, we had to write down how many houses we’re going to be selling next month. Everyone has to be in line, have to be like yelling or give a loud speech in front of everyone. I think the company, they just want to humiliate you in front of everyone.**

She described in detail how this “retreat” required employees to meet in a location for several days with no access to their cellphones, engaging in activities, such as walking 20 kilometers and having people scream at them.

Risa, who worked in a medical setting, described an incident during which she was physically assaulted by a doctor:

**One day I picked up a garbage from the floor, and the doctor passed nearby me, and he kicked me because I picked up the garbage. It was impossible for me.**

However, Risa did not seem to think this was due to her gender.

**Kristen:** Do you think if you were a male he would have kicked you?

**Translator:** All the workers were female. . . Because he is. . . I was kicked. I think gender discrimination is not caused by the atmosphere or any other things than the personality.

**Kristen:** For you, it's not something bigger? It's individuals to the person?

**Translator:** Just person. The personality or. . .

## **Izumi**

Izumi was another woman who experienced bullying and power harassment. Most of interview was spent talking about gender politics and the workplace in Japan, but she shared with me her personal experience of mistreatment in the workplace.

**...so my boss who is a supervisor said to me one day, "[Izumi], all of the workers in my job place said they disliked you. They hate you," so it was upsetting for me, so I'm very surprised. At that time, I was 26 or 7, in the twenties. I was so shocked, but the boss is my direct boss, called the supervisor, me and him the supervisor, and another supervisor said to me... But nobody said to me my attitude, working attitude is bad and no suggestion I'm not working well.**

**Nobody said to me, but the supervisor said to me, "Your attitude is bad, and you are disliked by everybody," but no people supported me at that time because, I think at that time, I thought everybody didn't want to get involved this matter. That case occurred at that time... Sometimes then we have no way to get against or... As a culture of the corporate, company culture is like that, so even though there is a law to support the people, the supervisor who was telling me that, "You should quit this job,"... Not paying attention to that law, the recognition of the law supporting the weaker, supporting the people who are said to quit job is very low at that time.**

Izumi suspected that the sudden pressure put on her to quit was perhaps illegal, so she decided to consult with a union for legal advice from an attorney<sup>48</sup> (more of this will be detailed in the next subsection). There was enough resolution for her to remain at the company, but there was “no work” for her, so they moved her to another section.

**The attitude didn't change at all. Then I stayed in the same section, but I had no job. Then I was transported to the other section, and I was not given any jobs, and no people talked to me every day, and nobody helped me at that time. Then I returned. Then little by little, things were changed. Then three years later, I quit that job. It's a sad story. That's a long story, but I couldn't [inaudible 01:21:03] with the stories.**

I confirmed with Izumi that she was given a “window job.” A window job in Japan is one of the worst situations in which a worker can be placed. Firings in Japan are exceedingly difficult to execute due to the number of labor laws and intricacies of social relationships. So, if an employee falls out of favor with their employer or the company has a reason to want an individual to leave, they place them in a window job. In order to understand what is so detrimental and shameful about a window job, we must first compare and contrast the American and Japanese workplaces.

Although open workspaces are becoming increasingly popular in the United States (much to the chagrin of many workers), historically, Americans value privacy in their workplaces. Depending on an individual's rank, they likely have their own cubicle and/or desk, own office, or even their own floor if they are an executive. In the United States, having a desk next to a win-

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<sup>48</sup> The interpretation is somewhat unreliable here. The interpreter states a local agency providing legal aid helped her but then states it was a union. The quote is below: *“I went to the union outside of the company and the lawyers who are free legal. We have a consultation run by the local government.... Legal aid or the local government to workers.... It's a kind of Japanese style [foreign language 01:17:21]...”*

dow, especially with a view, is preferable and, in some instances, conveys a type of status. In contrast, Japanese workspaces are modeled differently. They are usually one large room in what we might call an open workspace with the supervisor or boss sitting at the head of the room. This is a reflection of the collective nature of the Japanese society. Being ousted from this group is deeply shameful and stressful. Thus, if an individual is assigned a window job, this means they are separated from the work group, have a desk facing the window, no work assignments, and are generally ignored. Even worse, they receive no assignments, which further compounds their stress. However, if the individual wants to keep their job, they will continue to show up, although they usually buckle under the stress.

However, in Izumi's case, she felt a sense of relief.

**...[T]he worst thing was to be ignored and to be faced in the window like that, but until that time, I had worked until 10 to 11 o'clock p.m. I was so busy. I had worked with Sunday or a Saturday, but this time, I can accept it positively. I can leave office, and I can spend more time for my hobbies, and I can spend relax time... I felt... Positively."**

She used that time as a personal respite:

**...So, during that time—I went to Italy with my mother.**

Izumi downplayed this experience in her description to me.

**At that time, one female of the union told me a lot of stories, which were more heinous than my case regarding power harassment, or sometimes, the story is related to the survivors, so I heard at that time a lot of stories from her, so in comparison with the other stories, my case is smaller than that.**

**When it comes to her interview of sexual harassment or harassment from you, I might be a little bit... A little bit weak or weak...**

**B-san**

B-san is a vibrant woman in her early 40s, and I was struck by her graceful demeanor and extroversion. The same day I attended A-san's court hearing, I was invited to attend another court hearing of a professor bringing suit over a wrongful termination. The meeting was arranged by Tokyo General Union, but the real reason for the invitation was to meet the plaintiffs of the Sumitomo Metals case decided in 2004 and the former president of Working Women's Network. I was heartened to see the turnout of support for this woman and through this meeting met B-san who had an "interesting story." We agreed to meet so that she could share her story with me. Over lunch, we discussed her case and went on the record for a formal, semi-structured interview. B-san previously worked in broadcasting but wanted to travel abroad for work, which she believed she would be unable to do as a broadcaster/reporter. She quit working as a broadcaster and sought employment as a secretary through an employment agency (manpower). She believed that she could become an administrative assistant at a company and be assigned overseas.

She was assigned to work at a major financial institution in Japan. She worked for an executive at the company who had a habit of leaving his office door open. This encouraged other employees to trespass in his office and B-san thought this behavior was inappropriate. She was concerned that the employees would see confidential documents he left on his desk. She brought this to his attention, but he continued to leave his door open and employees continued to trespass in the office. She felt so concerned that she actually contacted the organization's compliance department.

**Boss was rude guy, so he was, "Okay, okay. Yeah, I think I'll think of it later," or whatever. Actually, after that I called the compliance department in the company and ask them, "Hey, is there any official posting to show everyone how to use a pri-**

**vate room?” Sounds very childish, right? The department, conference department answered, “Of course not because it’s common sense. No one should get into the boss’s private room.” That’s why, of course, we don’t make that posting. We expected your boss... That he had an imagination, why he was provided a private room... compliance department.**

**Conference department said, “There is no official document to set up the rule because we expected everyone’s common sense, so why don’t you speak to your boss again?” or “Why don’t you raise the issue within the department?” That’s the answer from compliance department, so I spoke to the boss already.**

She tried to address the matter with the trespassing employees’ supervisor per advice by the compliance department and referenced the documents she believed were compromised and supposedly confidential information mentioned to her by the employees:

**Then I felt I had to speak with those three ladies’ boss. That’s Miss [Redacted Name], female boss. I spoke to the female boss. “Hey Miss [Redacted Name], your three subordinate really get into my boss’s private room. Did you say you can really go to the private room or something? If you did it, please let me know.” I wrote that things on the email, and on the email, I wrote, “Day one, your subordinate put the memo right next to the Mr. [Redacted Name]. Mr. [Redacted Name] movement to going to the New York bureau. Day two, it seems a confidential document, something regarding between Mr. [Redacted Name] and Mr. [Redacted Name] of [Financial Institution]. Day three, I didn’t even know there was an MBA movement, but your subordinate said company decided who will be sent to the University of Pennsylvania. I was so surprised.” That’s the thing that I wrote to the ladies’ boss. The lady’s answer to me by email, “Let’s think about it later.” That’s all.**

The next day, she was fired. The company alleged that the supervisor she contacted did not know about the breached information she shared and that B-san actually breached the confidentiality. B-san resisted; the supervisor, according to her, already knew this information and it was not because B-san discussed it in her email.

**She created the whole situation. I think Miss [Redacted Name] didn’t like my reaction because... But those three ladies are Miss [Redacted Name]’s subordinate. I**



**know this their fault, and it's not really happy to Miss [Redacted Name], and it's not happy to the boss also because that's happened to that boss room, but I did it to protect my boss. Crazy.**

Rather than support his subordinate, B-san's boss sided with the supervisor as a matter of pride; he was also in the wrong to leave confidential information on his desk and door open and wanted to avoid blame or shame.

**Because that's his personality. I was trying to protect him, his room. That's why I noticed him many times, but it just annoying to him, and I said to Miss [Redacted Name], and from my boss's point of view, "You shouldn't tell my backstory to others." Just a problem of his pride. He has such a high, high pride... That's Japanese guy. Yeah... They like their pride, even though they are wrong. They want to protect their pride, so they can even hurt the secretary who are trying to protect them to protect his pride...**

Note that in her response she states, "That's a Japanese guy. Yeah... They like their pride, even though they are wrong. They want to protect their pride, so they can even hurt the secretary who are trying to protect them to protect his pride..." In this portion of the quote, she speaks to the gender dynamics that may be present in power harassment.

Further explaining the problem, she stated:

**The compliance officer called me later to make sure what's going on in my department, and also compliance officer said, "I spoke with bigger boss, and we came to a conclusion. Your boss is wrong."**

She was advised by the manpower company to return to work, but the company had already replaced her, creating a dilemma and an uncomfortable situation.

**...I actually spoke to my lawyer, and I was not wrong, so I can go to the company, and [temporary agency] said, "Yes, you can go," but other company was hired from the lady, [Redacted Name]. Miss [Redacted Name] wouldn't come to the office ever again, so there's a big conflict. Next day, I went office, so because announcement of the lady, I was not supposed to be in the office anymore, but I was there next day.**

**From the company's point of view, I was selfishness come to the office. Then what happened was I called the compliance office before, and the compliance officer called me later. I was so scared because my situation was not that good at the time. The compliance officer called me later to make sure what's going on in my department, and also compliance officer said, "I spoke with bigger boss, and we came to a conclusion. Your boss is wrong."**

She also stated:

**Yes, but my situation's funny because my enemy's a woman, but that's another dark side of Japan because in Japanese company and in the Japanese society, women are looked down, and because women was look down and women feel uncomfortable [inaudible 01:27:38], but as time goes by, women feel it's natural, so as they build up their career, as times goes by, women noticed younger women to be obedient for older women, so my case is like that... And older women expect that... Really the result of Japanese society. She survived in a big firm, financial firm in Japan, very typical Japanese society, Japanese typical financial agency, and she had learned how to survive in the Japanese typical society, typical financial agency, typical big firm, and she realized there is no fairness. Right or fair is not really big deal. Keep the pride is a big deal. She learned. That's why she used that point. Do you understand what I'm trying to say?**

What is interesting about B-san's response here is that she describes how Japanese women sometimes adopt masculine characteristics to adapt to the patriarchal workplace. This evokes Emma Dalton's (2016) description of female politicians as "men in skirts." That is, Dalton found in her study on women in Japanese politics that, in order to assimilate (or survive), they adopted masculine personality traits.

Explaining her boss's peculiar reaction and treatment of her:

**It's a matter of power. Power balance. Because my boss want to be maybe like a president in the future of the firm, but I called the compliance department, and the compliance department came to a conclusion... My boss is wrong, and it's not good for his career. Maybe he failed at that. I don't know. The more I used the evidence, I ask everyone to support my fairness and my I was right, the more I do it, the more my boss get mad.**

Upon her dismissal, she started receiving documents from anonymous sources, similar to A-san. One damning document was an email exchange in which she discovered a plot to fire her. The email states plainly that there was no reason to fire B-san but that they wanted her dismissed, so they made up a false story.

**Then Miss [Redacted Name] was actually... She has a courier at HR department, and then, in the email, she mentioned, "There's no point to fire Miss [B-san], but we want to fire her. How can we?" That's why they made up the story. Miss [Redacted Name] didn't know the story. That's a fake story because Miss [Redacted Name], during the email, she says, "There is no point to fire Miss [B-san] legally." That's why she made up the story. They made up a story. Miss [proper noun 00:32:04] didn't know those informations because of the secretary [manpower] sent to us, we are in trouble, whatever, whatever, so it's a power harassment toward me but also, it's a power harassment toward [manpower].**

## **Maternity Harassment**

### **C-san**

While there was what I called **implied maternity harassment**, which perhaps influenced employment decisions and promotion/pay, C-san experienced actual maternity harassment (*mata hara*), which resulted in her firing. My interview with C-san was less formal than the other interviews, as I considered her not only a participant interview but a key informant. Although she has gone public with her case and started an organization devoted to assisting women who have experienced maternity harassment, I have chosen to conceal her identity as I have done with the others. Due to issues with the interview translation and less formal structure of the interview, her story is shorter than the others.

C-san was fired when she became pregnant. Despite the fact the 1986 Equal Employment Opportunity Law protects women from maternity harassment and guarantees them leave,

allowing them to keep their jobs, maternity harassment is a widespread problem. What is particularly insidious about the harassment is that, once a woman loses her job, it is difficult for her to find another. I spoke to litigant of a paternity harassment suit off the record as he did not meet the recruitment criteria. However, as he described it to me, once he was fired from his job, it was nearly impossible to look for another one as he needed childcare and in order to get childcare, he needed a job.<sup>49</sup> Sometimes, during maternity harassment, women are not directly fired but encouraged or harassed to quit.

**The people who are working in the working place, the other people in terms of colleagues are saying, “Why don’t you quit job?” or suddenly, “You didn’t come to the office.” It’s sudden because children suddenly get sick or children... It is often the case children got sick suddenly, or sometimes we have to deal with something related to children, so the colleagues would say the kind of things, which is bad to them. It’s a kind of harassment, and it is also difficult to judge that is illegal or not.**

C-san believes that companies continue to engage in maternity harassment due to the work environment despite knowing it is illegal:

**Now the working place is lack of [inaudible]. They’re too busy, and in terms of time or financial, I think there are many conditions that they do not have enough time or money or mentally also. Employers or the working place are difficult to solve that problems, so they do not lose the workers. They do not want to lose the workers, and in terms of the cognition, they do not know if they lose the work women as a worker what will happen in the society.**

## Sexual Harassment

Sexual harassment, or *sekuhara*, became a “buzz word” in the early 1990s with the *Fukuoka Sexual Harassment* court case, which parallels the term becoming a more popular part

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<sup>49</sup> February 2018

of the American discourse due to the Anita Hill hearings. Sumire described being groped by passengers when she was an airline attendant.<sup>50</sup>

**Kristen:** So, you've experienced having somebody touch your rear.

**Participant:** [foreign language 00:26:30]

**Kristen:** Wow. How did you react to that?

**Participant:** [foreign language 00:26:35] [She indicates with her response and body gesture that she hit them and told them to "please stop that"].

**Translator:** Good.

**Kristen:** So, you hit them.

However, Sumire routinely downplayed this behavior. In an earlier part of the interview, she discussed "bad words" that men used, presumably meaning offensive language or perhaps lewd jokes. She indicated that it was "like a child" and "*baka baka*" or "idiotic."

Ayaka mentioned mistreatment by older men and receiving calls in the middle of the night from managers asking for sex.

**I was one of them, and that place, I was, of course, the youngest person, and my mentor was a 50-year-old man who was married and had kids, but obviously, he was very unhappy.**

**When we'll get into the car to go check up on the houses that he sold, he would be smoking, and I don't remember exactly what he told me, but I just remember him telling me, "Oh, that's why you suck. That's why you suck." That's why you're a horrible person, that's why you suck, things like that. I think it happens more than people think because that was my first company, and then there were other managers who would be calling me at night, asking me if I want to sleep with him.**

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<sup>50</sup> Modified from a bilingual conversation with my interpretation of the audio.

This treatment occurred simultaneously with the other bullying behaviors that she had experienced.

**Well, he was a manager at a different office, but maybe once a month or something, he would come over to our office. Every single time he would see me, he would make a comment about my body. In his way I think he was giving me a compliment, but it was very direct. It was something like, “Oh, look at your butt. You have an amazing butt,” or something like that...**

**So, when this other manager who came from the other office would compliment about my body or whatever it is, I think, at that time, because I was not in a good place mentally, so it didn't bother me that much. Then right after I told the company that I'm going to be leaving company, then he would call me. He called me a few times and asked me if I wanted to sleep with him.**

**A-san<sup>51</sup>**

One of the most insidious cases was that of A-san. I first met A-san through Tokyo General Union. Hifumi Okunuki and Louis Carlet kindly offered to introduce us, and we met at a labor union meeting in January of 2018. Although we were unable to conduct our first interview in that setting, A-san told me her story, and we agreed to meet again a week later to go on the record. A-san's story was publicized in the news media but she remained anonymous, concerned that her family would face retaliation. Not only did she guard her anonymity to protect her family, who did not reside in Tokyo, but she also did not tell them she was involved in a lawsuit.

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<sup>51</sup> Please note that I refer to an article published in *The Japan Times* as I recount A-san's story. This was to make sure I was properly reading her interview data. I do not, however, cite this article or include it in the bibliography. While the company's name is mentioned in this article, in a discussion with A-san, she seemed uncomfortable with me revealing the company name in my study's publication until she spoke with an attorney. I did not pursue the matter and abide by her wishes.

A-san's ordeal started in 2014 when she was hired to work as a contract worker for the subsidiary of a major corporation.<sup>52</sup> Although she only had a high school education, her impeccable English skills were valued at the firm. She had reservations about joining the company at first because the work did not seem interesting; however, she found the work quite enjoyable, explaining that she liked her manager. However, the situation soured considerably when she caught the eye of a married coworker, who singled her out for unwanted attention.

At first, she was amenable to his contact, which consisted of communications through social media and company email. However, the communication became increasingly inappropriate and constant, which concerned A-san.

**I was not asking him to stop texting me because if he is talking to me like very positive conversation, there is no reason to reject, but he did too much... I felt a bit weird [about being singled out on social media], but it was his something drop. In the New Year's Day, he kept texting me, so I said, "Oh, you must be with your family because it's New Year's Day, so you should go back to your family. Just leave me alone," but he said, "I do computer thing all the time, so you don't need to worry about it."**

A-san tried to stop the communication politely and in a non-confrontational manner:

**I tried to reject in softer way, but he didn't understand. At the time, I was also telling him, "You should stop the texting on [social media] all the time because you are a married person, and I'm single. If someone know about this, many people blame me because I cannot do this to married person, so I don't want to do it..."**

The coworker became upset with A-san when she rebuffed his advances, so she tried an alternative approach:

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<sup>52</sup> Please note that, while this subsection is devoted to telling the **experiences** of women and the subsequent subsection is devoted to **responses** (to answer Research Question 1), part of A-san's story and experience includes some of her initial responses to describe the severity of the treatment to the reader. I have included her experience and initial responses up until her termination.

**I felt, ‘I shouldn’t make him upset. Just smile and just leave this conversation.’ I just told him, “Okay, maybe I’m going to ignore you sometimes when I get texts. I will decide when I reply you.”**

However, the advances did not stop and his behavior deepened her concern. In particular, he found her phone number and called her on her phone, refusing to divulge where he found the information. She tried to be more resolute while remaining conciliatory:

**Maybe he know about me everything, so after, I asked him to unfriend on [social media]. I cannot continue this relation, and then I invited him to have a coffee to talk about this, and then I promised to him I’m not going to tell about this anybody, so just try to be okay between us in the company as a regular relationship.**

However, he then started making advances using company email, which A-san found unacceptable. This time, she was more firm about rejecting his advances.

**He said he accept it, but after, he started texting me on company email for dating. Then I told him, “It’s better to stop to talk about something like that on company email, so please do not text me anymore. Never, ever.”**

At first, this approach seemed to stop the behavior. However, she was then alerted by a friend that he was making defamatory remarks about her on social media. At first, she was not sure the social media postings were about her, but given their exceptional length, content, and detail, she felt positive he was writing about her. Some of the posts were particularly damaging and hostile, such as, **“Fucking bitch is smiling again, and spreading out something... And she want to have a sleep with those members.”** A-san felt compelled to bring the behavior up to her manager. She was worried about her reputation within the company:



**At first, I scared because everybody in the company calling me as a nickname “fucking bitch.” Even I haven’t dating with anybody, but he is mention about the girl, like people call the person “bitch.” I thought that... And also, my company has only men, like 90% engineers, they are men, so I thought that, ‘Oh, I’m in a very bad situation in the office because everybody try to dating with me for sex.’ After that, I was not able to talk anybody else in the company office because I scared because, ‘This is another trap’ or ‘He is trying to do something with me’ or even I cannot trust what people say in the office.**

She further explained:

**Actually, that time, I was really just scared. I didn’t want to make this trouble big. Just I hoped, ‘Just leave me alone from this trouble. Just work is just work.’ I didn’t involve with the other people anymore. I didn’t talk anybody.**

When she communicated electronically with her manager about the situation, he seemed amenable to resolving the harassment. However, days later, she was called into a conference room with management. The coworker denied that his social media posts were about A-san.

The managers then requested that she keep quiet about the situation and blamed her.

**...but few days later, big manager called me in the meeting room with the other big manager, so two big managers came to the meeting, and then I was only myself, and then they told me, “Don’t talk to this trouble to anybody.” Then they asked me, “Why you need to see his Facebook? Even you are not friend anymore, it was your fault because you check someone’s Facebook, and then you complained about it, so it’s your problem,” they said. Then we asked him, ‘You are talking about something, the person on Facebook, what was that?’ and then he answered them like, ‘Oh, I am posting on my Facebook about my friends, my known person,’ but company should stop him, right?**

**It was not me, but it was something about other person. Then talking about it like a bitch or slut or all the day... I thought that the company would ask him to stop it, do not post anything else, but they didn’t. I thought, ‘It’s better. I shouldn’t talk to these big managers about this problem anymore,’ because I would get harassment from them because they are helping him.**

A-san complied with their orders to stay quiet and the harassment seemed to diffuse until the management assigned her to work with the harassing coworker against whom she complained. The behavior resumed but in more insidious, damaging forms, like poisoning A-san's relationships with other members of the organization. A-san again complained to the manager about the treatment, and sensing her growing anger, he consulted with human resources. It was also during this time that A-san sought medical treatment for distressing health symptoms. The symptoms started emerge when she discovered his Facebook posts and eventually turned into a persistent cough of no known origin.

**I started coughing, and then I went to hospital, but all the doctor sent me mental disease hospital because this symptom is mostly comes from mental or stress... It was started in the company in the office when I had a seat in the desk. I started cough... Like without any wheezing. It was not cold. Just like [coughs] something like this. I couldn't stop it like three hours, four hours. Even during the work, I went to hospital... [when asked to describe the symptoms] Like you feel something stuck here, so you want to... Throat... With cough. Like always something here when you talk like uncomfortable, but cough was getting serious, so maybe my throat has something, infection because I'm coughing all the day, but all doctor say that I don't have any sickness, my lung or throat. Everything okay but just coughing.**

A-san was gravely concerned about the cough, even fearing she was dying of cancer or some other disease. Upon learning the cough was psychosomatic, she decided to escalate the complaint to human resources. Again, when A-san complained, she was told to stay quiet.

**Because this big manager doesn't work at all, so he's totally stupid, so I knew that, "Okay, I'm going to talk to human resource directly," and then I just copied all the message that I send to the big manager. The human resource manager came to me, and then he just said, "Don't talk about this to anybody." I thought that, 'Again, this company always do this,' so I said, "Okay. No matter, I'm going to go to labor government to talk about this problem."**

The threat of a labor commission complaint spurred human resources to open an investigation into the alleged behavior, but A-san felt it was also necessary to consult with an attorney.

**He was really afraid about me, “Oh, please do not go to labor government. Please listen. We’re going to sort out this problem. You have to wait. Next two months, three months, we will do investigate because last time, you didn’t want to investigations. That’s why we didn’t do it,” something like this, so I said, “Okay, please do investigation,” and he gave me the report what was happen to me, but after that, I wanted to talk to them properly, so I hired lawyer. The lawyer lettered them, official letter like, “[participant name] assigned me as her lawyer for this matter.”<sup>53</sup>**

Shortly thereafter, A-san was fired from her position. The termination was couched as the company discontinuing her contract due to her illness. She then filed a complaint with the labor commission. It was during this time that she found a strange man trying to enter or surveil her apartment, which she believes was a retaliatory effort by either the company or coworker.

## Responses to Sex Discrimination

To answer the **how Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace** (Research Question 1), I specifically wanted to look at the data connected to women who reported **yes, yes/no and yes-oblique references**. This comes to 14 out of 23 participants included in the study. There were five women who reported no experiences with sex discrimination and four who did not respond. Clearly, if a woman has not experienced what she perceives to be sex discrimination, I cannot report how she chose to respond. The first step to legal consciousness is recognizing that “something happened.” This is not to

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<sup>53</sup> It is interesting to note that A-san requests an investigation and a report. The implication here is that she is asking for confirmation or validation that her complaint was real and acknowledged. This is not dissimilar to Christine Blasey-Ford’s request for an FBI investigation into Brett Kavanaugh during his Senate confirmation.

say that, if there is no experience that a woman has no legal consciousness (as I will demonstrate in the “Measuring Litigiousness” subsection), but there is no law mobilization if there is no incident. Answering **how** Japanese women decide to mobilize the law can be conceptualized in two ways: the literal responses to the treatment and/or the process by which they respond to the treatment. In this subsection, we will look at “**how**” in terms of literal response, but will measure “**how**” in the “Measuring Litigiousness” section.

Because one facet of my study is to understand how Japanese women made decisions when faced with workplace sex discrimination, I wanted to understand how they would choose or chose to respond to these instances. Below is a breakdown of their responses:

**Table 5.4 Responses to Sex Discrimination**

Response	#	Per-centage	Notes	Reference Type
No action	3	21%		Internal
Quit jobs/considered job change	2	14%		Internal
Spoke with supervisor or HR	2	14%		Internal
Consulted with or joined a union or support group	4	17%		External

Response	#	Per-centage	Notes	Reference Type
<b>Filed a grievance</b>	1	7%	*This person experienced two different discrimination situations	External
<b>Filed a lawsuit</b>	3	21%	*The actions leading up to the lawsuit are detailed in the subsequent heading and those actions are not counted twice in this tale.	External
<b>Unspecified/no response/declined to answer</b>	2	14%		

\*Totals do not equal 100%.

## Internal Response

For the first set of responses—**no action, quit job or considered job change, and spoke with supervisor or human resources**—I classify them as **internal responses**. That is, the participants attempted to resolve the discriminatory treatment on their own or using internal procedures within their companies. As we will see, some of the stories that start here will also transcend into the **external response** category, which includes **consulting with an attorney or joining a union/support group, filing a grievance, and filing a lawsuit**.

### Internal Response: No Response or Ignored Treatment

Sara, the curator who worked at the monastery, indicated that she remained silent about her treatment. When asked if she even talked about the problems with her female colleagues, she replied:

**I did not talk about it with any other female workers about it. It was such an environment where female workers did not think that was something that they should**

**complain. They just took it as something natural or obvious or as the way it is. That's the way it is, so I felt like if I spoke something against it, people would consider me as, "Why is she talking about it? Is she being a high standard worker that's different from us?" I kept silent in that environment.**

Ultimately, as demonstrated in her response above, Sara ended up quitting her job and took a position at a university instead.

## **Internal Response: Considered Quitting or Quit**

Sara eventually quit the monastery and started working as a professor at the university at which we met. Hanako, who also experienced pay and promotion discrimination, also spoke of quitting.

**Participant: After that, I just keep the same position over four years. I'm now comfortable to the same position and the same opportunity, same environment, so I really came to find out another third-year development, so this just now... But I want to find a new opportunity because I just continued that over 25 years, for 25 years at the [institution]. I said, "Enough."**

**Kristen: So, you're ready for something new.**

**Participant: Yeah.**

**Kristen: Would you retire and then go into something new or...?**

**Participant: Maybe, I think. I should retire at [institution].**

At first blush, this response is benign. However, as we continued to talk, her purpose became more clear. She spoke about working with an American female mentor regarding her second career. But regarding her current career:

**Yeah. It's very hard to find an internal mentor in the company because this is only men. If I can find a good male mentor for my career development, it's more easier to keep my position. I think this is no prosperity. Male executives are very kind, some-**

times very cooperative to us, but [inaudible 00:13:00], so they don't want to foster we female executives.

I asked her directly:

**Kristen:** Do you feel like you've been promoted properly, or do you feel like you should've been promoted further? You personally.

**Participant:** Personally, first of all, I want to be promoted at the same position because I made a very progressive [inaudible 00:20:49]... Plus, there's no promotion to my project. If I will keep working at the JR Central, five years later, 10 years later, I feel that I will have a small chance to be promoted. I can't accept this slow speed.

**Kristen:** You can or you can't?

**Participant:** I can't. Cannot. This is one of the reasons I'm not comfortable. The outside environment have been changed, and if see the global market... I saw that in the society, this is a very successful, very powerful, very effective [inaudible 00:21:47]. This is the same age or younger age, but she had a very wide experience as a [inaudible 00:21:56]. Back to the company, I have one young courier, and I have a very small team.

I'm not good [inaudible 00:22:15] about very [inaudible 00:22:17], so the company will not provide a good opportunity to me, so I need to fight by myself.

I asked her if she had raised that point before.

Yeah, yeah, yeah. This issue, I talked to two person, two male executives. One is [proper noun 00:23:08]. He's supportive. Another one is my direct boss, but it's not a successful conversation. It was not successful conversation [foreign language 00:23:25]. He said that, so... I should not focus on my own career. "You should think about what you will be able to contribute to the company." I think this is a very traditional, very old, dated curse. The employment should contribute to that company. I should do... Very Japanese traditional thought about that, so...

## **Internal Response: Reported Treatment to Supervisor or Human Resources**

A number of women who experienced discrimination spoke with a supervisor or human resources about the treatment.

Sumire, who described being groped when she worked as a flight attendant, mentioned it to a supervisor.

**Kristen:** Did you ever complain to the supervisor about it?

**Participant:** Yes, yes, but among us, it's like a joke.

**Kristen:** When you complained, did they take it seriously-

**Participant:** No.

**Kristen:** ...Or were they just like—

**Participant:** It's like a joke.

**Kristen:** Was it a joke to you?

**Participant:** Bad joke. [laughs] Bad joke.

Ayaka similarly consulted with her supervisor and human resources about the terrible treatment she endured. In one instance, she reported the leering looks and lewd comments she was receiving from a coworker to her female Australian manager.

**...[O]ne of my ex-managers, he would always make inappropriate comments, or the way that he will look at me was very inappropriate as well. That I took to my manager. She's this Australian woman, but she's a little bit bigger. I still think about it a lot, but when I told that to her, she goes, "Sorry. I don't really understand what you're saying," and she started talking about her husband.**

**She said, "You know, with my husband, of course, I know that some days he will have a bad day, but you just kind of have to deal with it." I felt like she was blaming me for him looking at me inappropriately, or he actually was telling me to come over to his apartment. When I said no, he started pulling my hand, things like that, so I was like, 'Maybe she's blaming me,' and I just felt very uncomfortable talking to**



**her. I just stopped talking to her, I think.**

Ayaka also went to a manager regarding the incident that she endured in China when two male managers left her on the side of the road to go to a girly bar or strip club even though she was unaware that this treatment was illegal.

**I don't, but I actually talked to my manager, the higher manager who's a female right after the Dalyan trip. I went to talk to my manager, but because it was just me who was there... If my senior manager, if she went to two of the managers that I went to China with, I knew that they would blame me for going to the higher-level manager, but I still needed to talk to a higher-level manager, so I went to her, told what happened to her, told her, "Please don't directly say anything to those two managers, but I just wanted to let you know that this is what happened." She seemed like she was shocked, but of course, she didn't do anything about it. She still allows those two to go on business trips with other girls or anyone, so it made me feel like she didn't see it as that much of a big deal from her point of view. That's just the way that it made me feel like... When I thought it was not okay in every sense to do such a thing.**

It is important to note here the lack of response from the manager. As we will see in A-san's and B-san's case, it was the lack of appropriate managerial response and even adverse response that led to the escalation of their actions and ultimately filing lawsuits.

Ayaka often made self-blaming statements about her situation. Regarding the sexual harassment she received from the male manager:

**The problem was that I was telling him no, but I feel like right now when I think about it, I feel like I could've been a little bit more direct, but because I knew that I was going to be seeing him, I think I didn't want to get in trouble or anything, so that's why I was trying to be nice and not tell him straight-forward to just cut it off.**

I pressed her about this:

**Kristen: I have to be careful not to ask leading questions, but does it matter how direct you have to be when somebody is being inappropriate?**

**Participant:** Right now, I feel more confident. I know that it's okay to feel whatever I'm feeling right now, but at that time, if I feel uncomfortable, I felt like it is not okay to feel uncomfortable, so I think that's why I was trying to be nice to him. I felt like I have to be nice to everyone, and I think that's another thing that... Maybe I kind of blame it on the Japanese society and the Japanese culture, so I think that's why...

**Right now, I would definitely do or talk to that person or deal with the whole situation a completely different way, but at that time, I feel like I didn't have anyone to talk to about it.**

Ayaka mentioned that her first reaction was to stay quiet because she was embarrassed.

**I realize that at my current company, I realize that it does happen more often than people could imagine. It's just that people feel uncomfortable saying that aloud. For me, when something like that happened, my first emotion was embarrassment, and I didn't want to tell it to anyone.**

To put Ayaka at ease and make her feel more comfortable, I shared a personal experience with her. I told her about a company for which I worked not long after I graduated from college. In one instance, there was a coworker who expressed interest in a romantic relationship with me. We met outside of work a couple of times; however, it was clear that he wanted to have sexual intercourse. I rebuffed his persistent sexual advances and not too long afterward we amicably agreed not date any longer. However, for the duration of my employment with this company, this individual would make lewd gestures every time I walked by his desk. I was terribly ashamed—a “nice girl” would not have gotten herself into such an embarrassing situation—and worried if I reported his behavior that somehow I would be blamed for the situation. Ayaka immediately identified:

**I totally know what you mean. That's exactly how I felt. The team when I joined [company name], the team, it was a... Everyone, they were Japanese. They couldn't**

really speak English. They never really studied abroad or traveled abroad, so in a way, they were very conservative, and that's another reason why I felt like everyone was going to blame me if something like that happened, so I totally understand. I think another thing was that since I joined the company as a temp, and I wanted to become a full timer just because I couldn't really start my career at my first job and my second job and my third job, so I just said to myself, "I have to focus on my career and do whatever I have to do, so that I can become a full-time here."

Ayaka mentioned "blame" eight times in our interview.

**When I went to my managers, and then they just kind of blamed me... I know that it was just going to always be the same way, but I'm more of an optimistic person, I think, so telling you this or me telling these stories to people, I don't really think about how it affected me or anything like that, but more I hope that this story would help other people, or if I go to a different company, I hope that it will not happen again, or I hope that it will just be different and get better.**

As the interview progressed, I could sense that she was becoming more aware of the pain associated with the experiences. I asked her:

**Kristen: What if I told you this was prohibited by law?**

She asked me to clarify if I was asking if she was going to file a lawsuit. I answered "no," but it was my understanding that the behavior she was describing was illegal. She said:

**Right. I don't think I'll do anything. I won't do anything different. I think, deep down, even if I don't know every single law or all the company rules or anything, I know that whatever those people did, it's just not right, but when I think about it, I'm just more like, 'It happened, and I don't want to go back there. I don't even really want to think about it.' If I have to think about that again or go to a manager or maybe file a lawsuit or something, I don't want to deal with it anymore, so, yeah, I just want to move on. Don't want to really think about it.**

I offered her a break if she needed to take it, but she declined. I wanted to probe her again about the self-blaming statements she had made. I asked:

**One thing that struck me when you're talking, and you said this a few times, and it has me a little bit curious. You said a couple times, "Maybe now I would do something different." Why do you say that?**

Here, Ayaka vacillated again from not wanting to do anything to wishing she had done something differently. She illustrates in this block of text what is propelling her between states of emotion and inaction versus action.

**Because I feel like it kind of goes back to what I was telling you before the interview, but I feel like coming back from the States when I was seven and growing up in a Japanese environment, and the only thing I wanted was to just be a part of... Just one of them. I didn't want to stand out. I wanted to be the same, and that's how I felt at that time. I think the reason why I felt like that was because I knew that I had a unique background, which I'm very proud of right now, but at that time, I felt like I was going through this identity crisis. I didn't know who I am, what I should think or how should I think about things, so when I knew that I'm different from all the other Japanese kids in school, I felt like I was the wrong one. I think I still had that small, tiny bit, that part of me in me, just me living in Japan, and I feel like I still have to be the same with everyone, but it really helped me going back to the states and studying abroad in Syracuse. I saw everyone just in the US environment, and then just seeing all of it, I'm like, 'I don't have to be the same, and that's what makes me special, and I should love myself. I should be proud of myself,' and it really changed me. More like, I would say, I know that that was a huge part of me when I was a kid when I was in the states, but then living in Japan, I was trying so hard to be someone else.**

**Then going back and meeting a lot of people who came from a similar cultural background, I felt like it's okay to just be me, so I felt like myself when I was a kid before, when I was living in the states, but still, that's my heart, me feeling like I shouldn't be standing out, shouldn't be having a strong opinion about something. I should just say yes.**

**That's still a tiny bit a part of me. That part is getting smaller, but when it was a little bit bigger, *I think that's the reason why I say I would probably do something different if someone treated me like that right now, but back then, I feel like that... I just call it the Japanese part of me in a negative way though. I feel like because that part was bigger, and now I'm feeling more comfortable in being in my own skin, so that's why I say I feel like I would deal with it differently right now.***

## **External Response**

For the second set of responses—**consulting with an attorney or joining a union/support group, filing a grievance, and filing a lawsuit**—I classify them as **external responses**. That is, the participants resorted to consulting with external constituencies to resolve their conflict. This may have been the result of a multi-tiered process through which their internal attempts to rectify discriminatory treatment were unsuccessful, or there might have been no opportunity to rectify the discriminatory treatment internally.

### **External Response: Consulted with an Attorney and/or Joined a Union/Support Group**

When a sex discrimination complaint escalated, the next key critical step that women undertook was joining some sort of support network, such as a union or women's group, and/or consulting with an attorney. I included both of these responses together because they generally went “hand-in-hand.” One benefit to joining a union or women's group is their access to attorneys. Support groups in Japan are beneficial to victims or litigants. These support groups can provide legal support and personal support. Steinhoff (2014, 2000) writes about support groups for prisoners and other individuals navigating the criminal justice system in Japan. Arrington (2016) also writes about victim redress movements and how support groups assist. Although the women in my study were filing individual and independent civil lawsuits, I found similarities with some of experiences Steinhoff and Arrington describe.

## **Izumi**

When Izumi's supervisor tried to pressure her to quit her job, which she noticed was a pattern with other workers as well, she sought outside support.

**When I think about my circumstances, I had no reason to quit that job, and I had enough senses that I was hated by the people surrounding me, but at that time, I was not a member of [union], and I didn't have a people or good friends to consult. I went to the union outside of the company and the lawyers who are free legal. We have a consultation run by the local government.**

It seemed that Izumi was part of a systematic attempt to reduce the organization's workforce individual by individual. She observed that people were resigning quickly, and she would be next. Instead, she fought back.

**I went to the union outside of the company and the lawyers who are free legal. We have a consultation run by the local government... It's the organization which protects the workers, like the women, and I went these places to have a consultation. Then I confirm I'm not wrong. Then I went to the union, and I became a member of the union. Then I started to fight against the company. Then, at that time, even though I went there, the supervisor who said to me that I was disliked by everybody, but he ignored what I'm saying and protect his, "If I'm drunk, what I was saying..."**

During this time the union engaged in collective bargaining with her company.

**Then the members of the union and the company human resources and the people who knows the laws relating to that kind of things told the supervisor to withdraw what they said, what he said before. Then it passed 10 months, and 10 months later, and one of the female of the union said to me, "We could go to the court to find against the [inaudible 01:19:14]." At that time, the people of human resources or the union afraid what I was saying, but the [inaudible 01:19:31], the supervisor who's in the situation didn't understand it said.**

**He said to me, "Are you strong enough, or can you still work? Can you stay in this company?" The attitude didn't change at all. Then I stayed in the same section, but I had no job. Then I was transported to the other section, and I was not given any jobs, and no people talked to me every day, and nobody helped me at that time. Then I returned. Then little by little, things were changed. Then three years later, I**

**quit that job. It's a sad story. That's a long story, but I couldn't [inaudible 01:21:03] with the stories.**

## **B-san**

When B-san encountered power harassment at the financial institution at which she worked, she needed external support as well. However, as a temporary employee who was assigned to that job via a manpower company, she was ineligible to join a union. So, instead, she sought support from the Working Women's Network (WWN).

**Participant:** The thing was I was secretary, and under Japanese law, there is a Japanese labor union law, and under the labor union law, secretary is recognized as an employer, employer side, not employee, so secretary can't join the union. We can't join the union, so that's why I realized, "Oh, I can't rely on union, but I need more supporters," so I searched for internet and I found out WWN. It's not the union. They are activists.

**Kristen:** But they're activists that help women.

**Participant:** Yes, but my situation's funny because my enemy's a woman, but that's another dark side of Japan because in Japanese company and in the Japanese society, women are looked down, and because women was look down and women feel uncomfortable [inaudible 01:27:38], but as time goes by, women feel it's natural, so as they build up their career, as times goes by, women noticed younger women to be obedient for older women, so my case is like that.

She further clarified:

**Kristen:** What has WWN done for you?

**Participant:** So far, being honest, just having information, share the information, and when I did the press conference, they ran the information about

**that, but the thing is WWN is basically in Osaka. They don't really come to Tokyo, so I think they are now developing the society in the Tokyo, so that's it for now.**

**Kristen: Have they been very helpful to you?**

**Participant: Mentally, yeah, it's help, but actually, the people who want to join the union, people who want to join the WWN, they have an expectation of they're broadcasting their news actually, making a big [inaudible 01:31:50] or something, but I'm from media persons. I'm from media, and actually, in that sense, I don't need the [inaudible 01:31:57] society because I can use the media by my personal connection. Yeah, but WWN's opinion and their experience are very useful. Yeah, yeah.**

**How to survive in the [inaudible 01:32:16] or something.**

It was unclear from B-san's story if she went to an attorney or WWN first, but she also consulted with an attorney as well.

**Kristen: You mentioned that you contacted an attorney at one point. When did you talk to the attorney?**

**Participant: Right after I got the phone call from [man power company], "You shouldn't go to the financial agency anymore." I was like, "What?"**

## **A-san**

When A-san's situation escalated, particularly after she believed the company was sending individuals to further harass her, she went to an attorney. However, the relationship turned sour when the company offered A-san a lump sum settlement rather than a substantive resolution. She fired the attorney.

**At first, this harassment manager sent strangers to me, but after, I thought that the company sent the person to give me something, try to give me stop to do this because the first lawyer, he was stand by me at first because I paid \$3,000 by cash to**



**ask him to do this case, and then, but once he had a meeting with company, he told me, “Stop this case. I’m not going to work with you anymore. If you want any work, give me another \$2,000.” Then I said, “I paid you. I made a contract. I paid you by cash \$3,000, and then how you can ask me another \$2,000 to pay now by cash to do this problem?” He didn’t work at all. He always excuse, “Oh, I’m working on it now. I’m working on it now,” and in seven months, he didn’t do anything.**

**I decide, “Okay, I’m going to fire you. It doesn’t matter \$3,000... I’m going to change my lawyer,” and then suddenly, he was really tried to talk to me. “Listen, listen,” something like this, and then he let out to the company, “I’m going to leave from this problem. Our contract will be finished soon,” something like that. Then company talked to him, “Okay, I’m going to pay \$3,000 to her.” Lawyer talked to me, “Listen, listen. Company’s saying they are going to pay you \$3,000, would you like to accept?” Then I say, “Of course not. \$3,000 is nothing. I reject it.”**

It is important to note that, in the United States, it is not uncommon and even preferable that clients give attorneys guidance as to what resolution they are seeking. In Japan, however, attorneys do not always heed their clients wishes. For instance, one union official with whom I spoke advised a union attorney to fight a case on one particular point. According to this official, he wanted to lose the court case. His reasoning was that, by doing so, it would set a precedent that would benefit another case later on. However, the attorney did not heed the official’s guidance and proudly announced that he had won the case.<sup>54</sup> After firing her attorney, A-san then joined the union and continued to pursue her case. They tried collective bargaining.

**I just fired my lawyer, and then I joined a labor union. Then they write me and told me, “This company is so big, so it’s going to be clear one time, two time meetings. You don’t need to worry about it because all big company has their own regulation, and then everybody following that. It’s not small company, so they must have regulation,” but the first meeting with labor union with company, the human resource manager came into the meeting and say, “I will take you, her to court for the defamation.”**

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<sup>54</sup> Conversation from January 2018. For privacy reasons, I am not citing the source.

Even though the company threatened A-san with a defamation lawsuit, they continued to advocate for her.

**Just to say, “I will take you to court for the defamation. You should know what you are doing. You are making a story. You are telling lie for people,” but the labor union ask it again. “You have to check his Facebook and then print out everything and then bring us to let her check what she’s talking about, and then if you are saying, ‘This is not about [participant name 01:05:03], this is about someone else, you have to explain what he is explaining on his Facebook,” but they say, “Oh, we haven’t checked his Facebook for more than 1,500 pages, but it was everything okay. What’s the problem?”**

**Then we said, “Please show me. Show us.” “No.” “Why?” “It’s his private. How we have to expose... No, no, no,” something like this. I thought that, “This company is totally protecting themselves,” because I was not wanting to have a fight, just more logical solution. “Oh, we have checked his Facebook like this... You can see it. What are you seeing? If you don’t like it, we’re going to ask him to stop it or delete it.”**

The issue seemed to hinge on the fact that A-san’s perpetrator was harassing her via a private Facebook page (obviously made public), and therefore, the company was not responsible for his behavior. As the situation continued to escalate, the union provided a different kind of support: protesting.

**Yeah, even labor union put me to... Big labor union parade that I mentioned. [proper noun 01:12:48] has more than 100 people, so we did a protect in front of the company with more than 100 people with two cars and then give them a paper like this, “Please mail this case,” and we have done maybe more than five, six times in in these past two years.**

## **External Response: Filing a Grievance**

Before filing a lawsuit, C-san filed a grievance.

**After giving birth children, there are two types of leaves, giving birth and raising children, but the [foreign language 00:36:37] the leaves to raise children for a second time. Then she was to move back to the working place, she was fired. Then she took**

**the legal action. Then, during that time, the media picked up her case.<sup>55</sup>**

She first tried to file a grievance with the Labor Commission.

**Labor Force Organization, the public organization, the labor. The public organization dealing with laborers... At first, she took on a consultation at the office. At that time, it was not solved at the consultation. Then they went to the other office. The lawyers refuse her. In the beginning, the rules between her lawyers and the employers had... I don't know the legal terms but had the discussion or the legal institution—Yes. Negotiation.<sup>56</sup>**

All C-San wanted was the proper payment for the wrongful termination, but unable to come to a resolution, the case seemed headed to court.

### **External Response: Filing a Lawsuit**

Three women, A-san, B-san, and C-san, filed lawsuits. It must be noted that the reasons for their lawsuits were based on their own descriptions; however, the basis for such lawsuits would have to be due to some harm caused to them.<sup>57</sup> In the case of all three, it was an unfair dismissal.

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<sup>55</sup> The interpreter was speaking in the third-person for C-san.

<sup>56</sup> This segment of interview text is abbreviated and edited for brevity and simplicity, eliminating crosstalk between the research, interviewee, and interpreter.

<sup>57</sup> See Asakura (2004).

C-san, as mentioned in the above subheading, was unable to come to a resolution through the Labor Commission. So she filed a lawsuit. The lawsuit was either arbitrated or mediated (it was unclear due to the quality of the interpretation).<sup>58</sup>

**Kristen:** When you filed the grievance, the labor commission couldn't help, so then you got a lawyer, and they tried to negotiate, so before it went to court, what were you negotiating? What did you want from the negotiations?

**Participant:** [foreign language 00:41:45]

**Translator:** The final decision was the same. What she wanted in the beginning was the appropriate payment, and the fire to... The notice that she needed to leave the office was invalid, so two points she wanted in the beginning, and the financial had... [foreign language 00:42:33] Finally, she got what she wanted in terms of legal action.

**Kristen:** That's great.

**Participant:** [foreign language 00:42:45]

**Translator:** But what she wanted, she acquired what she wanted. She needed to go to the court.

**Kristen:** When you went to court, you got that judgement. When it made the notice, the firing notice invalidated, did that mean you got to go back to your job?

**Translator:** [foreign language 00:43:17]

**Participant:** [foreign language 00:43:25]

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<sup>58</sup> Please note there is some ambiguity about C-san's actions due to interpretation integrity. The interpreter indicated she was having difficulty finding the correct word to describe C-san's legal action. It seemed as though a lawsuit was filed but the case ended up arbitrated. It is possible that my own interpretation and understanding is incorrect. However, during a subsequent interview with Izumi, the interpreter was able to articulate that Izumi mediated her grievance.

**Translator: This is an option. She could go back to her original place, but she didn't.**

B-san decided to file a lawsuit after the company who fired her threatened her with a defamation lawsuit. B-san previously worked as a media broadcaster, and rather than acquiescing to their threats, she held a press conference instead. The company threatened her via fax about the press conference, threatening to sue her, but she proceeded anyway.

**Me and many media, but they said, "Can we use the name of [inaudible 00:52:30] for financial group?" I said, "I will sue the company itself, so I can't decide if you can," or something, so they didn't write about the story a lot, but some media wrote about the story. I can send you PDF by the magazine. There was a Japanese business magazine, which treated my happening for three pages.**

As a result, the harassing faxes threatening defamation lawsuits ceased.

**First, funniest thing was they stopped saying to me, "I will sue you." My message to all the victim in Japan was, "If they said they will sue you, you do the press conference, so they will never sue you." They sue you because they want to protect their name, value, their pride, but first, if you do the press conference, they can't hurt you anymore.**

A-san decided to file a lawsuit when all attempts to seek redress through internal mechanisms and attempts to collectively bargain with the union failed. Her company was attempting to silence her with a defamation lawsuit, and she began to feel her health decline even further, seeking mental health treatment. She finally exploded after the pressure and decided to pursue the lawsuit:

**Yeah! Yeah, I was so scared about myself. Even like at home, if I going out outside, if I heard someone else on the street because of this anger... So, that time was really scared, and so I just said clearly, "Okay, you bring me to the court. I will fight you. I will destroy you, everything! Do it!" Then he was so scared, and then when I leave the meeting room, I just passing by to him, the human resource manager, I said, "Fuck you. I'm going to destroy you!" and then he didn't see my face like this.**

At the time of writing this dissertation, C-san's case had been resolved, and she works for a different company. B-san and A-san's cases are still pending.

To briefly summarize, this subsection answers the research question on “how” Japanese women mobilized the law when they believed they had encountered workplace sex discrimination. This means that the responses included only capture women who reported workplace sex discrimination. The responses fell into two categories. **Internal Options** captured actions that remained within the workplace and included no action, quitting/considered quitting, and speaking with human resources. **External Options** captured responses when women sought relief outside of the workplace and included joining a union or consulting with an attorney, filing a grievance, and filing a lawsuit. Note that this reflects a potential escalation process—as a complaint of sex discrimination is not adequately addressed or remedied, women may pursue channels and options until their claim is addressed. That is, there is a progression leading up to filing a lawsuit, and these options increase in gravity.

### **Reasons for Law Mobilization**

To answer the **why Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace** (Research Question 2), I again wanted to turn to data connected to women who reported **yes, yes/no, and yes-oblique references**. In this section, the reasons why women decided on a particular course of action will be explored. It is important to note that, while I specify we are looking at “why women decided on a particular course of *action*,” deciding on a course of action could translate into inaction. Deciding to refrain from action or law mobilization in and of itself is a type of action and warrants exploration. Finally,

while in the last section, I detailed each step of the law mobilization process for participants who experienced sex discrimination. However, in this section, I will explore **why** in the context of the overall process. This cuts down on the tedium of starting and stopping the narratives of participants who moved through several stages of law mobilization and creates continuity in their stories. Also, the process was not the same for each participant. For example, while A-san and B-san had very similar courses of action that resulted in a lawsuit, their process differs from C-san's process, who also filed a lawsuit. This may be due to different circumstances or different reporting. That is, each woman told her story differently. Thus, the participant's story will be found in the final point of law mobilization in this section (rather than sequentially as the previous section). Also note that I do not break down the categories by code but rather the reason **why** they responded in a particular way; in other words, the categorical breakdown lies with the action.

Along those lines, to start with, of the women who decided not to act, there reasons were as follows:

### **Responding in Vain / Easier to Ignore**

#### **Correlates with: Inaction**

Sara is one participant who decided not to speak up about her mistreatment:

**I think it was totally impossible or in vain to respond to the situation there. I could not do anything in that situation. I think if I complained, they would just say, "Well, then you should quit."**

Sara also stated:

**I did not talk about it with any other female workers about it. It was such an environment where female workers did not think that was something that they should complain. They just took it as something natural or obvious or as the way it is. That's the way it is, so I felt like if I spoke something against it, people would consider me as, "Why is she talking about it? Is she being a high standard worker that's different from us?" I kept silent in that environment.**

In the end, Sara did quit (which will be explored in the following subsection). Himari also expressed that it would be pointless to respond, as her harasser was also a manager.

**There's that one guy, and I also said there were two other guys that react? One of them was the manager, so it was like, 'Who can I go to?' I guess I didn't think it was worth... It was easier to just ignore it, and I knew I wouldn't stay at this job forever, so...**

Sumire also chose to ignore the treatment. She did complain to a supervisor, but the implication was that she was doing so to commiserate rather than to seek a resolution.

**Kristen: Did you ever complain to the supervisor about it?**

**Participant: Yes, yes, but among us, it's like a joke.**

She did later say, regarding other types of harassment:

**Rights? We have the right to complain, and I think if we are in problem, I think we can complain. I don't know, but I'm not sure if everybody do that. [foreign language 00:37:41] Maybe in Japan, if it is me, if I am really in trouble, I will act, but usually, Japanese girls, Japanese women will not tell, will not act, I think.**

## **Seeking or Sought Better Opportunities**

**Correlates with: Considered Quitting or Quit**

Sara, who worked for the monastery, remained quiet while working for the monastery but ultimately quit to work as a professor for a university.



**This job, in the past, I really liked working as a curator at a museum, but the working conditions were very bad, and it was a disappointment, and I had to quit.**

She decided to wait until she had finished a major project.

**It was in 2015 at [monastery name], there was a big event celebrating the 1,200 anniversary of their reformation, so there was a big event, and I was in charge of the ceremony there. It was way overtime. I had to work hard overtime, and it came to the limit where I wanted to finish the job. I was in charge of this ceremony, and I took care of everything, and so after I finished it, I felt like it was time that I could move on because I did care of all the responsibilities there, so while working, I looked for new jobs, and I found a part-time job that I was able to work for, so I decided... It was a big decision, but I decided to quit [monastery name] and start working part-time.**

Other workers felt as though the workload was too difficult.

**Kristen: Just to clarify, was it because the workload was too much for the event or you just felt like your work was done, and it was time to move on?**

**Translator: Both.**

**Kristen: Did you feel like they were unfairly making you do too much work?**

**Translator: I think other workers, they were having a hard time too. They worked hard, but especially during that event, many people came to visit that place, and it was like a multitudes of people, and I don't like being in a place where it's very crowded with people, so I guess the event was the final step that led me to towards finding a new job.**

She stated:

**Thankfully, they did want me to stay there, so they tried to persuade me to stay there, but as I already had the new job, it was hard on my part too, but I decided to quit, but they did want me to stay there.**

This would be Hirshmann's "exit."<sup>59</sup>

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<sup>59</sup> Via Schoppa (2006).

## **Prevention of Adverse Treatment: Speaking with Human Resources Agent**

**Correlates with: Spoke with Supervisor or Human Resources**

Ayaka decided to report her mistreatment to a supervisor. Regarding the incident in China during which her male coworkers left her on the side of the road to go to a gentleman's entertainment club:

**I don't, but I actually talked to my manager, the higher manager who's a female right after the [city name] trip. I went to talk to my manager, but because it was just me who was there... If my senior manager, if she went to two of the managers that I went to China with, I knew that they would blame me for going to the higher-level manager, but I still needed to talk to a higher-level manager, so I went to her, told what happened to her, told her, "Please don't directly say anything to those two managers, but I just wanted to let you know that this is what happened." She seemed like she was shocked, but of course, she didn't do anything about it.**

**She still allows those two to go on business trips with other girls or anyone, so it made me feel like she didn't see it as that much of a big deal from her point of view. That's just the way that it made me feel like... When I thought it was not okay in every sense to do such a thing.**

Just prior to giving this response, she indicated that she was unaware of the laws as they related to the sex discrimination she had experienced. Yet, she says: **"but I still needed to talk to a higher-level manager, so I went to her..."** That is, despite lacking specific legal knowledge, Ayaka was still aware *something happened* and felt compelled to report it. She was worried that she would be blamed for reporting the incident and requested that her supervisor not say anything directly to them. However, as it turned out, her supervisor did nothing at all. Her reason for reporting the incident seems to lie in this answer:

**She still allows those two to go on business trips with other girls or anyone, so it made me feel like she didn't see it as that much of a big deal from her point of view. That's just the way that it made me feel like... When I thought it was not okay in every sense to do such a thing.**

Later, she expresses her frustration regarding the lack of action.

**To be honest, just hearing your story right now, I feel like, in a way, since I never felt like my problems were solved, or if I have a problem harassment or non-harassment, if I go to the managers, I never felt like the problems were being dealt with ever, so I think that's why I always feel like I should solve the problem by myself. Going to someone else is not going to help or change anything, which I know that is not true in a lot of places, but just from my past experience and where I am right now, that's how I feel.**

Going back to an earlier comment Ayaka made, she states:

**I don't really think about how it affected me or anything like that, but more I hope that this story would help other people, or if I go to a different company, I hope that it will not happen again, or I hope that it will just be different and get better.**

## **Finding and Providing Support**

### **Correlates with Consulting with Attorney Women's Group**

Like Ayaka, Izumi was also concerned about her fellow colleagues who were also experiencing the same treatment she had encountered.

**As a matter of fact, not only me, but the others quit at that time. Everyone else one by one quit the job, but everybody didn't tell anything because it's a shame thing. Then the ages of the people who quit the job at that time was around 40. Then, in total, 45 people quit at that time, but everybody didn't know why they quit the job, and they wondered, 'How come they quit the job?' Then I noticed that it was my turn. Then one of the persons I respected quit the job, and I wanted, at that time, to continue to be with them, but they quit.**

**Then I understood the situation. Then I have a feeling I should stand out, stand up. Represented them too...**

Izumi also felt as though she needed the support:

**...I was not a member of [proper noun 01:16:29], and I didn't have a people or good friends to consult.**

On this point, she also stated:

**Then I talked with the person whom I could trust. Then what I should do... She suggested to me to meet one of the person who had explored the same experiences. Then I talked with her. Then they told me to meet a lawyer, union, and the local government, local government section, which deals with the laborers...**

One striking point Izumi makes here is that she wanted to confirm that she was not doing anything wrong with the attorney. That is, she wanted to better understand what was causing her situation and felt conflicted about the reason she was being targeted.

**...and I went these places to have a consultation. Then I confirm I'm not wrong.**

Seeking assurance from an attorney is a theme found in A-san's and B-san's stories. When I asked B-san why she went to an attorney, she stated:

**It's funny story because my boss and Miss [Redacted] kept on saying, "Miss [Redacted], me, was wrong. That's Miss B-san's big mistake." Because they said like that, I wanted to ask a lawyer's opinion how I was wrong, not how they were wrong. Do you understand? I just wanted to know how I was wrong. Then I call the lawyer, so lawyer started laughing. "Why are you asking me why you are wrong? No, they were wrong. Not you are."**

I asked her to clarify why she thought she was wrong and how it made her feel to be told by an attorney that she was in the right.<sup>60</sup>

**Because they kept on saying, Miss B-san was wrong... I don't know why I did like that, but I was trying to do the professional job. I did my best to protect my boss,**

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<sup>60</sup> This response is condensed from the audio transcript for clarity.

**but they said it's wrong, so I wanted to know why I was that wrong. The lawyer was laughing at... "No, they are wrong."**

This ties into the concept of **blame** that Ayaka continually brought up throughout her interview, although she stopped at reporting the incident to a supervisor or manager.

## **Refusing to be Silenced**

### **Correlates with: Filing a Lawsuit**

One striking feature of each of the litigating participants was their refusal to be silenced. A-san's and C-san's stories were ultimately picked up by the media and B-san, having previously worked in broadcasting, held a press conference. In the cases of A-san and B-san, they were both threatened with defamation lawsuits.

In B-san's case, while she was in negotiations with her previous employer, they sent her a number of harassing faxes about her potential involvement with the media and threatening lawsuits.

**Right. For one fax. This is a very simple one. I [inaudible 00:40:14]. This is first one, second one. It's funny. Look. It [inaudible 00:40:23]... Next one... Again from them just for this letter. For this letter. By fax from them to me, it said media. "You mentioned about mass media, but if you did it, we will sue you." Again, "We want to sue you." Again. Again. I show you four fax, and this is fifth one on the same day. [Kristen asks a probe]. Because they [inaudible 00:41:19] because of media. They got too nervous. Stupid. They got so nervous about media, but in my opinion, before they get nervous, they had to listen to my note carefully to protect my boss's room. That's all...**

She further states:

**Okay, a demand, yes. Then that attorney called my attorney, "How many medias did you speak already?" They always care about media because they care about**

**pride again. That's their most intention, most interest. They always care about pride. They like name value. They like pride, so they don't like media. You understand so far?**

I inquired about the company's obsession with her potential media involvement and asked if there was something else going on. She stated:

**You got a nice point. There are many, many faxes, but anyway, I brought those faxes to another attorney as a second opinion, and that attorney is a kind of famous guy in Japan who used to be a judge. He retired a judge and become attorney... He has a certain point of view. He's very [inaudible 00:47:22], a fair person, so after he read those 11 fax, he, as a judge, gave me his opinion, "[participant name 00:47:36], as a judge, as a judge career, I think they have another big secret, but I think they are really scared about you have another big story about their company. It shouldn't be open to the public." I didn't know anything about that, but you remember, many people started calling me after I was fired, the people who don't like the company... To tell me many secrets. For example, one worker passed away because of [foreign language 00:48:23][she is referring to *karoushi*, or death by overwork... You know [foreign language 00:48:24][*karoushi*]?**

B-san then reported that the company did indeed have something hide, and in fact, other people were bringing her evidence and documentation of other wrongdoing along with evidence for her case. It seems that one thing they were hiding was evidence about the death of an employee due to overwork (*karoushi*) and other illegal activities.

**Participant: But human resource department here, this department, hid that truth. They hide it, the truth to his family. His family didn't realize their son passed away because of too much job. Company lied to his family, and they just pay like [inaudible 00:49:11] because [inaudible 00:49:14]... 100 million Japanese yen suddenly to avoid to be sued. Like Trump paid money, "Be quiet." That's a scandal, so that financial group care or are nervous about, "Maybe you will speak it out to the media." I was like, "No, this is first time to hear that story."**

**Kristen: So, people were bringing you pieces of information.**

**Participant: Yes, and many information so far besides my happening.**

**Kristen:** Are you allowed to say what other things you were learning that weren't good?

**Participant:** No, nothing good things. Many bad things, like they sell stocks. They sell the stocks to the really old people who doesn't understand the situation or something like... Many stupid things. I don't care about another story because I sue for my story, so I did a press conference because I got many fax, and I got mad.

I asked her why she went to the media:

**Because my situation is one of the big sample how to show how the power balance between a temporary worker and a big financial firm and not only between the relationship but relationship between manpower company and big financial firm. It's a power balance, and they can fire temporary worker very easily, even though temporary worker said, "You are right," by the company. Also, that was happen in a bank, which is mistreat the trust. The bankers told a lie to get their benefit. Benefit means firing me.**

**I thought it's a very good thing to explain the situation, Japanese [inaudible 00:51:38]. I called the hotline, but it didn't work. It worked against me. I told that story, and also, later on I got a fax to imply the [inaudible 00:51:54], so this is a situation. This is a true situation. Listen to my story. This is a true situation. Japanese people, get up. This is my press conference.**

A-san also went to the media with her story. Her story was on the internet and also published in *The Japan Times*. Furthermore, she maintained a social media account for which she posted information related to her case.<sup>61</sup> But the most striking feature of A-san's case was that she was repeatedly told to keep quiet. At first, it came from management as they tried to reassure her that they would handle her situation. Then, they threatened her with defamation lawsuits. Finally, with the encouragement of the union, she joined labor protests.

**Actually, always on the day or before the day, I feel sick and very bad. Sometimes I have fever, but after maybe one week later, I feel something... My little bit anger is gone. First time, it was hard, but second time, third time, I said, "I need to do it**

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<sup>61</sup> These posts are excluded from the data analysis due to methodological intent and privacy concerns.

**again.” I need to scream his name on microphone to destroy his life, but I never mentioned his name on the microphone, but I can talk to people what kind of text he messaged me or what kind of things happened to me.**

For A-san, the more she screamed into the microphone, the louder her metaphorical voice became. Like B-san, who mentioned exposing the *power imbalance*, she stated:

**Because I thought, ‘I need to do it because if he think, “Oh, she is employed, contract employee, she doesn’t have money. She doesn’t have any power,” you cannot judge people from outside.’ That’s why he was saying, thinking maybe, ‘She is just easy, just a contract worker, I can handle her life. I’m the power. I may lead,’ but you cannot think like that. Sometimes people stand up, trying to against you. I wanted to show him, “I will be the first one against you, and then you have to understand if you hurt someone else in negative way, you will get the revenge from the person, and then the revenge is worse than what you did.”**

Just as with B-san, A-san also became a conduit for channeling injustice.

**Even a news came onto the internet, about more than 10 people anonymous texted me, “I tell you a company secret. I had the same problem. My friend working in the same company, she was in harassment, and then she got sick,” something like that.**

We spoke about this again at our second interview. I asked her how she felt about this.

**Kristen: ...At that a protest, and I think at one point, I couldn’t understand all of it, but you’re like, “That is a joke. That is a joke. That is a joke.” Then you’ve got this platform of Twitter, and you’re being heard, so you really took a small voice and made it very big. How do you feel about that?**

**Participant: Actually, I felt totally alone, but the first time I did interview at the court, and then some news magazine put the article on their website, and then next day, I received a few messages by anonymous, like just, “I support you. Just win this case really. Instead of me... Just fight for me too,” something like that. Many people has similar situation, but they cannot move, but if they find someone else, they want to support. Then on Twitter, I receive many message... Like they are curious about my case, and then also, they had the similar trouble with a**



**company, so they are saying, “Let’s help each other to spread out this case.”**

It was almost as though, with the efforts to silence A-san and B-san, the companies only made the voices of the women bigger, and with those large, powerful voices, rather than the stigmatization that other participants mentioned with reluctance to mobilize the law, others found them as harbingers of justice, becoming proxy voices.

## **Compensation**

### **Correlates with: Filing a Lawsuit**

Although previously mentioned, lawsuits typically do not yield high monetary rewards, as there is a set compensation amount that courts award for certain injuries. However, it is reasonable for the litigants in the study to want compensation for either their lost time or lost job.

In C-san’s maternity harassment suit, she wanted compensation. But she also wanted her job back.

**The payment during the lawsuit, and after she was fired, after she left the office to the new job because it was difficult for her to find a new job because she has a baby. Then the notice to fire is not... Let me think... Invalid. The notice was invalid. After the lawsuit. [foreign language 00:41:26]**

Although C-san did not come out and say it directly, this made me recall a conversation I had with a the litigant in a paternity harassment lawsuit with whom I spoke sometime in January or February 2018. This individual was embroiled in two ongoing legal battles. At one Labor Commission hearing, he brought his daughter with him to the hearing. After the hearing, which was regarding a different matter, he spoke with me about his paternity harassment lawsuit. He

explained that part of the reason he wanted his job back was because, without it, it was difficult to get another job. Part of the issue stemmed from childcare (hence bringing his daughter to the hearings). In order to obtain and retain childcare, you have to have a job. It is difficult to look and interview for another job if you have a child in tow. Thus, even if did not want to remain with the employer who discriminated against him, he would need the job back to obtain and retain childcare to look for the next job. Again, although C-san did not expressly state this, I suspected she was likely in a similar predicament. Ultimately, she received a settlement of sorts but found a different job without going back to the old one.

B-san's case was a little more complex. In her situation, she decided to sue the individual perpetuating the harassment first and then the corporation. She explains:

**I see. Because Miss [proper noun 01:15:25] Because there is no lie by Miss [proper noun 01:15:29], I wasn't fired, but after that, I'm thinking about suing the company because [inaudible 01:15:41] under Japanese law, there's a time deadline to sue, so it's to sue the individual for this kind of matter, it's three years from the day of happening, so but for to sue the company, the time period is 10 years, so I lost the job suddenly, so I needed the money, and I didn't have enough money to sue the boss, the company and the individual boss, so I decided to sue the individual because the time range was shorter. I had to hurry up. Time goes by, I earn some money to sue the companies, so I'm planning to sue the company this spring.**

I asked her what outcome she wanted:

**Apology and also money. Actually, I went mental hospital sometimes because I got sick and tired of that. Too much stress, so maybe I want for her to pay for that... Yeah, because it's very complicated story, and I worked for justice. I worked for protecting my boss, and then suddenly, I was fired. It's cruel.**

So she is asking for damages due to the mental stress.

## Apology

### Correlates with: Filing a Lawsuit

As mentioned in the previous subsection, B-san was seeking compensation and damages inflicted from her harassment. But she was also seeking an apology. She stated:

**Participant:** Then after the meeting on July 16th, after that, it's [foreign language 00:43:36]... Meeting was held around 12 noon, and we sent this fax during the evening. We organized what we spoke in the meeting, and we again clearly said, "Pay for the money. Pay money for me," and agree with that, but Miss [proper noun 00:44:09] made up the story and lie. This is our letter to them, and we need some [foreign language 00:44:22].

**Kristen:** Yeah, an apology.

**Participant:** Officially apology, blah, blah, blah...

Later she stated:

**Kristen:** And what do you want from the lawsuit? What do you want to receive?

**Participant:** Apology and also money...

For A-san, her lawsuit was not about the compensation. She wanted an explanation and an apology.

**Kristen:** What do you want from this case?

**Participant:** He have to come to the court.

**Kristen:** That's what you want.

**Participant:** And the open court, and he have to explain everything by himself. If he need to say sorry to me, he have to do it. Also, company showed me the investigation report, and then they have to promise this is never, ever happen again for other women.

She also stated:

**Because at that time, I was so mad about this, and *then I thought that it was not about the money*. It was exactly I wanted to talk to him directly, and I wanted to hear the explanation from him or from company what was happen to me, what they did, what company supported this case.**

The face-to-face conversation and confrontation was precisely what A-san wanted. She wanted an explanation.

**Actually, I really didn't understand why company need to hide because I never asked them to give me a money or fire him. I never asked them... <sup>62</sup>**

We discussed this further in our second interview, and I asked her what might happen if they actually apologized. This meeting occurred after we met with Professor Ayumu Yasotomi.

**Kristen: So, going on with Dr. Yasutomi's theory about this and your belief, what would happen to them if they said, "We were wrong. We're sorry." What happens?**

**Participant: Because they don't want to say sorry.**

**Kristen: Why?**

**Participant: Because they didn't do any wrong... "Because she is wrong. We are okay." They have that mentality. Not only one, everybody in the company. Because they have something, they are selected people because they went to a very smart university... Like as human rights, everybody should be the same, but they have something different mind, but I really feel that from the people in the company... Because once I went out, the guy in the company for dinner with many people, and I introduce him to my friends. Actually, all my friends, they are very well-educated people, not like me, but he just look down them and said, "Oh, like they're like lower people."**

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<sup>62</sup> She then went on to explain that she really wanted her initial request, which was for the harassment to cease at the time it was occurring.

This concept of apology is extremely important. It ties back to the concept of *giri*. Recall in the “Theoretical Framework” the quote from Noda (1976): “It is not the amount of the indemnity but the sincere attitude worthy of *giri-ninjo* on the part of the offender which is the important thing to the victim” (p. 20). Everything that A-san wants from her lawsuit is perfectly illustrated in Wagatsuma’s and Rosett’s (1986) work, including the acknowledgement of harm, expression of regret, compensation, and a commitment to resolving the problem (pp. 469-470). According to Louis Carlet and Hifumi Okunuki, all the complainants want sometimes is a simple apology.<sup>63</sup>

## **Injustice and Anger**

### **Correlates with: Filing a Lawsuit**

As with pursuing litigation in most countries, filing a lawsuit is a process of iterative steps. When I met with the litigants of the *Sumitomo* lawsuit and members of WWN, I asked them why they chose suing. “I was angry!” exclaimed one of the litigants.<sup>64</sup> C-san also stated this very plain regarding her maternity harassment lawsuit.

**I just angry.**

B-san also mentioned anger as well. Recall where she said:

**...so I did a press conference because I got many fax, and I got mad.**

She also stated:

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<sup>63</sup> Conversation from January 21, 2018.

<sup>64</sup> February 19, 2019

**Kristen:** I know you want monetary damages. You want an apology, but what was the one factor that you just said like, “I have to take action.” What made you say...

**Participant:** Because it’s unfair.

**Kristen:** It’s unfair.

**Participant:** Yeah. If I get the [inaudible 01:34:15], that’s their purpose. I shouldn’t. [inaudible 01:34:20] Actually, my [inaudible 01:34:24] message for the ex-worker in they are still working under [proper noun 01:34:29] society firm. You can say your opinion. You can ask for justice.

Of the three litigants, A-san’s anger was the most fierce. At first, the company’s attempt to silence and intimidate her seemed to be working.

**I felt really sick, and my sickness went to so bad because I was really scared because if this big company taking me to court, what’s going to be happen to my life? Maybe I have to commit suicide because I don’t have money to pay back for them. If they say a 10 million, 20 million I have to pay back to them because of this defamation, so first meeting, I was really sick, and the second meeting, I was really sick.**

But then, she snapped.

**Then third meeting, I became so crazy in the meeting, I lost myself. I thought I’m going to kill him by myself. I just asked him, “Okay, you just get out of the company. I will talk to you face-to-face. Come on,” and I said to that human resource manager, and he was so scared about me because I never aggressive to the person. I never anger. I was always quiet, but I was so much madder, and then I thought, ‘I’m going to kill this person really.’**

Her anger frightened her, and she even sought treatment from a mental health professional. The doctor offered her assurance—if she was indeed a crazy person, she would have acted on the impulse already.

**Yeah, even I went to the hospital because I was so much madder. I thought, ‘I’m going to do something to other people, and then I need doctors’ support,’ but doctor told me, ‘You wouldn’t do that because if you the person you would do that, you al-**

**ready would've did it," but I could control myself even though I showed them so much anger.**

I agreed with her that this sort of anger is scary but also powerful.

**Very powerful. It's very dangerous... Then of course, before that I didn't have any of those personalities. Suddenly I became crazy like a monster.**

It was through this powerful anger that she finally confronted the company and proceeded with the lawsuit.

**So, that time was really scared, and so I just said clearly, "Okay, you bring me to the court. I will fight you. I will destroy you, everything! Do it!" Then he was so scared, and then when I leave the meeting room, I just passing by to him, the human resource manager, I said, "Fuck you. I'm going to destroy you!"**

In fact, it was the anger that propelled her to seek remedy to begin with. A-san believed that the persistent cough she experienced was a manifestation of the anger.

**It's hard to describe because the one reason that I knew that all my strange symptom is coming from my anger, and then I couldn't find any way to erase this anger, and then I was like coughing 10 hours a day. I felt like, 'I'm going to die if I can't organize this anger.'**

A-san's anger propelled her into action and also helped her come to a realization. Recall Ayaka's interview. During our conversation, she mentioned eight times that she blamed herself. A-san lost many friendships to her situation and stress, but she also came to realize she was not at fault for her situation.

**Many people told me like that. I blamed myself so much, and then my sickness went to serious. Then I was not able to going out almost one year. Staying at home. In that time, something my symptom was so serious, so I thought that I got really serious disease and that I'm going to die in two years or three years, something like that. I didn't want to see people. Also, I had the big anger for this problem because I was**

**thinking, ‘It was not only my fault. Also his fault and my fault. Not only me.’**

My impression was that A-san’s anger led her to empowerment. In one of our meetings, she described an incident when she followed a rude man into his building and yelled at him. I witnessed A-san’s anger firsthand when she invited me to a court meeting between the attorneys. She was aware they were trying a strategy to upset her before the meeting to make her look insensible. During the meeting, in which I was present, there was some issue about additional attendees she had invited, including me. I was asked to explain my reason for attendance. I explained that was invited by A-san to attend and was a research at an American university studying Japanese law and government. The company’s lawyer, from the best that I could tell without an interpreter, was having none of it and did not approve of my presence. His demeanor was rude, belligerent, and loud. A-san immediately fired back, yelling at the company’s counsel and an argument ensued. I recognized immediately that this was a ploy and tactic—while the attorney yelled at A-san, he would quickly avert his gaze when I made eye contact with him. The issue was not about me. It was about riling her anger. I was asked to leave, but I recognized A-san’s unique anger and power.

To briefly summarize, this subsection answered the research question on “why” Japanese women mobilized the law when they believed they had encountered workplace sex discrimination. This means that the responses included only capture women who reported workplace sex discrimination. The responses included the following:

**Table 5.5 Reasons for Law Mobilization**

Reason	Corresponding Response
Inaction/Easier to Ignore	Inaction



<b>Seeking better opportunities</b>	Quitting/Considered Quitting
<b>Stop/prevent adverse treatment</b>	Went to supervisor or human resources
<b>Finding and/or providing support</b>	Consult with attorney, union, support group
<b>Refusing to be silent</b>	Filing a lawsuit
<b>Compensation</b>	Filing a lawsuit
<b>Apology</b>	Filing a lawsuit
<b>Anger/Injustice</b>	Filing a lawsuit

### **Barriers to Mobilizing the Law**

In order to answer **what barriers do Japanese women perceive to mobilizing the law** (Research Question 3), I wanted to know what barriers would obstruct a Japanese woman from seeking judicial relief, but tuning the concept to my study, what barriers would obstruct or prevent a woman from mobilizing the law? That is, if we accept the literature that low-litigiousness at the macro-level may be due to different factors—cultural, institutional, economical, etc.—bringing this concept to the micro-level of individual intent, in this case Japanese women, what would prevent a woman from mobilizing the law?

The answer to this research question was captured in asking if Japanese women are reluctant to litigate. As mentioned in the “Methodology” chapter earlier in this dissertation, I was somewhat hesitant to accept that Japanese women are indeed reluctant to litigate or mobilize the law. So, I would ask, “I’ve read that Japanese women are reluctant to litigate? Is that true?” or “Do you think a Japanese women would file a lawsuit?” This way, the respondent could affirm or negate the information I read or give her own opinion about litigiousness.

To answer this question, I included all responses of participants who answered. I do not attribute them to a particular participant. Experiencing sex discrimination on this topic is not a requisite for inclusion, as I am asking about a general opinion, and as we will see, even women who filed lawsuits offer unique perspectives on the matter that may be counterintuitive.

Unsurprisingly, nearly all of the participants indicated that Japanese women are reluctant to litigate.

**Table 5.6 “Are Japanese Women Reluctant to Litigate?”**

Reluctance to litigate	#	Percentage
Yes	22	96%
No	1	4%

The reasons they cited the reluctance to litigate included:

**Table 5.7 Reasons for Reluctance to Litigate**

Reason	#	Percentage
<b>Non-litigious: General</b>	9	41%
<b>Social stigma</b>	3	14%
<b>Lack of legal consciousness</b>	3	14%
<b>Retaliation</b>	2	9%
<b>Cost/benefit (“not worth it”)</b>	1	4%
<b>Job security/maintain job</b>	2	9%
<b>Power (gendered perceptions of Japanese women)</b>	3	14%

Reason	#	Percentage
Burden of proof/evidence	1	4%
Cost (financial)	1	4%
Time	2	9%
Energy	2	9%
Unspecified/no response/indiscernible response	3	14%

## General/Cultural

**General or cultural** reasons mean that the reluctance or low-litigiousness is due to sex-neutral reasons or cultural reasons.

**In the first place, whether it's female or male, doesn't matter, in Japan, people are reluctant, much more reluctant than you probably think than America to sue... That's because, traditionally, Japanese people are very sensitive to not cause troubles appear on the surface... Not to cause the waves... Yeah, go wild. In that society where everyone is reluctant to sue, whether they're female or male, in that society, for women to file a suit, law case against someone or against something is very strange, viewed as something that's very strange and rare, especially *sekuhara* cases. Cases such as *sekuhara* cases, it might be common overseas, but in Japan, if you file a law case like that, the one that gets criticized is the woman, I think.**

**Maybe women are more reluctant to litigate. Yeah, I always find it very difficult to explain how we solve problem here in Japan. Maybe the way how to deal with problem in general is maybe very different from, not only women, but from people in the United States.**

**No, no sex specific. In general. I always find that here, maybe... We don't think that we should solve every problem. We accept some problems as a part of reality, so we try to learn how to deal with it, deal with the situation without having much stress, but this is probably our way of living, so we don't necessarily think that we have to solve all the problem. Also, we think that solving all of the problem is impossible.**

The more important is probably how to deal with them, how to cope with them and get along with them. We respect harmony more than having resolution.

Yes, I often heard from the lady in mass communications, I often see the fact some women take the litigation, to take the law, appear to the court and that kind of things, but in ordinary lives, it is difficult to take an action in terms of litigation, I think.

Yes, I agree with what you just said, and I think it's more common in Japan that if, when you are not satisfied with your workplace, you just change job. Filing a lawsuit not just requires time but also requires a lot of energy emotionally, so I think it's much easier to just change the workplace, get a new job. My friend has changed her workplaces many times for that reason.

I don't think it's just about women. I think it's the same for men and women, but depending on the content of the harassment, what kind of issue that people face, women tend to have deeper influence or harm physically and emotionally than men, and then women tend to fear the public view towards them, say, "Oh, that woman got harassed. That woman became a victim of this harassment," kind of a public view towards them. I think women tend to be more reluctant about filing a lawsuit.

Sue, they don't... Yeah, I think it's very rare that people act like that.

When I lost my husband, I had trouble to withdraw money from the bank. Then, on that occasion, I needed the lawyer to withdraw money. I felt that the differences between Japan and Western countries. When it comes to litigation, Japan cases are different from that point of view.

When it comes to typical, the cases of Japan, the lawyer is a little bit remote of distance. When I lost my husband, at that time, I was in London, UK. I got kind of culture shock because in London, in the UK, the contracted lawyers are allocated to the families. All the families has the contracted lawyer, but in Japan, that kind of style is not common in Japan. Lawyers a little bit remote of distance. I'm not sure about the cases of the United States, but in London, the cases of the UK, I know that.

No. I feel like we're not really encouraged to do that as well... I don't think so. Never heard of anything like that. People don't talk about that, which I think, in my opinion, which is wrong because I feel like everyone should have equal opportunities, equal rights. We should be able to, but I don't know if it's just in Japan or in other countries too, or maybe it's just not even females, or maybe there's a lot of males who feel like that way too, but... Yeah.

## Structure of Legal System

Some participants pointed to structures within the legal/judicial system that would result in reluctance or low litigiousness.

For instance, this participant speaks about the distance between individuals and *access to attorneys*:

**When it comes to typical, the cases of Japan, the lawyer is a little bit remote of distance. When I lost my husband, at that time, I was in London, UK. I got kind of culture shock because in London, in the UK, the contracted lawyers are allocated to the families. All the families has the contracted lawyer, but in Japan, that kind of style is not common in Japan. Lawyers a little bit remote of distance. I'm not sure about the cases of the United States, but in London, the cases of the UK, I know that**

This individual spoke to the preference of alternative remedies (*alternative structures*):

**Suing is a big step in the... Very few people will select that path, I think. In our company, we do have these steps, of course, that in every office, there is a poster that says, "No *sekuhara*. No *matahara*," and you can call this person at this office if you have problems. We do have that poster, and I feel that there are people who actually call and ... Yeah, and usually, things get solved there, so they don't have to go up to the government or the law office.**

This quote speaks to the criminal justice system in general and underscores general truths about the judicial system. We will see this quote in other subsections.

**That is true in any lawsuits, as you might know how the legal system works here. Like if you are arrested by the police, it's like 99.9% that you'll be prosecuted, and it does require so much capital to try and prove your innocence. If you have a family to support, if you have a job, so many people choose not to go through that ordeal, so the similar argument can be applied to when it comes to fighting for your rights as a woman.**

## Social Stigma

Several of the participants suggested that social stigma caused women to refrain from pursuing litigation as an option:

**Cases such as *sekuhara* cases, it might be common overseas, but in Japan, if you file a law case like that, the one that gets criticized is the woman, I think.**

**...and then women tend to fear the public view towards them, say, “Oh, that woman got harassed. That woman became a victim of this harassment,” kind of a public view towards them. I think women tend to be more reluctant about filing a lawsuit.**

This individual makes reference to several issues, such as job security, but speaks to the significance of relationships.

**If a person who had a competence in terms of job, the boss recognizes how competent she is. She is lucky to get a promotion and she was recognized by the other colleagues and the workers. Even though a person who has an ability or a competence to perform in the company, but the recognition in the working place were lack. In that case it is [inaudible 00:26:36], I think. That is important for the... To meet a good boss. The human relationship is also important.**

Referring to a quote included in the aforementioned section about the justice system, this individual also talked about social stigma. The implication is that pursuing litigation could jeopardize those relationships.

**...If you have a family to support, if you have a job, so many people choose not to go through that ordeal, so the similar argument can be applied to when it comes to fighting for your rights as a woman.**

## **Gendered Perceptions and Power**

Some participants believed that reluctance and low litigiousness could be attributed to gendered perceptions and power differentials.

**I think so. If you were in a weaker position, whether it's a woman or man, it's harder to sue, so it's a power situation, but American women are brave, and they're encouraged to be independent. Here, encouragement is not enough. Many people are not independent enough.**

**...[W]omen tend to have deeper influence or harm physically and emotionally than men**

**I think there is an impediment. It might be a cultural thing where women are supposed to support men to look good. It's called [foreign language 01:18:17] in Japanese. Yeah, they are to support their face, [foreign language 01:18:26] face, so I think there is an unwritten binding and rule for women to do that. With that, I think also with that, females tend to refrain from going against male. It's that kind of concept is taught from early childhood in Japan.**

This participant gave a particularly detailed response about the history of such gender perceptions:

**Participant: Yeah, I think that common sense of the Japanese society is not supportive to the suit cases by women, especially for the harassment.**

**Kristen: Why is that?**

**Participant: This is a Japanese tradition history, I think, so 100 and 200 years ago, this is a very hierarchal society, and the male are fighting, and the male try to keep that stable hierarchal society, and the women role is clear to be supportive to that hierarchal system... Not inside the hierarchal. The situation is very changing in a progressive... Based on the common sense of the Japanese society, it's based on the ideal, female... The ideal women should be calm, should be supportive to men, supportive to family. If the Japanese society is more open to diversity, one of the diversities is of men and women. In the Japan society, the women is minority group in the business sector. Japan's society is more flexible to the diversities, including the women and including overseas workers. Also, Japanese companies, industries more successful to the global market, and they need to manage very different types of people. I really hope that, so this situation is progressed, so the Japanese company could be acceptable to diversity.**

## **Cost/Benefit**

Cost/benefit refers to the amount of effort or resources a woman would have to input into a lawsuit. Says this participant:

**I have a feeling it's not really worth it, I guess... But why would I say that? I've never really encountered something that's really, really bad, that 'I just want to get out of here,' so it's like things I could... Handle. It might be uncomfortable, but I could**

**just ignore it and handle it. I think that's what it is... I guess we don't know up to what point could become sexual harassment, for example. I think we do think about how... 'It's not enough to sue someone for this.' I know that just by how someone looks at you, it could become sexual harassment. I know that, but I guess if someone was looking at me like that, I would just ignore instead of going to someone and asking them to sue that person.**

Again, referring to the individual who commented about the general nature of the justice system, she states:

***...and it does require so much capital to try and prove your innocence. If you have a family to support, if you have a job, so many people choose not to go through that ordeal, so the similar argument can be applied to when it comes to fighting for your rights as a woman.***

Lawsuits require a lot of *time* and *energy*, which may inhibitors:

**Filing a lawsuit not just requires time but also requires a lot of energy emotionally, so I think it's much easier to just change the workplace, get a new job.**

## **Burden of Proof**

The burden of proof is problematic when seeking judicial relief.

**First of all, I think they don't have the proof. For instance, employment, if the company wouldn't disclose the information about how they recruit people, it's difficult to sue them. As a student, for instance, being employed, you don't know what kind of criteria they have for recruiting, so they don't know if it's because of I am a woman or not is the reason why I'm not employed. I think it's quite difficult. I would want to know what US is doing, how the US is dealing with that kind of issue.**

Proof is an important concept in the Japanese legal system. Proof was mentioned in both A-san's and B-san's cases. In both cases, their discrimination was acutely documented, which further contributed to their indignation.

## **Job Security**



If someone has not already lost her job due to sex discrimination, holding onto her job would be of utmost importance.

**One reason is that's not only for women, but in Japan, it's not very common to change your job. Once you join a company as a new graduate, basically you stay there for 20 years, 30 years. Once you quit, it's difficult to find a new job, find a new job better than prior company, so we prefer, both men and women prefer to stay in same company until they retire, so that's why they don't want to have some kind of trouble. Even though you experienced some kind of harassment, you just endure and just try not to think about it too much.**

## **Lack of Legal Consciousness**

One theme that appeared in the interviews was a lack of awareness about what constituted sex discrimination and at what point to take action.

**I guess we don't know up to what point could become sexual harassment, for example. I think we do think about how... 'It's not enough to sue someone for this.' I know that just by how someone looks at you, it could become sexual harassment. I know that, but I guess if someone was looking at me like that, I would just ignore instead of going to someone and asking them to sue that person.**

This theme appeared when some of the participants reported the issue to a supervisor or human resources; in cases that escalated (such as Izumi and B-san), the attorneys were used to confirm who was right or wrong. This was because, while the participants were aware *something happened*, they were uncertain what was wrong and who to blame. Given that most women do not escalate their cases and mobilize the law to the point of consulting an attorney, filing a grievance, or filing a lawsuit, it is difficult to say what hypothetical threshold would need to be crossed.

## **Women are Willing to Sue**

As for the lone participant who indicated that women were not reluctant to litigate, she stated that **fairness** was the reason that women would litigate.

**Kristen:**      **Would a Japanese woman file a lawsuit?**

**Participant:** **I think so.**

**Kristen:**      **Yeah, you think so?**

**Participant:** **I think so.**

**Kristen:**      **Why would she file a lawsuit?**

**Participant:** **Because it's not fair. We should do some action or something.**

To briefly summarize, this subsection answered the research question on what barriers do Japanese women perceive to law mobilization. This means that the responses included all participants. All of the participants (22) except one answered that Japanese women are reluctant to litigate when they encounter workplace sex discrimination. The reasons included non litigiousness (general), social stigma, lack of legal consciousness, retaliation, cost/benefit (not worth it), job security, power (gendered perceptions), burden of proof, cost (financial), time, energy, and no response/unspecified. The one participant who responded that she believed Japanese women to be willing to file a lawsuit cited fairness as the reason.

## **Perceptions of Grievance Options and Law Mobilization**

To answer **how do Japanese women perceive grievance options and law mobilization?** (Research Question 4), I wanted to know what attitudes and opinions were had about the law and/or **women who mobilized the law**. Occasionally, this was as straightforward as women reporting their personal opinions about the efficacy of the laws. However, legal knowledge var-

ied from woman to woman. For instance, a woman who started her career around the time that the 1986 Equal Employment Opportunity Law was promulgated and implemented likely would have a distinct memory of this law and would be able to gauge how it changed the society. However, younger generations have no such collective memory, so it may be more difficult for them to ascertain the efficacy of the laws.

That said, I found that asking probing questions about how the women felt about *other women* who mobilized the law telling. It is no secret that Japan is a collective society. This is abundantly obvious from just the title of this study—a play on the idiom “the nail that sticks up is hammered down.” As we saw in the **what barriers to women encounter** subsection, women are reluctant to litigate, even when litigation is an effective tool for social change. However, in general, they were favorable to women who mobilized the law. This is aligned with a conversation I had with Hifumi Okunuki and Louis Carlet.<sup>65</sup> Mr. Carlet indicated that people are concerned about suing, particularly in terms of social stigmatization or finding employment in the future; yet these concerns rarely rise to the level of their concern, and future employers actually view the previous employer unfavorably.

Twenty of the participants were asked their impressions of women who litigate or mobilize the law. Excluded from this question were the three litigants. The following chart is a breakdown of the impressions:

**Table 5.8 Impressions of Law Mobilization**

Impression	#	Percentage
Positive (+)	9	45%

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<sup>65</sup> January 21, 2018

Impression	#	Percentage
Negative (-)	2	10%
Neutral (+/-)	5	25%
No response	2	10%

## Positive View of Law Mobilization

Of the **positive** respondents, they added the following:

**I think she is brave, and she is courageous, but because this is very personal... but the [family] of the person would be involved. The names of the family members will be exposed to the society, to the public, and the faces of the family might be damaged. I wonder if the family members consent with that legal action. If we avoid the involvement of the family members, I wonder there might be other ways to take legal actions.**

**I think it's a positive thing to do, and if I were someone close to that person, I would definitely support that action.**

**She did good. Right thing.**

**Yeah, of course, they have a right to do that, and it's very brave of them to do that. Because of that bravery, administration is gradually changing, so I totally support their actions.**

**Yeah, I think women should speak up and raise their voice. For me, if something like that happens to me personally, I think I would speak up if that means my speaking up would help others, including younger generation.**

**Yeah, I think they're strong-willed people. You cannot do that with a half-way kind of commitment, so I do feel strength in those people.**

**Go, girl! [Probe: Why do you say that?] I know it's hard to speak out sometimes, especially if it could be embarrassing, because you don't want a lot of people to find out what happened. Something like that has never happened to me, so I don't know how I would actually feel about it, but I think it could be a little bit embarrassing to**

tell everyone about what happened, so I think that's why.

## **Negative View of Law Mobilization**

Of the **negative** respondents, they stated:

**It's interesting how sometimes I have two feelings for that. In one way, I feel that women should be speaking up if they feel something is wrong. I feel that in one way. On the other part, I have experienced in the past 10 years being quiet and keeping, refraining myself. I have that history, my experience of refraining my feelings, so when I see somebody raising their hand, I feel that that person is... They are not refraining themselves.**

## **Neutral View of Law Mobilization**

Of the **neutral** responses:

**I have never thought about it.**

**I have no idea. Maybe only the option for women is using internet, SNS.**

To briefly summarize, this subsection answered the research question on how Japanese women perceive grievance options and law mobilization. This means that the responses included all participants. Forty-five percent of the participants viewed law mobilization as favorable, ten percent as negative, 25 percent as neutral, and ten percent had no response.

## **Measuring Litigiousness: From Legal Consciousness to Law Mobilization**

A significant component of law mobilization is *legal consciousness*. Legal consciousness includes how individuals interpret the law and how this meaning turns into action (Blackstone, Uggem, & McLaughlin, 2009, p. 633; Hoffman, 2003., p. 693). According to Ewick and Sibley

(1998), “Consciousness is not merely a state of mind. Legal consciousness is produced and revealed in what people *do* as well as what they *say*” (p. 46). They further state, “Legal consciousness is always a collective construction that simultaneously expresses, uses, and creates publicly exchanged understandings, what earlier we called schemes” (p. 46). Ewick and Sibley discuss how, typically, legal consciousness is considered in terms of attitudes or epiphenomenon; in response, however, they created a framework of analysis that considers legal consciousness in terms of *cultural practice*, which is met at the juxtaposition of action and structural constraint (p. 38). For my study, I stay close to Ewick and Sibley’s framework of defining legal consciousness. However, I deviate from it because my study is not about legal consciousness. My study is about litigiousness measured in terms of personal intent and operationalized as law mobilization (based on Moog and Helsig).

My approach, as described in the theoretical framework, can be described as such: *feminist jurisprudence* embodies “women doing law” (Bartlett, 1990), so in this study, I am focusing on “Japanese women doing law” as it relates to workplace sex discrimination. Feminist jurisprudence is *legal consciousness*, or “what people *do* as well as what they *say*” (Ewick & Sibley, 1998, p. 46), so in this study, I am focusing on “what Japanese women *do* as well as what they *say*.” Contained within legal consciousness is *law mobilization*, which reaches back to my first two research questions: how and why do Japanese women mobilize the law when they believe they have perceived workplace sex discrimination. Law mobilization operationalizes *litigiousness*, which is what I am really seeking to understand, not on the macro, aggregate level, that excludes many significant ways in which the law is exercised that stop short of litigation (as most cases are not litigated in most places), but rather personal intent. The purpose of this scale

is to measure or try to predict how far a Japanese woman has moved (or will move) toward law mobilization.

In regard to other studies, just to illustrate how my study “fills in the gaps” in terms of legal consciousness and sex discrimination in Japan, Christopher Uggen and Chika Shinohara published a comparative study examining how the concept of sexual harassment “diffused” nationally and argues that younger cohorts have more “consciousness” of sexual harassment (2009). However, this study focuses on public consciousness, not law mobilization. Furthermore, the survey data used (out of necessity) for their study was an instrument administered in 1992. Shinohara’s dissertation focuses on the impact of international pressure and changes in national law on gender-roles attitudes. Her study couches legal consciousness in terms of attitudes and again focuses on public consciousness. For my study, I want to understand *how* and *why* Japanese women mobilize the law, not expressly focus on legal consciousness. However, if we conceptualize legal consciousness as a *process*, something akin to Ewick and Sibley’s framework, to what extent does consciousness transform into action? Or when does legal consciousness transcend into law mobilization (which is how I operationalize *litigiousness*) and to what extent? How do Japanese women relate to the law? Is this something that could be predicted or measured?

To find out, I developed a simple scale based on the following factors: experiences with sex discrimination, response to perceived discrimination, legal consciousness operationalized as legal/rights knowledge, their perception of litigation in Japan, and finally, how they perceive women who mobilize the law.

**Table 5.9 Scale Measuring Litigiousness**

Category	0	1	2	3
<b>Sex Discrimination</b>	<p>No or NR:</p> <p>No sex discrimination reported; no response to question; not applicable; not mentioned</p>	<p>No/Yes (N/Y):</p> <p>Respondent initially reported “no” but later reported behaviors that were discriminatory and/or illegal</p>	<p>Yes—Oblique (YO):</p> <p>Respondents reported sex discrimination in vague or oblique terms. May or may not be related to the workplace. Response not specific. Participant, however, some awareness that inappropriate behavior occurred.</p>	<p>Yes.</p> <p>Participant reported clearly that sex discrimination was experienced.</p>



Category	0	1	2	3
<b>Legal Consciousness</b>	<p>None.</p> <p>Participant reports no legal knowledge.</p>	<p>Very little.</p> <p>Participant reports some awareness of the law, particularly as it relates to sex discrimination, as well as grievance procedures.</p>	<p>Some/moderate.</p> <p>Participant reports some or moderate knowledge of the law particularly as it relates sex discrimination. May or may not be able to discuss grievance options and procedures adequately. May or may not name laws, organizations, institutions.</p>	<p>Yes.</p> <p>Participant demonstrates working knowledge of laws particularly as they relate to sex discrimination. They are able to discuss grievance options, procedures, and alternatives. Likely to know names of laws, organizations, and institutions.</p>
<b>Response</b>	<p>None.</p> <p>Participant did not experience sex discrimination and therefor had no incident to respond to</p> <p><b>or</b></p> <p>Participant did not respond to discriminatory treatment.</p>	<p>Limited.</p> <p>Participant relied on <b>informal</b> law mobilization options. (Ex: Talked to peers, family, or colleague; considered quitting or changed jobs; tried to resolve on her own, etc.)</p> <p><b>Or</b></p> <p>Participant relied on <b>internal</b> processes. This would include speaking with a supervisor, consulting with human resources, calling a hotline, etc.</p>	<p>Escalated.</p> <p>Participant relied on <b>external</b> grievance channels and/or resources to address discriminatory treatment. This could include prefectural-level mediation, joining or consulting a labor union, or consulting/retaining an attorney.</p>	<p>Litigated.</p> <p>Participant filed a lawsuit.</p>

Category	0	1	2	3
<b>Litigiousness: Are Japanese women willing or reluctant to litigate?</b>	<p>Reluctant.</p> <p>Participant indicates clearly that Japanese women are reluctant to litigate and/or that is something they would not do.</p> <p><b>or</b></p> <p>No response.</p> <p>Participant did respond or the question was not mentioned/.</p>	<p>Reluctance with specific reason.</p> <p>Participant indicates clearly that Japanese women are reluctant to litigate but gives a specific reason.</p> <p>(This suggests the participant has considered variables that may contribute or diminish potential litigation).</p>	<p>Maybe.</p> <p>Participant indicates that Japanese women might be willing to file a lawsuit</p>	<p>Willing.</p> <p>Participant indicates clearly that Japanese women would file a lawsuit.</p>
<b>Perception of women who mobilize the law</b>	<p>Negative.</p> <p>Participant expresses a negative perception of women who mobilize the law and/or files a lawsuit.</p>	<p>Neutral or no opinion.</p> <p>Participant expresses a neutral perception of women who mobilize the law or express no opinion.</p> <p><b>or</b></p> <p>No response. Question may not have been asked or the participant may have ignored or declined.</p>	<p>Somewhat positive.</p> <p>Participant expresses response that is somewhat positive, perhaps blending some positive and negative aspects.</p>	<p>Positive.</p> <p>Participant expresses clear positive perception of women who mobilize the law.</p> <p><b>or</b></p> <p>Participant participated in advocacy capacities, including joining a women's group or union, legal advocacy group, or protesting.</p>

The scale does contain some limitations.<sup>66</sup> First, the score assigned to a participant's response is based on what they have self-reported. So, if what the participant relays is inaccurate or the interpretation is incorrect, this could impact the score. Also, if a participant did not answer a particular question, this too could impact the score. The scale relies on the researcher's subjective judgment in its application. Having additional coders would have created intercoder reliability; however, as this study was self-funded and time-constrained, this option was not integrated.

## Results

In the first group of three categories—experience with discrimination, response to perceived discrimination, and legal consciousness—the average rating on a scale that ranged from 0 to 9 was **4.8**. In the second group of two categories—litigiousness and impression of women who mobilize the law—on a scale of 0 to 6 the average score was **3.0**. The average of both categories was **7.9** on a total scale of 0 to 15.

What does this tell us? Let's give some context to the scale, context, and participant responses. On the low end of the scale, some participants scored a total of "0" or "1." Setsuko, for example, was a hairstylist who owned her own business and also did not have a college degree.

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<sup>66</sup> Power harassment is included in sex discrimination. Although power harassment is not sex discrimination, power harassment was an unexpected emergent theme in the data. Participants also reported sex discrimination accompanied with sex discrimination; that is, workplaces that engaged in one behavior tended to engage in the other behavior.

If participants reported an awareness about sex discrimination but no direct experience, she would receive "0" for experience. Although general awareness could be a precedent for legal consciousness, the instrument was designed to measure the possibility of the extent of legal consciousness to law mobilization. The exception is if the participant reported she had not directly encountered workplace discrimination but encountered some sort of differential treatment as it related to the job (such as family pressure and the like).

In our opening conversation, Setsuko talked quite a bit about how her mother influenced her to learn a trade so that she could be self-sufficient and independent.

**Then my mother said to me that my mother recommended me to become a nurse, but I didn't want to be a nurse, so another option, I chose to become a hairdresser, or my mother always said to me to become independent, to get a job. it comes to dependence. My mother's case was my mother cannot live by herself. My mother had to depend on her husband. She couldn't have the proper job, just only part time job, so that is a big influence for her choice.**

She spoke at length about how her mother worked part-time, but the difficulties she experienced and her mother's experiences impacted Setsuko's outlook. Setsuko enjoyed running her own business. The overall tenor of the conversation was one of empowerment. Furthermore, she seemed somewhat aware of the general atmosphere of gender politics in Japan.

**Yes, I think that, in terms of my business, I do not feel much, but it is true, as you said, that in Japan, gender discrimination exists. Even Japan is an advanced country, but the gap didn't [inaudible 00:27:35], so gap exists I feel too.**

However, she reported no encounters with workplace sex discrimination as she ran her own business. She could not discuss specific laws in detail and had no opinion about women who mobilized the law. Thus, Setsuko only scored a "1" on the scale.

Reiko was another entrepreneur who scored "1." Reiko served on the board of her father's company and managed her late husband's wealth vis-à-vis a business or foundation. She also worked part-time as a horse racing announcer. She did not attend college and married a race car driver, having two children with him. Her husband was killed in an accident, and she became widowed. She never remarried. Again, because of Reiko's nontraditional career and unique circumstances, she did not encounter workplace sex discrimination and generally had few opinions

about the topic as it related to the themes captured by the scale. This did not mean, however, that she did not have strong opinions about the subject. Rather, if we remember the scale is meant to measure how likely or to what extent a woman journeys from legal consciousness to law mobilization or if she may mobilize the law, Reiko scores relatively low, as that has largely not been her experience.

On the opposite end of the scale are women who litigated, arbitrated, or filed a grievance, who generally scored high. A-San, who was embroiled in a sexual harassment lawsuit, and C-San who filed a maternity harassment lawsuit, each scored “13.” They maximized the whole 9-points on the first scale measuring experience, response, and legal knowledge and scored 4-points in the second category measuring litigiousness and impressions. They both indicated that women were reluctant to litigate (“1”). However, they scored “3” points for impressions. This was a subjective call made by me, the researcher. In all three instances, I did not ask them what they thought of women who mobilized the law. This begs the question why. Robert Kidder and Setsuo Miyazawa (1993) identify three types of plaintiffs: money crusaders, local crusaders, and national crusaders. I do not firmly distinguish which type my litigating participants fall under; however, none would be money crusaders (only involved in litigation for a quick payout). All three would fit into a local crusader (seeking justice). Finally, I feel that based on A-san's participation in union protests, B-san's involvement with WWN and showing up to support other plaintiffs, and finally, C-san's participation in Matahara Net, each of the women to some degree have become national crusaders even if their lawsuits, to the best of my knowledge, was not part of a collective effort to combat a particular type of discrimination. I detail their participation

even further in the next paragraph, however, here I want to tie this measurement determination in with the literature.

In each of their cases, the women participated in activist groups dedicated to supporting law mobilization. A-San participated in a union and joined numerous protests with affiliate groups. She routinely engaged and sought reciprocal support and relationships with other individuals, especially women, who litigated. At one protest in which I participated as an observer, she protested outside of the headquarters of the parent company, joining other protestors who lambasted the company regarding their treatment of and refusal to compensate Koreans forced into labor during the Pacific War (the case was recently decided by the Korean Supreme Court in October 2018, favoring the sole surviving Korean claimant). B-San joined the Working Women's Network as she was unable to join a union. We met at the Tokyo High Court when she was there supporting another WWN member engaged in a lawsuit against a university. Finally, C-San helped run an organization dedicated to providing support to women who have experienced maternity harassment. It suffices to say that this is sufficient evidence that the women favorably view women who mobilize the law, so much so that they engage in groups that mobilize for social action.

No one participant scored a "0" or a full "15" points. In general, participants classified as **entrepreneurs** scored a total of **4**, **management-track** or **traditional employment** scored a total of **8**, **professors** scored a total of **7.8**, and **regular, nontraditional, full-time, and/or temporary** workers scored a total of **9.7**. Entrepreneurs were the least likely to report experiences with sex discrimination and generally did not indicate extensive knowledge of the law and opinions about law mobilization.

Professors were also less likely to report sex discrimination in their current positions, but some indicated that they had experienced sex discrimination in previous employment (usually non-academic). They explained that there was a great deal of equality in university settings (although some did report some instances of gender perceptions or prejudice). However, they were acutely aware of specific laws and university grievance procedures and, of course, were aware of current events as they related to sex discrimination.

Women who worked in what I classified as traditional or management-track positions tended to share their experiences vaguely or obliquely or report that they had not experienced discrimination themselves. I noted their careful circumvention of outrightly saying they experienced discrimination. For instance, an informant reported to me that one of the women in this category was discriminated against; however, she did not report it, revealing only that she had experienced “prejudice.” However, they were acutely aware of the gendered differentials and treatment. When I created the traditional employment or management-track category, I meant to capture those women who went to prestigious universities, found employment the traditional way straight out of college, and stayed with one company for the length of her career...like a Japanese man. My suspicion was that, because this type of employment is so prized and coveted, they were less likely to disparage their company. Furthermore, the companies for whom these women worked were major corporations with high national and international prestige. They are integral to Japanese society—mainstays with impeccable reputations. Given their reputation, wealth, and visibility, even if they were male-dominated as the participants were quick to point out, they were at least dedicated to minimizing discriminatory treatment. The informant who referred several of these women to me was proud of his company’s reputation and treatment of

women. There could be several reasons for this, including that these companies employ individuals with high levels of education, vast levels of international experience, and a stable employment in a tolerable workplace (these women met me at reasonable hours after work). Perhaps just as salient is what A-San reported to me during an informal conversation. She indicated that companies with brand recognition as “good companies” or “family companies” do not want to gain a reputation of treating their employees poorly. When I asked why this was different for her company, which was embroiled in several lawsuits of different kinds of discriminatory treatment, she said their primary client was the Japanese client. This statement was particularly striking and, in my opinion, is a sterling symbol of the government’s *tatemaie*, or outward face about women (creating a national where “women can shine”) and *honne* (their primary metals contracts are with a company that discriminates against minorities and women to the point that it creates international disputes).

Finally, the nontraditional or temporary pool of participants reported some of the most disturbing stories and experiences with workplace discrimination and treatment. Their score was not significantly higher than those in the professor positions or managerial-track positions. That is, professors and management-track employees generally have high levels of education while at least the professors have low discrimination experiences. Thus, they know the laws and how to mobilize the laws if need be. The less traditional or regular employment participants experienced what I qualitatively assessed as the most severe treatment—loss of job, impact on mental health and physical health, flouting of laws, etc.—however, the scale does not measure severity of treatment, as that is individual to the woman and cannot be assessed by the researcher.



The scale, while simple, puts the participants on a spectrum or continuum of legal consciousness, which may predict law mobilization or at least assesses where a participant is in that continual process.

To briefly summarize, this subsection describes how litigiousness was measured in the study. The scale presented here measures individual intent or propensity to mobilize the law. On a scale of “0” to “15,” where “0” means “no litigiousness” and “15” means “litigious” or “likely to file a lawsuit,” the average score of the participants was 7.9. This indicates that, while the literature suggests that Japanese women are reluctant to sue and the participants said that women are reluctant to sue, there is a moderate degree of litigiousness present. That is, Japanese women will mobilize the law as necessary up to and including filing a lawsuit.

## **Summary**

This section answered the four research questions set forth in this study:

**Q1: How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q2: Why do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q3: What barriers do Japanese women perceive to mobilizing the law?**

**Q4: How do Japanese women perceive grievance options and law mobilization?**

In sum, Japanese women who experience workplace sex discrimination resort to a variety of remedies when they believe they have encountered workplace sex discrimination; these remedies or actions are ways in which they mobilize the law. These activities range from inaction all the

way up to filing a lawsuit; thus, this range of law mobilization captures litigiousness. This continuum explains how Japanese women relate to the law. In general, their responses reveal that, to a degree, women observe traditional Japanese legal culture and tradition. That is, when they encounter workplace sex discrimination, they start with modes of law mobilization that are categorized as *internal*. This would be informal law mobilization. So, these remedies are things like taking no action, considering quitting or actually quitting, and/or speaking with a supervisor or human resources. Additionally, they try to resolve the matter on their own.<sup>67</sup> These actions try to minimize conflict between parties for some resolution or relief. However, if the discriminatory treatment persists or worsens, or worse, results in a termination, the women would resort to external responses. In other words, they would consult with an attorney, join a union, and/or join with a support group (not necessarily in that order), file a grievance, and/or file a lawsuit. So, when this occurs, the women move from the informal, extralegal space of Japanese law to the formal, institutionalized, and structuralized spaces. This also denotes a shift from private spaces to public spaces, thus raising the stacks of the matter at hand.

One interesting observation that would have been difficult to capture on the scale measuring litigiousness was the triggering event or focal event that propelled a Japanese woman to move from informal law mobilization to formal law mobilization. For instance, does severity of discrimination impact a woman's course of action? Does the type of discrimination impact a women's course of action? In the case of the participants in this study who filed grievances or

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<sup>67</sup> Most of the women did not report resolving the issue on their own except for A-san. A-san explicitly asked her harasser to refrain from his offensive behavior. I suspect that the other women did not report this because 1) they did not confront the offending party in their situation or 2) they did confront the offending party but did not report it.

lawsuits, each of them either experienced or faced termination from their employment. Firing in Japan is not commonplace; in fact, it is difficult to fire employees, even temporary ones.<sup>68</sup> This is due to lifetime employment schemes in Japan, the structure of labor laws, and the unpredictable outcomes from litigation.<sup>69</sup> So to be fired is a grave offense to the one being terminated. It is this kind of mistreatment and loss of employment that sends the complainants on a mission to receive an apology, compensation, and justice. Having said that, the results of this study are not generalizable, so termination of employment should not be considered the only reason a Japanese woman would file a lawsuit. For instance, the women in the *Sumitomo* case were still employed and remained employed during their lawsuit, which was over promotion and pay.

Another key observation was that the women who were not lifetime or management-track employees reported some of the most disturbing complaints of discrimination. It is unclear what C-San's employment status was prior to her grievance or lawsuit, but Izumi, A-san, and B-san were not lifetime, management-track employees. Ayaka also experienced terrible mistreatment and discrimination at her firm; however, Ayaka did not experience a job loss from it. She was also unaware of her rights under the law. However, this interplay of variables is speculative because the study did not measure them due to their subjective nature, and thus, cannot be drawn as a firm conclusion. That is to say, I cannot adequately assess and assign value to the severity of treatment. That has to be reported directly from the participant. My assumption, though, is that

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<sup>68</sup> Based on Louis Carlet's presentation in January 21, 2018, to Tokyo General Union members about the five-year rule.

<sup>69</sup> This is taken from a PDF on TransAsiaLaw.com. The veracity of the source is unclear but the content is consistent with my understand of Japanese labor law and culture. Also see the *New York Times*' "Layoffs Taboo, Japan Workers Are Sent to the Boredom Room" by Hiroko Tabuchi (August 16, 2013).

“severity” would have been reported when answering “why” Japanese women mobilize the law. It is worth drawing this observation to what current literature describes as precarious employment and this fundamental shift in Japanese society from the *nenko* system to less stable and more temporary forms of employment. This seems to have created a heightened sense of anxiety, as some scholars have noted, and additional agitation of men who previously benefited from the system (Allison, 2016; Kano, 2015; Osawa and Kingston, 2015).

Finally, I conclude from these findings that Japanese women do display some degree of litigiousness. When they encounter workplace sex discrimination, they start with law mobilization through informal means but then resort to formal, institutionalized means if the situation goes unresolved or escalates (such as in a termination). Furthermore, while they overwhelmingly state that they believe Japanese women are reluctant to litigate, they also report an overall positive (45%) or neutral (25%) opinion of women who mobilize the law. Understanding these nuanced attitudes and beliefs, that is, legal consciousness, coupled with how Japanese women actually “do law” gives us some understanding of how Japanese women relate to law and the implications of public policy, whether it be efficacy or policymaking.<sup>70</sup>

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<sup>70</sup> As it relates to workplace sex discrimination and the law.

## CHAPTER 6: CONCLUSION

In an August 26, 2018, op-ed piece for *The Japan Times*, Hifumi Okunuki writes, “Flabbergasted. That was my feeling last week reading the news of an example of brazen institutional sexism and fraud 33 years after the enactment of the Equal Employment Opportunity Law.”<sup>71</sup> The incident to which Professor Okunuki was referring was the discovery and admission that Tokyo Medical University lowered entrance exam scores of female applicants to keep female enrollment low (O’Grady, 2018). But as Professor Okunuki illustrates in her opinion piece, the scandal speaks to larger discrimination that women face in employment, starting even in college or professional school. She quotes Dr. Ayako Nishikawa, who stated, “If they just admit the best, the freshman class would be all female. Because girls are better. But then everybody will be ophthalmologists and dermatologists. Women can’t handle heavy people with hip dislocations” (2018). Professor Okunuki debunks Dr. Nishikawa’s assumption with data contradicting her claim. Professor Okunuki’s piece was a call to action to treat score tampering with the same scrutiny that workplace sex discrimination has received (although workplace sex discrimination has a legal framework).

This scandal was shocking in Japan. As Professor Okunuki writes in her piece (and as was confirmed in my own interviews with university professors):

Many people, I think, have the impression that the highly specialized, ‘certificate-only’ world of doctors and lawyers is more naturally gender-equal than the domain where ordinary private corporations dwell. My friend even became a lawyer because she thought she’d be shielded from the harsh sexist corporate world. I was shocked by this test score scandal and even more by the ho-hum reaction to it from many commentators.

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<sup>71</sup> Also referenced in November 8th, 2018, *Washington Post* article by Siobhan O’Grady.

Indeed, one would-be participant sent me a message alerting me to the scandal, completely astonished.

What is fascinating about the medical school scandal is how quickly these women mobilized the law. The news of the discrimination broke only over the summer of 2018, yet by late October of the same year, a lawsuit had been filed; and the university attempted to rectify the situation by offering some of the denied applicants a spot. The literature up until this point in time suggests that women are reluctant to litigate when they encounter workplace sex discrimination, but clearly, there is a new consciousness among women.

This dissertation has sought to explore this consciousness. My study examined *how* and *why* Japanese women decide to mobilize the law when they believe they have encountered workplace sex discrimination. Through 23 semi-structured in-depth interviews with Japanese women, this study answers four research questions:

**Q1: How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q2: Why do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?**

**Q3: What barriers do Japanese women perceive to mobilizing the law?**

**Q4: How do Japanese women perceive grievance options and law mobilization?**

## How and Why Japanese Women Mobilize the Law

The first two research questions, how and why do Japanese women decide to mobilize the law, speak to ways Japanese women interact and engage with the law. In general, these two research questions essentially capture women who have experienced sex discrimination. Participants who responded **yes**, **no/yes**, and **yes/oblique** to the question “Have you been treated differently because you are a woman?” indicated that they experienced the following types of discrimination: **general/differential treatment**, **discrimination in promotion and pay**, **sexual harassment**, **maternity harassment (implied)**, **maternity harassment (actual)**, and **power harassment**. Power harassment was a surprise finding that will be discussed in the “Implications for Further Research Section.” Power harassment is gender-neutral; that is, it can happen to men and women. What I found, though, is that the participants who reported experiencing power harassment also experienced sex discrimination. Thus, there is a gendered element to power harassment, particularly as it relates to masculinity, which will be discussed in a subsequent subsection. However, because this is an exploratory study, I decided to keep power harassment in the findings.

**How** Japanese women mobilize the law can be answered in two ways: the literal *how* as in “what ways” or “what actions” and *how* as in the process by which they reach law mobilization. For this study, I look at both *hows*. The first of these *hows* is the literal response to discriminatory treatment. Japanese women tended to respond the following ways: **no action/inaction**, **considered quitting or quit job**, **spoke with human resources or supervisor**, **joined a union or support group**, **filed a grievance**, or **filed a lawsuit**. The first three actions—no action/inaction, considered quitting or quit job, and/or spoke with human resources or supervisor were clas-

sified as “**internal responses.**” That is, they were resolutions that were sought internal to the company or firm where the participant was working at the time. The latter responses—joined a union or support group, filed a grievance, or filed a lawsuit—were classified as “**external responses.**” That is, the participants had to seek remedy external to the company or firm where they were working.

There are a couple observations to be made with “how” Japanese women mobilized the law. First, several of the women experienced more than one type of discrimination. For instance, Izumi experienced sexual harassment and power harassment, but it was the power harassment that she prompted her to file a grievance. Second, these responses should be viewed in terms of steps in law mobilization, a progression of sorts. For instance, A-san started with what would have been classified as internal responses: she first tried to address the issue with her harasser and when that did not work, she went to a trusted supervisor, then human resources. However, as she developed psychosomatic symptoms causing her illness and the discriminatory treatment worsened, she sought outside help via a labor union and attorney. With her legal team, she tried to collective bargain,<sup>72</sup> She was fired during this process, which her company attributed to her health issues. They also did not believe they were responsible for their employee’s behavior on social media, even when it was creating a hostile work environment. When these efforts failed, she sued. Thus, we see a continuum here that will be further explored in the “Measuring the Process from Legal Consciousness to Law Mobilization” subsection. The point here is that most participants took some sort of intermediary step(s) before their final course of action.

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<sup>72</sup> “Collective bargaining” or “CB” or “CB”ing was used frequently in informal conversations, but the usage of this term may vary somewhat based on the cultural context.



These responses fit the Blackstone, Uggen, and McLaughlin (2009) typology: ignore, avoid, self-help, telling acquaintances, telling peers, telling superiors, and consulting with an attorney or external resources (p. 658), although not necessarily in that order. Also interesting here is the interplay of Hirshman’s (1970) “exit, voice, and loyalty.”<sup>73</sup> While Hirshman’s theory is not part of the theoretical framework, here we see it in action in dynamic, almost fluid way.

**Table 6.1 Exit, Voice, Loyalty**

<b>Response</b>	<b>Classification</b>
<b>No action/inaction</b>	Loyalty
<b>Considered quitting/quit</b>	Exit
<b>Spoke with HR or Supervisor</b>	Voice
<b>Joined a union or support group</b>	Voice
<b>Filed a grievance</b>	Voice
<b>Filed a lawsuit</b>	Voice

What is striking to me here is that, while the literature suggests that women are reluctant to litigate, in most instances, they did use their “voice” when they perceived discriminatory treatment, even when they were not entirely sure if their rights were being violated (like in the case of Ayaka); but they felt that “something happened” and reported it. This signifies that, while perhaps the anecdotal evidence previously presented in the literature may be true—Japanese women are reluctant to litigate—they are not totally unwilling to mobilize the law. That is, the stated perception does not necessarily match the realized action, which in some sense, is

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<sup>73</sup> Via Leonard Schoppa (2006).

almost consistent with *tatemae* and *honne*.<sup>74</sup> Thus, I attempt to measure this law mobilization in terms of litigiousness in the subsequent subsection.

**Why** Japanese women mobilized the law deals with the specific **reasons** for which they chose their particular courses of action. The interviews revealed that women mobilized the law for reasons related to **responding in vain/easier to ignore, seeking better opportunities, preventing of adverse treatment, finding support, refusing to be silenced, seeking compensation, seeking an apology, and feeling injustice and anger**. Responding in vain/easier to ignore corresponded with no action/inaction (loyalty). Seeking better opportunities corresponded with quitting or considered quitting (an exit, although, the decision to remain with a firm would be loyalty). Finding support corresponded with joining a union or a support group. Refusing to be silenced, seeking compensation, seeking an apology, and feeling injustice and anger all corresponded with filing a grievance and/or filing a lawsuit.

“I was angry!” responded one of the plaintiffs from the Sumitomo Metals and Chemical lawsuit when we met informally at Tokyo High Court, and I asked her why she pursued a lawsuit. One striking feature about seeking external grievance options was the sense of empowerment that the women gained during this process. Louis Carlet mentioned this during our first conversation,<sup>75</sup> and it comports with what Phoebe Stambaugh Morgan found in her own research. Initially, some of the women sought support, which in turn, provided them with access to legal advice. A-san and B-san both wanted to know what they had done wrong; in other words,

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<sup>74</sup> “Outward face” and “inner intentions.”

<sup>75</sup> January 21, 2018

they blamed themselves for their situations. However, in both cases, they were advised of being the wronged party. This confirmation seems to have propelled them into escalating their cases.

A-san and B-san were also *threatened with silence*. Initially, when A-san sought internal remedy, management and human resources advised her to keep quiet. As the situation escalated and lawyers became involved, she was then threatened with a defamation lawsuit. B-san was also threatened with a defamation, or SLAP, lawsuit. However, these threats interestingly had the opposite of their intended effect. Rather than cower under the threat and acquiesce to the firm's demands, both A-san and B-san used their voices (metaphorical and literal) and became louder. A-san joined labor protests with a megaphone and went to the media. She continually posted snippets of her story on social media. B-san, who previously worked in television, held an actual press conference. These women were not going to be silenced.

A salient observation to be noted here is that the women who pursued external grievances—they are the proverbial nail in the idiom “the nail that sticks up gets hammered down”—are doing exactly what they are not supposed to do per societal norms that value and compel conformity. While “sticking up” and not conforming, thus risking social relationships so valued in Japanese society, they instead sought to exercise their rights and make their voices heard, diving into that dreaded sphere of nonconformity, by seeking support from others (unions, women's groups, attorneys, etc.). This is a significant finding. This finding suggests that *social support is a key variable to external law mobilization*. This is aligned with Phoebe Stambaugh Morgan's finding from her study that *relationships* were an important factor when aggrieved American women filed lawsuits; however, the focus was more on familial relationships that support networks (although it should be, since Stambaugh Morgan recruited women who participated in a

support group). Here, familial relationships are less important for proceeding with a lawsuit. In fact, A-san's concern for anonymity is directly related to her family not knowing about her participation in a lawsuit; they still do not know. C-san in her maternity harassment suit said that family relationships were important, but this makes sense in her particular situation as there were childcare considerations.

While the participants who sought external remedy and redress generally sought modest compensation or restoration of their positions, which are economic drivers, the main driver for their lawsuits was an *official apology*. This aligns with the literature about *giri*,<sup>76</sup> and its role in Japanese legal culture. Again, the apology was not the only reason for legal action, but it seemed to be among one of the most important demands the women made of their companies. This suggests that the women at least wanted their harm acknowledged.

Finally, a sense of injustice and anger propelled the women who sought external remedies. Both A-san and B-san *suffered from health issues related to the discriminatory treatment* that they experienced. In the case of A-san, she developed a psychosomatic cough that was a result of the distress and anxiety she felt about her situation. She also sought mental health treatment, as did B-san. A-san was the most vocal about her anger, even to the point of having thoughts of harming others.

### **Barriers to and Perceptions of Law Mobilization**

“Barriers to and Perceptions of Law Mobilization” answered Research Questions 3 and 4: “What barriers do Japanese women perceive to mobilizing the law?” and “how do Japanese

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<sup>76</sup> “Apology.”

women perceive grievance options and law mobilization?” These two categories included responses from all the participants, as they had to do with general perceptions, attitudes, and beliefs rather than personal experiences. Barriers were addressed by asking the participants about Japanese women’s willingness or reluctance to litigate. All but one of the participants answered that Japanese women were reluctant to file a lawsuit if they believed they encountered workplace sex discrimination. Their reasons reflect what was previously found in the literature (see Appendix E). The reluctance to file a lawsuit was a not a surprising finding; however, what is different about this finding is that, unlike other studies and literature available to English-speaking audiences, this information was collected through a systematic method of inquiry rather than anecdote. The participants listed **general/nonspecific reasons, social stigma, lack of legal consciousness, fear of retaliation, cost/benefit analysis, job security, power differentials, burden of proof, cost (financial), time, and energy** as reasons that Japanese women are reluctant to litigate.

To answer, “how do Japanese women perceive grievance options and law mobilization,” I focused on how they viewed and related to other women who mobilized the law. I would ask something to the effect, “What would you think of a woman who filed a lawsuit?” Of the 45 percent of participants who favorably viewed law mobilization (**positive**), most cited **bravery** as their reason for viewing such actions positively, noting how challenging it is to pursue such an option and its propensity for helping other women. Of the women who unfavorably viewed law mobilization (**negative**), which was only ten percent of participants (or two women), they indicated more of an ambivalence to law mobilization than outright disdain or disagreement. Five

women, or 25 percent, expressed a **neutral** opinion, stating that they had really never thought about it.

### **Measuring the Process from Legal Consciousness to Law Mobilization**

Going beyond simply asking Japanese women about their thoughts, opinions, and beliefs about workplace sex discrimination and law mobilization, I considered the breadth and depth of their experiences. This is the second “how” of how Japanese women mobilize the law when they believe they have encountered workplace sex discrimination. How do they do they mobilize the law—by which process? Some women reported no experiences with workplace sex discrimination; they were aware it was a problem but worked as entrepreneurs or professors and did not feel it was an issue that pertained to them. Other participants not only experienced sex discrimination but mobilized the law all of the way to the point of filing a lawsuit. Still, others experienced sex discrimination and mobilized the law in some ways while they refrained in others. Here we see a continuum of perception and action that vacillates between legal consciousness and law mobilization. My study sought to capture all of the significant ways in which a Japanese woman could mobilize the law that may or may not include litigation, but what I was keenly interested in was their propensity to sue, or litigiousness. Recall that I measure litigiousness in terms of personal intent at the micro, individual-level rather than through litigation rates, which is at the macro, aggregate level. Capturing litigiousness by measuring litigation rates is certainly a robust measure of cultural or societal litigiousness; however, it tells us very little about how individuals access the judicial other than whether they filed a lawsuit or not. In certain fields of inquiry, this tells us a considerable amount of information. However, since sex discrimination

cases are relatively rare, litigation rates would not adequately capture how Japanese women seek judicial relief or their personal intent.

In my study, I mentioned such theoretical and conceptual frameworks as Hirshman's "exit, voice, and loyalty" and the findings of Phoebe Stambaugh Morgan's research about American women who sought judicial relief for workplace sex discrimination. We also saw how key components of Japanese legal culture, such as *giri*, were realized in the participants' responses. However, my study is exploratory, and my guiding theoretical framework is feminist jurisprudence. I want to know how Japanese women "do law."<sup>77</sup> A central component of feminist jurisprudence is *legal consciousness*. Legal consciousness is described as how individuals, in this case women, interpret the law and mobilize it (Blackstone, Uggan, & McLaughlin, 2009, p. 633; Hoffman, 2003, p. 693). Thus, feminist jurisprudence is an apt framework for this study.

However, one critical distinction about my study is that I want to measure litigiousness. I operationalize litigiousness as law mobilization, but the significant nuance here, if we go back to my definition of litigiousness, is the *propensity to sue*.<sup>78</sup> So really, I am trying to capture and pinpoint that frame in which the participant is moving from legal consciousness, which is a continuum between interpretation and mobilization, to litigiousness, which is the propensity to sue or the individual's intentions.

To try to capture this, I developed a simple scale measuring five key components or categories found in the interviews: **sex discrimination** (the participant's experience with sex discrimination); **legal consciousness** (how well the participant understands the law as it relates to

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<sup>77</sup> Bartlett, 1990.

<sup>78</sup> Moog, 1993.

sex discrimination); **response** (the response the participant reported addressing the perceived sex discrimination); **litigiousness** (does the participant believe that Japanese women are willing or reluctant to sue); and **perception of women who mobilize the law** (how do the participants perceive other women who mobilize the law). The first three categories—sex discrimination, legal consciousness, and response—strongly capture women who reported experiences with sex discrimination; that is, these first three indicators speak to a realized experience. The last two categories—litigiousness and perception—capture all participants.

The purpose of splitting these categories was not only to measure realized experiences but also potential litigiousness. For instance, there may be a university professor who reported that she never experienced workplace sex discrimination; but universities are typically egalitarian workspaces in which such things rarely occur. However, this woman is keenly aware of the law and the university policies that govern workplace misconduct; in fact, she may even serve on a special harassment committee that handles complaints (as was the case with one participant). She may believe, based on empirical observations, that Japanese women are reluctant to litigate, but she would favorably view a woman who mobilized the law. So here we see a paradox in which this Japanese woman reports that she has never experienced yet is very aware of the law. In this case, if she did experience sex discrimination, how could we measure her propensity to sue?

The scale ranged from 0 to 15 points; no person scored on either extreme (so, no one individual scored a 0 or a 15). Four of the participants who filed suit and one a grievance—A-san, B-san, C-san, and Izumi—scored the highest with 13 points, while Setsuko and Reiko—who are both entrepreneurs and self-employed—scored the lowest with 1 point. What is interesting about



these women and their associated scores is that they essentially provide a benchmark frame to measure litigiousness in real terms. Hypothetically, common sense would infer that a lower score means lower litigiousness and a higher score indicates higher litigiousness. Here, we see this realized in the interviews. So, the higher a participant's score inches toward double-digits, the more likely she would be to pursue external options, such as filing a grievance or lawsuit. For instance, Hanako, the participant who was in senior management and frustrated with her prospects for promotion, scored an 11. Sara, the curator who became a university professor, also scored an 11. Another interesting case to look at is that of Ayaka. Recall that Ayaka experienced terrible mistreatment in the form of power harassment and sexual harassment while working for a "black company." Ayaka only went as far as reporting the behaviors to her supervisor and was met with relative apathy. Ayaka demonstrated enough legal consciousness to know that "something happened" but as a young professional was not knowledgeable enough with the laws intended to protect women from discriminatory treatment. Ayaka's complaints were largely ignored and dismissed, and resignation seemed to be a dominant tenor of our interview. She had a lot to say about the mistreatment, but when probed, it seemed that she did not have a lot of hope that such treatment would be rectified. She scored 4 points.

The average score of the participants was 7.8, which is essentially a middle-of-the-road score. If we consider that the four women who litigated and/or filed grievances scored 13 points and the lowest score was 1 point, and we accept that this scale reliably measures litigiousness, this would indicate that Japanese women not only demonstrate legal consciousness, but a propensity for law mobilization, which could include a lawsuit. Thus, while the literature suggests that women are reluctant to litigate and the participants themselves state women are reluc-

tant to litigate, they are far from reluctant to mobilize the law. In fact, the average score of 7.8 suggests that they are perfectly poised for law mobilization—they are equipped with legal knowledge and perceptions and unfortunately experiences of discrimination to make decisions to seek legal redress.

When we take into consideration the literature that suggests the Japanese are a low-litigious society or non-litigious, we are considering this in terms of litigation rates. If we look to the anecdotal evidence that Japanese women are reluctant to litigate, we are looking at the most severe and extreme course of action—a lawsuit. But rarely does a dispute ever start with the sudden filing of a suit; law mobilization is an iterative process that may culminate in a lawsuit should the parties not find a reasonable resolution within the intermediate steps. Thus, to judge litigiousness merely on the premise of litigation rates is a poor indicator in East Asian cultures,<sup>79</sup> which typically rely on informal modes of dispute resolution, or self-reporting that “Japanese women” or “Japanese people” are reluctant to litigate by presenting them with the ultimate, extreme step in law mobilization, seems faulty. As my study demonstrates, if you present Japanese women with the hypothetical prospect of filing a lawsuit, of course, they will seem reluctant. It seems common sense that individuals and especially women in most industrialized nations would balk at the idea of engaging in that process. However, if you look closely at the ways in which women do engage with the law and consider law mobilization in an iterative fashion, we see that Japanese women do actually display some propensity toward litigiousness.

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<sup>79</sup> See Marie Seong-Hak Kim (2012) *Law and Custom in Korea*.

## **Grounded Theory**

In the “Theoretical Framework” chapter, I also indicated that grounded theory is a framework guiding this study. That is, I intended “to uncover and understand what lies behind any phenomenon about which little is yet known” and attempt to develop my own theory which might emerge from the interview data (Corbin and Strauss, 1990, p. 19). In this study, I develop a model to measure litigiousness as operationalized as intent to mobilize the law and apply it to Japanese working women and workplace sex discrimination. This model lays a strong foundation for theoretical development. However, due to the small sample population included, further study is needed to more fully develop this model and fully generate a new theory. This would be further enhanced with intercoder reliability. Nonetheless, the model makes a contribution toward theory generation with the scale to measure litigiousness and how Japanese women move from “something happened” to law mobilization, thus capturing litigiousness.

## **Implications for Further Research**

Data reduction for this study was quite a challenge—it seemed that a number of surprising or interesting developments emerged, which fell outside of the research questions or even the scope of the IRB protocol (and thus could not be further explored). There is not an abundance of literature about sex discrimination and the law in Japan, and the literature that does exist becomes outdated relatively quickly. That does not diminish its value or impact, but there is a lag between developments and literature. Another issue regarding literature about workplace sex discrimination in Japan is that there are few gatekeepers to this knowledge to serve as conduits to Western, English-speaking audiences. One is the availability of Japanese research and literature

beyond Japan (even Google in Japan yields very different results than a basic search in the United States), and the second issue is language, as there are few bilingual or proficient scholars who can easily research these topics (myself included).

To speak to these challenges, one professor at a Japanese university on sabbatical in the United States warned me to be cautious about how I framed my study. She cited one example of a British scholar who made a brilliant discovery (perhaps in a scientific field) and traveled to a Japanese conference to discuss his novel findings. At the conference, his findings did generate interest and a buzz, but it was because his findings were already previously discovered in Japan. This professor's anecdote speaks to a larger issue with knowledge production and dissemination within Japan and extending beyond its borders.<sup>80</sup>

Nonetheless, despite these challenges, I would like to offer several implications for further research. First, I will start with topics directly related to my study, such as limitations, and then expand into other themes and issues that emerged in my data that should be explored.

Regarding my study, I make the following recommendations:

1. **Expanded scope of study.** Due to the small sample size, I recommend that this study be duplicated to include more participants for generalizability. Furthermore, as this study has been completed, adaptations and changes should be made to the interview instrument so that it is fine-tuned.

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<sup>80</sup> This conversation occurred sometime during December 2017 at a Japanese language meet-up in Philadelphia, Pennsylvania. Specific date unknown.

2. **Litigant-focused study.** Like Phoebe Stambaugh Morgan's study that focused on American women who filed suit over sex discrimination (sexual harassment), such a study should be undertaken in Japan as well.
3. **Survey research.** There are several surveys that have been administered to gauge gender issues in Japan, such as sexual harassment or legal consciousness. Eventually, I would recommend that underlying assumptions that guided this study be developed into a survey instrument that can yield quantitative results that are more generalizable. However, this would be difficult to administer without generous funding and the support of a Japanese university, research institute, or even government.
4. **Further development of the instrument measuring litigiousness.** Without a doubt, the instrument measuring the continuum from legal consciousness to law mobilization to explain litigiousness needs fine-tuning to capture nuances that the simple scale misses. This would need to go hand-in-hand with fine-tuning the interview instrument for more targeted data mining. This would best be handled by individuals comfortable with quantitative methods and data analysis.
5. **Further research about Japanese litigiousness.** By operationalizing litigiousness in terms of personal intent rather than aggregate litigation rates, researchers and scholars analyzing or debating Japanese litigiousness now have a rudimentary framework and instrument with which to study litigiousness at the individual level and that can be used in many applications.

Regarding other findings that cropped up in my research, I make the following recommendations:

6. **Power harassment.** First, participants routinely brought up power harassment, and to date, there are very few academic articles about this problem in Japan in terms of law, policy, and judicial relief. Because this topic dominates the Japanese media, such as the *Dentsu* case, it is a ripe topic for scholars to explore. I decided to include power harassment in my study because it was a surprise finding that seemed intertwined with sex discrimination. That is, where you find power harassment, you may very well find sex discrimination and vice versa. However, the literature devoted to power harassment should be expanded.

7. **Paternity harassment.** During my field research, I had the opportunity to meet Adam Cleave, an English teacher at an *eikawa* (English-conversation school) who was terminated due to paternity harassment.<sup>81</sup> I was unable to interview Mr. Cleave as he did not meet my study's inclusion criteria. However, he was one of three men suing over paternity harassment, and this is a phenomenon that should be further investigated, as it ties back into my last policy recommendation that both men and women need better working conditions.

8. **Social movements and media visibility.** While conducting data collection in Japan, Shiori Ito's book, *Black Box*, about her harrowing account with sexual assault and the justice system, had recently been published. The #MeToo movement was also gaining momentum at that time. These events were discussed in my interviews, although not analyzed, as they fell outside of the study research questions. However,

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<sup>81</sup> See this January 28, 2018, *The Japan Times* article: [www.japantimes.co.jp/community/2018/01/28/issues/court-cases-shine-light-japans-problem-paternity-leave/](http://www.japantimes.co.jp/community/2018/01/28/issues/court-cases-shine-light-japans-problem-paternity-leave/)

the fact that a Japanese woman published an account about her sexual assault and the failures of the Japanese criminal justice system, implicating a renowned journalist with ties to Prime Minister Shinzo Abe, is groundbreaking. While the conversation surrounding #MeToo is not as loud as it is in other countries, scandals, such as the Tokyo Medical University discrimination case (which is expanding to other universities), provide ripe ground to explore how the #MeToo movement interplays with these developments, as well as #MeToo's impact for collective social action.

### **Implications for Public Policy**

I am somewhat hesitant to make strong policy recommendations based on this study. First and foremost, this study is exploratory. It is the first of its kind and not generalizable due to its small sample size. The purpose of this study was to get a preliminary understanding of how Japanese women related to the law, specifically answering how and why they mobilized the law when they believed they had encountered workplace sex discrimination. The impetus for the study was that the literature suggested that Japanese women were reluctant to litigate, and my study demonstrates that, while they do state this, Japanese women also display a degree of litigiousness. The way they do this is through informal law mobilization, and if an appropriate resolution is not achieved, they will pursue formal law mobilization up to litigation.

My reluctance to make firm policy recommendations comes from where I am situated. I am an American woman who is the product of an American public administration program. I am continually striving to become an expert on this topic, but I will never be an authority. That is because this is not my experience. I am not a Japanese woman. I have not lived my life in Japan

or even lived there for an extended duration of time. I have never had to relate to the law in Japan. A criticism of feminist theory and feminist jurisprudence is the limited regard to intersectionality it has historically demonstrated. So I want to acknowledge my worldview and assumptions when crafting policy implications for another country and culture.

Generally, the literature about the 1986 Equal Employment Opportunity Law contains many criticisms and policy recommendations. They include (but are not limited to):

- Creating a separate agency to process claims and mediation (Helwig, 1991)
  - Creating stronger enforcement and/or enforceable sanctions (Starich, 2007; Goff, 1995; Knapp, 1995; Helwig, 1991; Parkinson, 1989)
  - Creating a private cause of action (Helwig, 1991; Laursen, 2007; Miller 2002)
  - Drafting definitions to include more types of discrimination (Starich, 2007; Goff, 1995)
- Adopting affirmative duty legislation (Starich, 2007)
- Educating on law and rights (Laursen, 2007)
- Educating on stereotypes and bias (Laursen, 2007)
- Revising the mediation procedure (Laursen, 2007; Miller, 2002; Fan, 1999; Knapp, 1995)
- Striving for better legislation (Efron, 1999)
- Changing the legal system (Fan, 1999)

Joyce Gelb (2000) wrote, “Generally, as we have seen, the law has done little to improve the condition and opportunities for most women” (p. 401). However, she then goes on to lay out



what has changed is the increased dialogue about women and the law in Japan, increased litigation, and increased participation in international conferences (pp. 402-403). She states:

The weakness of the enforcement process of the EEOL, perhaps occasioned in part by the weak authority of the Ministry of Labor, together with the reluctance of employers to initiate more than superficial change, has created limited progress in this area of potential social change. The narrowness of the law and its interpretation by the bureaucracy have permitted employers to modify their surface policies, while continuing to exploit women and perpetuate traditional approaches based in gender bias. (p. 403)

While it is true that there is weakness with the Ministry of Labor and reluctance on behalf of employers, I wholeheartedly disagree that there has been nothing but shallow changes and exploited women. This belies the other latent functions of the law that Gelb describes in the same conclusion and relies too heavily on formal institutions, which is not aligned with Japanese legal culture.

It has been 33 years since the passage of the 1986 EEOL and a handful of years since the last article devoted to it. Some of the predictions that the aforementioned cited scholars made did not happen and many of the policy proposals were not adopted. So it would be speaking into the wind to make the same routine recommendations, however right they may be.

I do not think educating about rights and law will do much to change culture and working conditions. As we saw in this study, some women who even held law degrees did not know much about the EEOL, and others knew their company had some sort of policy but did not pay attention to it. After all, it would be unlikely that the average American man or woman could recall what is contained in their company handbooks or government posters about labor law in break rooms. It is unlikely that the legal system is going to change, at least on account of this

issue, or that “better legislation” will be drafted (after all, bureaucrats play a strong role in drafting Japanese legislation, as they are experts).

I do strongly agree that:

- It may be prudent to establish a private right of action under the EEOL. I think this will be an unlikely legislative outcome and I am not convinced that this will encourage women to access judicial relief any more than they already do. However, it would at least make workplace sex discrimination punishable.
- An agency or organization outside of the Ministry of Labor should process complaints.
- It would be nice if enforcement was stronger.
- Revising the mediation process might facilitate better outcomes, especially if enforcement is better applied.

The name of the 1986 EEOL is the *Danjo koyou kikai kintouhou*, or the “Law Promoting Equality Between Men and Women.” This implies equality between men and women at the workplace. This means that women cannot receive special treatment and attention under the law; they must be treated the same. But what if equality was not necessarily a good thing? That is, what if that equality means poor treatment of men and women?

At the time that the law was passed, men without a doubt enjoyed privileges that came with employment. This included lifetime employment, better pay, more promotions, and the like. Furthermore, many men perpetuated discriminatory treatment against women. Much of this is still true, but to a lesser extent. But times have changed.

The women I interviewed did not complain about the law. They did not complain about formal structures and institutions. They complained about individuals. They complained about firms. They especially complained about the pervasive sexism in Japanese society that permeated some workplaces.

In research, sometimes investigators get their research questions neatly answered by the data. Other times, the data reveal something else. One surprise finding in my study was the focus on power harassment. This could be dismissed as falling outside of the study. However, I think this is actually a significant finding.

Many of the women I interviewed spoke about a need for workplaces to be more humane, treating men and women better. They wanted to talk about the *Dentsu* case, *karoushi*, and suicides to which miserable working conditions contributed. Professor Ayumu Yasutomi writes prolifically about how moral harassment is embedded within institutional structures. Miserable treatment within these companies starts at the societal level with how we raise children and societal expectations and pressures.<sup>82</sup>

The women who expressed these sentiments believe that, if we create better workplaces for men and women, everyone will benefit, including women. On face, one could argue that discriminatory treatment against women was a problem when working conditions were better for men. However, with the stagnation of the Japanese economy, shifting demographics, and degradation of the labor market, institutions have changed markedly. Plus, whether #MeToo flourish-

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<sup>82</sup> This is based on an interview with Dr. Yasutomi in February 2018 and informally translated articles given to me by A-san with no source attributed (other than it was authored by Dr. Yasutomi). Dr. Yasutomi writes about moral harassment prolifically, including a book about how *The Little Prince* is an allegory for moral harassment.

es or fades, it has come to Japan, and in this highly global and digital world, one can only imagine a way forward, not backward.

That being said, my policy implication is as follows: The Japanese government should continue to find ways to improve the EEOL. This could be through better processes, better definitions, more amendments, completely overhauling the law, or even creating a new one. Prime Minister Abe should continue to push womenomics. Scholars on a whole should not assess efficacy merely on manifest functions and latent dysfunctions and instead take into account the functions of the law as a whole.

My primary implication, though, is this:

**Addressing harassment, overwork, and poor working conditions for *men and women*.**<sup>83</sup>

This is my most critical policy recommendation. Perhaps this is ill-fitted for the EEOL per se, although my policy recommendations are general and not specific to that law. A government cannot legislate happiness or morality, but it can address working hours, creating better work-life balance policies, implementing better family-friendly policies, and finally, creating mechanisms that promote such policies for which enforcement is possible without rigid, punitive sanctions. In other words, the government could adopt a “carrot” or motivational approach instead of a “stick” or punitive approach to advance this particular agenda. The only exception to this “softer” approach would be the working hours dilemma because it is costing human life.

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<sup>83</sup> This would also include nonbinary individuals as well, but the literature does speak to gender identity, so for now, I am aligning my rhetoric with the existing literature.

Focusing on work conditions for men and women emerges from the data in the form of power harassment. For so long, the *nenko* system of lifetime employment created a social structure in which men were committed to their work organization, which served as a surrogate family, and for this system to work, women were needed at home to run the household. It was a patriarchal system that reinforced itself. Women trying to gain entry into these patriarchal institutions were not welcome in these hyper-masculinized spaces. However, the socioeconomic conditions under which that system thrived no longer exists. The demographics in Japan are changing and families need a dual-income to survive. Furthermore, more and more Japanese are not privy to these lifetime jobs and work in contractual or temporary jobs, which are governed under different labor laws. These masculine institutions are deteriorating under these new socioeconomic conditions, so where previously women were the target of abusive work conditions, now men and women are victims of a patriarchal system that is folding in on itself. We often hear that patriarchy hurts both women and men; to a casual observer, this assertion seems lofty and theoretical, but we see it realized in the Japanese workplace as an institution.

Furthermore, addressing the treatment of men and women has been effective in other settings when the legislative impetus was to focus on a woman's issue. For instance, in the passage of domestic violence legislation, women's advocacy groups sought relationships with female Diet members. This type of policymaking is called *giin rippo* (usually legislation is created among bureaucrats). However, there was a concern that women were receiving preferential treatment under the law, so during the process, men had to be included in the legislation. By doing so, the policy entrepreneurs were able to cull enough buy-in to pass effective domestic violence legislation (Kamata, 2014; Gelb, 2003).

I also believe that symbolic policymaking is important, so while it is easy to criticize law or policy for being “toothless” or difficult to measure, starting a conversation creates dialogue, openness, and participation. The government can do this through awareness campaigns, education, and policy. This creates a frame in which its citizens can engage and society change.

The biggest contribution I feel my study makes to policy implications is the research itself. The goal of exploratory research is to provide a basis for more research that is broadened and eventually more generalizable. Whether it is qualitative data that tells stories or quantitative data that creates a broad picture, that data can be packaged and used by policy actors (state or civil) to promote legislation.

I have one final research recommendation, which is broad and generic, but salient nonetheless. I suggest that more Japanese literature be brought to English-speaking audiences. In particular, research and literature devoted to feminist jurisprudence in Japan should be translated or developed, and this could be facilitated by engaging in collaborations with Japanese professors. Another instance would be books, articles, and other materials currently published by Japanese scholars. For instance, Dr. Ayumu Yasutomi is a prolific scholar at the University of Tokyo. She originally studied economics and now writes about how moral harassment is embedded in organizational structures. Dr. Yasutomi is transgender, having transitioned to becoming a woman some years ago, and she writes about this experience in her book *Ari no Mama no Watashi: Dansei no Furi wa Yamemashita*, or “As I Am: I Stopped Pretending to Be a Man.”

A central theme of Dr. Yasutomi’s writing is living authentically and advocating for compassion. In particular, Dr. Yasutomi believes that much of the abuse and harassment we see in Japanese workplaces stems from childhood abuse, presumably from the pressures that the collec-

tive society places upon the individual to conform to certain norms (such as masculinity). Dr. Yasutomi draws parallels between the childhood story *The Little Prince* in her book *Dare ga Hoshinoujisama o: Koroshita noka Moraru Harasumento no Wana* or “Who Killed the Little Prince? The Moral Harassment Trap.” Also, in an interesting publication, *Maikeru Jakuson no Shisou* or “Michael Jackson’s Thought,” she discusses the legacy of Michael Jackson’s music as it relates to kindness and abuse. Dr. Yasutomi’s work is not widely known in the United States, but her work has the propensity to shed insights and solutions as it relates to moral harassment (and in turn, other types of harassment and discrimination).

I met with Dr. Yasutomi with A-san in Ikebukuro during February of 2018. A-san actually introduced me to Dr. Yasutomi’s work, providing me rough translations of articles.<sup>84</sup> In our conversation, and through subsequent conversations with A-san, it seems as though those who perpetuate moral harassment themselves are suffering in their circumstances and miserable. According to Dr. Yasutomi, this starts during childhood and continues into adulthood in a vicious cycle.<sup>85</sup>

What does this conversation and Dr. Yasutomi’s work have to do with research implications? By bridging the gap between Japanese research and scholarship and English-speaking audiences, we can begin to engage in an exchange of policy ideas and solutions in comparative contexts. Most translated work available in the United States is intended for mass consumption, such as novels, novellas, and short stories from a limited scope of popular writers. I marvel at

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<sup>84</sup> These articles have informed my discussion here, but unfortunately, I do not have enough information to form a complete citation as this was A-san’s rough translation in a Word document.

<sup>85</sup> Conversation in February 19, 2018.

the possibilities if we had translations of scholarly materials related to public policy and even case law.<sup>86</sup> In the case of Dr. Yasutomi, I wonder what sort of fusion in theory could occur, say, if we juxtaposed her research with that of Dr. David John Farmer (2005, 2002) who wrote about public administration and love or authentic hesitation? What sort of insights could we garner in that nexus?

### **Final Remarks**

This exploratory study provides the basis for further research about litigiousness in Japan that can be generic, specific to women and law, or targeted to workplace sex discrimination. By conducting semi-structured interviews with Japanese professional women, I was able to answer how and why Japanese women mobilized the law when they believed they encountered workplace sex discrimination and what barriers to and perceptions of the law that they held. By doing so, I was able to provide literature about how Japanese women access judicial relief, which can inform policymaking and serve as the premise for future research.

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<sup>86</sup> Most case law and information related to the Japanese courts is only available through Westlaw Japan at a limited number of institutions in the United States. Most of these cases are only available in Japanese.



## **Appendix A**

### **Interview Instrument**

#### **Interview Protocol**

The semi-structured interview process is intended to draw responses to answer the following research questions:

Q1: How do Japanese women decide to mobilize the law when they encounter gender discrimination in the workplace?

Q2: Why do Japanese women decide to mobilize the law?

Q3: How do Japanese women perceive grievance options and law mobilization?

Q4: What barriers do Japanese women perceive to mobilizing the law?

The interview questions will address these key areas:

- Definitions, terminology, and concepts
- Legal consciousness (*how do women perceive their options and mobilization*)
- Procedure and process (*answers how women decide to mobilize the law*)
- Decision making (*answers why women decide to mobilize the law*)
- Barriers and outcomes (*answers what barriers they perceive. . .*)

#### **Interview Ground Rules**

1. Interview 20 Japanese female professionals.
2. Record (digital) the interview.
3. Interviews will be conducted in a quiet, confidential location of the participants selection.
4. Each interview should last approximately 60-90 minutes depending how long the participant wishes to engage.
5. The interviews will be semi-structured and coded for confidentiality.

#### **Interview Objectives**

Interviews are semi-structured to elicit narratives from the study participants about their thoughts, beliefs, and experiences. The semi-structured format is more flexible than structured interviews, which may compromise validity as this study is exploratory and not intended to be generalizable. The semi-structured format is more formal than unstructured interviews, which are more conducive to study participants with shared experiences. In this way, the semi-structured facilitates the interview process, allowing narrative expression and partial dialogic discourse.

## **Interview Guide**

Prior to the start of the interview, I will introduce myself and obtain verbal consent (“Introductory Script and Verbal Consent”). The participant will receive the consent document and fill out a brief demographic survey. I will then ask for permission to record and start recording.

I will start the interview with one question: “*Tell me what it is like being a working woman in Japan.*” The subsequent interview questions are semi-structured probes. They are intended to guide the researcher (and interpreter if necessary) on the types of questions that may be asked depending on the participant’s responses.

The interview starts with broad, general questions about working women in Japan. As the interview progresses, the questions become more tailored to the participant’s responses and address the issue of gender discrimination. The term “gender discrimination” broadly captures various types of discrimination (wage gap, forced retirement, sexism, sexual harassment, maternity harassment, power harassment, etc.). The participant will introduce her conceptualization of these concepts to the researcher.

The questions will vary depending on the participant’s individual experiences and response.

Interviews may be conducted in English, Japanese, or bilingually. Japanese interviews will include an interpreter. Due to the open-ended nature of the questions, no translated guide is necessary.

## Introductory Script and Verbal Consent

Hello. My name is Kristen Luck and it is a pleasure to meet you today. Before we start our interview, I want to make sure you received the consent form document and had time to read it. Do you have any questions? Do you agree to participate in this research study?

*[Document that the participant verbally consented on a paper or electronic note sheet].*

The purpose of our interview today is to **learn more about your thoughts, opinions, and experiences about working women in Japan and how they decide to respond to gender problems**. As a professional woman working in Japan, your thoughts and experiences are vital and relevant to understanding working women in Japan. Our interview is confidential and your name will not be used. You are welcome to share as much information as you please. Also, you do not have to answer any questions you do not want to and may terminate the interview at any time.

## Pre-Interview Demographic Survey

*To be administered on paper prior to the start of the interview. Paper record will be transferred on digital spreadsheet (password protected) and the paper will be subsequently be destroyed.*

Name/名前:

Age/年齢:

Highest level of education/教育レベル:

Degree/学位:

Employment status/雇用: Full-time (フルタイム)/Part-time (パートタイム)/Temporary (臨時雇用)

Marital status/配偶者の有無:

Number of children/子どもの数:

Ethnicity/エスニシテイ:

Japanese citizen/日本の市民: Y/N

## **Permission to Audio Record**

If you don't mind, I would like to record our conversation, so that I can get your words accurately. If at any time during our talk you feel uncomfortable answering a question please let me know, and you don't have to answer it. I will not use your name in my report. Do you agree to participate in this study, and to allow me to record our conversation? [Start recording]

## **Interview**

Tell me what is it is like being a working woman in Japan.

Tell me a little bit more about your career and work history.

What industry do you work in?

What is your position?

How long have you worked for your current company?

Tell me more about your job.

What are your career goals and aspirations?

Tell me about your experiences as a working woman in Japan.

What was your best job or experience?

What was your worst job or experience?

What happened? Why was this experience negative?

Was this because you are a woman?

*I will get at this question by using probing from the participant's response.*

If yes: Tell me more about that. Why do you feel that way?

If no: *Move to next question.*

What issues do working women face in Japan? Tell me about those issues?

How do the working women you know respond to those issues?

Have you encountered those problems? How do you respond?

Do you believe men and women are treated differently in the workplace?

If “yes”: In what ways do you think they are treated differently?

In the United States, when men and women are treated and unfairly based on their gender, we call that “gender discrimination.” Is there a similar concept in Japan?

Tell me about that. What is the definition?  
Are there different types of discrimination? What are they called?  
What behaviors would be discrimination. How would you know it if you saw it?  
How did you arrive at these definitions?

If “no”: I have read articles and statistics that men and women are treated differently in Japan based on their gender. Are you familiar with this?

What do you think about that?

In the United States, when men and women are treated and unfairly based on their gender, we call that “gender discrimination.” Is there a similar concept in Japan?

Tell me about that. What is the definition?  
Are there different types of discrimination? What are they called?  
What behaviors would be discrimination. How would you know it if you saw it?  
How did you arrive at these definitions?

In the United States, there are laws and rights protecting women from being treated differently from men. Sometimes they are very effective and other times not so much. Do you have any laws like that in Japan?

Tell me about those laws. What are they called? What are they supposed to do to help?  
Do you think the laws are effective? Why or why not?

How do you think companies try to protect women?

Do they have policies? How do those policies work?  
Do you think the policies are effective? Why or why not?

What can a woman do if she feels she is treated differently based on her gender?

How do you believe most women respond to being treated differently based on gender?

Why do you think that is?

What barriers do you believe women encounter when they want to take steps to stop behavior they don't like? [*What barriers do you believe women encounter when they want to stop gender discrimination, sexual harassment, maternity harassment, etc.?*]

In the United States, women have the right to sue their employer when they feel they encountered discrimination and it was not properly resolved by the company or employer. [Bring up Lilly Ledbetter as an example]. They are ordinary women who feel their rights were violated. In articles available to Americans about gender and the workplace in Japan, it says that Japanese women are reluctant to litigate. Is that true? Why do you believe that is?

[Discuss “the nail that sticks up is always hammered down.”]

Do you think women are reluctant to take action against their employer?

Do you think women are reluctant to file a grievance?

Do you think women are reluctant to go to the union?

Do you think women are reluctant to file a lawsuit?

In those instances, what are the social consequences to women? What are the benefits?

How do you perceive women who take action?

There seems to be growing media attention about workplace gender discrimination (#MeToo, Shiori Ito, Rina Bovrisse). What are your impressions? Is this positive or negative?

Do you think conditions are improving or worsening for working women in Japan? Please explain.

If it is not addressed earlier in the interview and seems appropriate:

Do you know of anyone who has experienced gender discrimination in the workplace?

If so, what happened?

How did this person respond?

Have you ever felt like you were treated differently because of your gender in the workplace?

If yes, tell me more about that. What happened?

Why did you feel that way?

How did you respond?

When did the incident(s) take place?

Potential probes:

*Did you file an internal grievance/complaint or participate in dispute resolution or mediation?*

*Did you pursue an external grievance, mediation, or dispute resolution?*

*Did you pursue legal action or litigation?*  
*Did you feel the course of action properly redressed the problem?*  
*Why did you decide not to take action or respond?*  
*What outcomes were achieved by not taking action?*  
*What do you believe would have happened had you taken action?*

How did you arrive at the decision?

Potential probes:

*What factors did you consider when evaluating your options and arriving at a decision?*

*What factors did you consider the most important?*

*How do you feel about your decision?*

*Who did you tell or consult with when evaluating your options?*

What did you want to happen?

Did it turn out the way you expected or wanted?

Tell me more about that.

If no (the participant has not experienced gender discrimination):

How would you decide what course of action take? Please explain.

Potential probes:

*What factors would you consider when making this decision?*

*What factors do you think would be the most important?*

*Who would you talk to or consult with when evaluating your options?*

*Would you file a complaint within your organization if you encountered gender discrimination? Under what circumstances?*

*Would you file an external grievance against your organization? Under what circumstances?*

*Would you decide to litigate or file a lawsuit? Under what circumstances?*

Is there anything else you wish to share with me?

Can you refer me to a few women who might be interested in participating in this research?



## Appendix B Consent Document

### Information about Participating in a Research Study (VCU IRB NO.:HM20008909)

You are invited to participate in a research study about what Japanese working women experience in the workplace and how they decide to respond to gender problems. As a professional woman working in Japan your thoughts and experiences are important.

私の研究目的は仕事を持つ日本人女性の考えかた、意向、経験の洞察を深めることにあります。私は働く女性が仕事場のジェンダーの問題にどのように反応するかを理解したいです。

The interview should last about an hour, and I would like to learn more about your work experiences and how you make decisions. I will record the interview. However, I will conceal your identity and will not use your name. Once the interview is transcribed, I will erase the recording. The results will be published, but your name will not be used.

インタビューは録音をしますが、インタビュアーの身元および名前を極秘扱いし利用することはありません。インタビューが書き起こされた際には、録音されたものは消去します。文書化されたものは公開されますが、インタビュアーの名前が公開されることはありません。

Your participation is voluntary. You can choose to not do this interview. Or, if you decide to participate, you may refuse to answer any questions that make you uncomfortable or stop the interview at any time. Please contact me if you wish to have your information withdrawn.

インタビューのご参加はご自身のご判断によるものです。あなたが不快に感じる場合は、質問にお答えいただきたくなければお断りくださってかまいませんし、いつでもインタビューを取り消すことができます。あなたの情報やデータを取り消したいのであれば、私たちに連絡してください。ご自身の情報あるいはデータを取り消されたい場合には、ご連絡ください。

You will receive ¥3000 in cash for your participation in the study at the interview. This is to cover the cost of your transportation and show appreciation for your contribution to this study.

交通費3千円をお支払いいたします。薄謝ですがお受け取りくださいませ。

If you have any questions or concerns about the study, you can contact the researcher. If you have questions about your rights, please contact:

当研究にご参加いただけますことに関し、ご質問、お不明点、不安に思われることがございましたら、個人的にでもまた、帰属組織を通してでも構いません、お問い合わせください。

Kristen L. Luck, MPA at +1 804 347 6574.  
or

Office of Research

Virginia Commonwealth University  
800 East Leigh Street, Suite 3000  
Box 980568  
Richmond, VA 23298  
Telephone: (804) 827-2157

[http://www.research.vcu.edu/human\\_research/volunteers.htm](http://www.research.vcu.edu/human_research/volunteers.htm).

If any information contained in this form is not clear, please ask me to explain any information that you do not fully understand.

当文書において、ご不明点がございましたら、どうぞご自由にお問合せくださいませ。

## Appendix C Institutional Review Board Approval Letter



**Office of Research and Innovation**  
 Office of Research Subjects Protection  
 BioTechnology Research Park  
 800 East Leigh Street, Suite 3000  
 Box 980568  
 Richmond, Virginia 23298-0568  
  
 (804) 828-0868  
 Fax: (804) 827-1448

T O:	Deirdre Condit
C C:	
FR O M:	VCU IRB Panel A
R E:	Deirdre Condit ; IRB <a href="#">HM20008909</a> The Nail that Sticks Up Isn't Always Hammered Down: Women, Employment Discrimination, and Litigiousness in Japan

Kristen Luck  
Susan White

Kristen Luck  
Susan White

On 1/3/2018, the referenced research study was *approved* by expedited review according to 45 CFR 46.110 by VCU IRB Panel A. This study is approved under **Expedited Categories 6 and 7**.

The information found in the electronic version of this study's smart form and uploaded documents now represents the currently approved study, documents, informed consent process, and HIPAA pathway (if applicable). You may access this information by clicking the Study Number above.

**NOTE: As a reminder, the smartform currently states that the recordings will be destroyed upon completion of the English transcription. If you decide to retain audio recordings, an amendment must be submitted to the IRB.**

**This approval expires on 12/31/2018.** Federal Regulations/VCU Policy and Procedures require continuing review prior to continuation of approval past that date. Continuing Review notices will be sent to you prior to the scheduled review.

If you have any questions, please contact the Office of Research Subjects Protection (ORSP) or the IRB reviewer(s) assigned to this study.

The reviewer(s) assigned to your study will be listed in the History tab and on the study workspace. Click on their name to see their contact information.

### **Attachment – Conditions of Approval**

#### *Conditions of Approval:*

In order to comply with federal regulations, industry standards, and the terms of this approval, the investigator must (as applicable):

1. Conduct the research as described in and required by the Protocol.
2. Obtain informed consent from all subjects without coercion or undue influence, and provide the potential subject sufficient opportunity to consider whether or not to participate (unless Waiver of Consent is specifically approved or research is exempt).
3. Document informed consent using only the most recently dated consent form bearing the VCU IRB "APPROVED" stamp (unless Waiver of Consent is specifically approved).
4. Provide non-English speaking patients with a translation of the approved Consent Form in the research participant's first language. The Panel must approve the translated version.
5. Obtain prior approval from VCU IRB before implementing any changes whatsoever in the approved protocol or consent form, unless such changes are necessary to protect the safety of human research participants (e.g., permanent/temporary change of PI, addition of performance/collaborative sites, request to include newly incarcerated participants or participants that are wards of the state, addition/deletion of participant groups, etc.). Any departure from these approved documents must be reported to the VCU IRB immediately as an Unanticipated Problem (see #7).
6. Monitor all problems (anticipated and unanticipated) associated with risk to research participants or others.

7. Report Unanticipated Problems (UPs), including protocol deviations, following the VCU IRB requirements and timelines detailed in [VCU IRB WPP VII-6](#):
8. Obtain prior approval from the VCU IRB before use of any advertisement or other material for recruitment of research participants.
9. Promptly report and/or respond to all inquiries by the VCU IRB concerning the conduct of the approved research when so requested.
10. All protocols that administer acute medical treatment to human research participants must have an emergency preparedness plan. Please refer to VCU guidance on [http://www.research.vcu.edu/human\\_research/guidance.htm](http://www.research.vcu.edu/human_research/guidance.htm).
11. The VCU IRBs operate under the regulatory authorities as described within:
  - a. U.S. Department of Health and Human Services Title 45 CFR 46, Subparts A, B, C, and D (for all research, regardless of source of funding) and related guidance documents.
  - b. U.S. Food and Drug Administration Chapter I of Title 21 CFR 50 and 56 (for FDA regulated research only) and related guidance documents.
  - c. Commonwealth of Virginia Code of Virginia 32.1 Chapter 5.1 Human Research (for all research).

## Appendix D

### Qualitative Codebook

#### Tell me what it is like to be a working woman in Japan

Relation	Definition
<b>Positive (+)</b>	Participant responds positively about work.
<b>Negative (-)</b>	Participant responds negatively about work. This could be expressed through stating dislike, discussing gender discrimination, etc.
<b>Neutral (+/-)</b>	Participant did not express a positive or negative response. This could be interpreted through indifference or flat response.

#### Experiences of Sex Discrimination

Sex discrimination	Definition
<b>No (N)</b>	No, the participant clearly expressed that she did not experience sex discrimination.
<b>Yes (Y)</b>	Yes, the participant clearly expressed that she did experience sex discrimination.
<b>Yes/No (Y/N)</b>	Yes and no, the participant expressed that she did not experience sex discrimination and/or differential treatment but later expressed she did. An example would be saying “no” but then describing a behavior, pattern, or treatment that would constitute as sex discrimination.
<b>Yes-Oblique reference (Y/O)</b>	Yes, the participant obliquely expressed that she experienced sex discrimination. For instance, she may not clearly express she experienced sex discrimination but describe a behavior, a pattern, or treatment that would constitute as sex discrimination.
<b>No response/no mention (NR)</b>	No response or was not mentioned; the participant never brought up whether or not she experienced sex discrimination.

#### Type of Sex Discrimination Experienced

Harassment Type	Definition
<b>General/Differential Treatment</b>	The treatment was unspecified and not described.

Harassment Type	Definition
<b>Promotion/pay</b>	The treatment was in regards to promotion (such as not receiving a promotion) or pay (such as wage discrimination).
<b>Sexual Harassment</b>	The treatment was either 1) clearly expressed as sexual harassment or 2) the participant described behaviors that would constitute as sexual harassment. This could include asking about the woman's marital/relationship status, unwanted romantic overtures, unwanted physical contact, sexually-charged remarks, sexually-charged jokes; stalking behaviors, and/or sexual assault.
<b>Maternity Harassment (Implied)</b>	The treatment was subtle maternity discrimination. This could include. . .
<b>Maternity Harassment (Actual)</b>	The treatment was overt maternity discrimination. This could include firing, demotion, and [adjective] behavior.
<b>Power Harassment</b>	The treatment was non-gender specific harassing behavior, including unfair dismissal, bullying, coercion, intimidation, verbal abuse, emotional abuse, physical abuse, and the like.

## Response to Discriminatory Treatment

Response	Definitions
<b>No action</b>	Participant did not respond to treatment.
<b>Spoke with supervisor or HR</b>	Participant decided to speak with organization's human resource personnel about or to address the treatment.
<b>Filed a grievance</b>	Participant decided to file an internal or external grievance to address the treatment.  *This person experienced two different discrimination situations
<b>Quit jobs/considered job change</b>	Participant considered resigning from the position and/or resigned from job.
<b>Filed a lawsuit</b>	Participant decided to litigate and seek judicial relief.  *The actions leading up to the lawsuit are detailed in the subsequent heading and those actions are not counted twice in this tale.
<b>Unspecified/no response/declined to answer</b>	Participant did not provide a response to interviewer about how she responded to treatment.

## Reasons for Law Mobilization

<b>Reason</b>	<b>Corresponds With</b>	<b>Definition</b>
<b>Easier to ignore/responding in vain</b>	Inaction	Expresses hopelessness in taking action or mobilizing the law; "it's no use" or "pointless".
<b>Sought better opportunities</b>	Quit or considered quitting	Participant expressed that she considered changing jobs or actually quit her position.
<b>Prevention of continued adverse treatment</b>	Spoke with Supervisor or HR	Participant indicates that she spoke with supervisor and/or human resources about the incident. Desired outcome may or may not have been expressed.
<b>Finding and providing support</b>	Consulting an attorney, union, or women's group	Consulted with attorney for naming, blaming, and possibly claiming. Joined a union or women's group. Sought and/or gave support.
<b>Refusing to be silenced</b>	Filing a lawsuit	Participant expressed that she was threatened and silenced.
<b>Compensation</b>	Filing a lawsuit	Participant wanted monetary compensation.
<b>Apology</b>	Filing a lawsuit	Participant wanted an apology from the firm and/or offending party. Participant wanted suffering acknowledged.
<b>Injustice and/or anger</b>	Filing a lawsuit	Participant was seeking justice or revenge.

## Litigiousness

<b>Reason</b>	<b>Definition</b>
<b>Non-litigious: General</b>	No specific reason provided or indicates cultural reasons.
<b>Social stigma</b>	Indicates that the behavior or action is socially unacceptable; expresses fear of ostracization from friends and/or family.
<b>Lack of legal consciousness</b>	Does not understand the law or rights; unable to discern what behaviors or treatment constitute discrimination or harassment.
<b>Retaliation</b>	Fear of "second harassment" or retaliatory behavior.
<b>Cost/benefit ("not worth it")</b>	Indicates that pursuing litigation is "not worth it".
<b>Job security/maintain job</b>	Expresses concern about maintaining job or losing job.
<b>Power (gendered perceptions of Japanese women)</b>	Do not believe it is something a Japanese woman would do or the power differential between men and woman is too great to confront.
<b>Burden of proof/evidence</b>	Indicates that proving sex discrimination and/or harassment is difficult to prove.
<b>Cost (financial)</b>	Indicates it is too costly to pursue litigation.
<b>Time</b>	Indicates that litigation takes too much time and/or is lengthy.

<b>Reason</b>	<b>Definition</b>
<b>Energy</b>	Different from cost/benefit or time, litigation simply takes too much energy from an individual.
<b>Unspecified/no response/indiscernible response</b>	Does not answer the question or answer is indeterminate.



## Appendix E

### “Reluctance to Litigate” in Literature

Author	Year	Source	Text	Type/Code
Parkinson	1989	Owaki, 1985	“For most women, the price that they would pay emotionally and socially outstrips any value that they might gain, so that for the great majority of women who suffer employment discrimination, legal suit would not be a truly viable option, even if they had been granted access to a private right of action” (p. 637)	Reluctance: Social stigma
Patterson	1993	Parkinson, 1989, p. 637	“Women who believe themselves to be sexual harassment victims encounter many obstacles to legal redress. . . Moreover, Japanese society is not as litigious as the U.S. society, and the social and emotional costs of instituting a lawsuit often far outweigh the potential benefits for a Japanese woman alleging sexual harassment” (p. 3)	Reluctance: Barrier/access  Reluctance: Nonlitigious (nonspecific gender)
Helwig	1991	Parkinson (1989), Upham (1987), Reischaur (1977), Haberman (1985)		
Goff	1995	Helwig	“Given the non-confrontation preferences of Japanese workers, particularly women, most complaints will go unfiled” (p. 1166).  “In addition, the inherently non-confrontational Japanese woman would be encouraged to file a complaint against her discriminating employer if the possible benefit of doing so ( <i>i.e.</i> actual redress of the situation or cause of action for money damages) is greater than the societal cost of ‘not going with the flow’ (p. 1167).	Reluctance: Nonlitigious (gender specific)  Legal remedy: Alternative redress

Author	Year	Source	Text	Type/Code
Knapp	1995	Parkinson, Owaki, Lash	<p>Discusses the Japanese aversion to litigation.</p> <p>“A litigant inevitably subjects herself to harsh criticism from the public” (p. 102).</p> <p>“The embarrassment and humiliation that accompanies litigation often discourages potential litigants. These consequences discourages women from going forward with their claims and instead forces them to internalize their grievances” (p. 102). *</p>	<p>Reluctance: Social stigma</p> <p>Reluctance: Nonlitigious (nonspecific gender)</p>
Efron	1999	Helwig; Knapp; Kukak,; Wagatsuma and Rosett	<p>“In such a society, women find it extremely difficult to demand equitable treatment and challenge gender discrimination. Individuals harmed are often under tremendous societal pressure to maintain the social order, and failure to uphold social harmony brings shame and embarrassment. Moreover, victims are often dissuaded from making their claims public for fear that mentioning their grievances would result in disharmony” (p. 144-145).</p>	Reluctance: Social stigma
Fan	1999	Bernstein and Fanning	<p>“Second, in a nonlitigious society such as Japan, which values <i>wa</i>, or harmony, significant change is a difficult concept to accept” (p. 116).</p>	Reluctance: Nonlitigious (gender unspecified)
Larsen	2001	Knapp, Helweg, Madison	<p>“There is a common saying in Japan: The nail that sticks out gets hammered down. A woman who files suit will almost inevitably receive severe criticism and pressure from society. She is seen by society as one who cares only about her own well-being, regardless of the effect on the group. Many even consider it to be shameful to be mentioned in a court proceeding. The intense embarrassment and humiliation associated with litigation serves as a strong deterrent for women who are subject to discrimination” (p. 218)</p>	<p>Reluctance: Social stigma</p> <p>Deterrence</p>

Author	Year	Source	Text	Type/Code
Shimoda	2002-03	Efron, Wolff, Goff	<p>“Because Japan’s culture emphasizes conformity and fails to acknowledge the equality of female employees, Japanese women usually avoid filing a claim when they have been sexually harassed” (p. 219).</p> <p>“Thus, an employee will utilize mediation and alternative dispute resolution prior to seeking judicial intervention in sexual harassment claims.”</p>	<p>Reluctance: Social stigma</p> <p>Reluctance: Nonlitigious (gender specific)</p> <p>Reluctance: Nonlitigious (gender unspecified)</p> <p>Legal remedy: Alternative redress</p>
Miller	2003		<p>“Opponents who view this measure as unnecessary might cite the time and cost of litigating in Japan, a country well known as a non-litigious society” (p. 212).</p>	<p>Reluctance: Nonlitigious (gender unspecified)</p> <p>Reluctance: Barrier/access</p>
Barrett	2004		<p>“Litigation is also unattractive in Japan for cultural reasons. Traditional Japanese cultural and social values place a great deal of importance on the effect of one’s actions on the community as a whole” (p. 3).</p> <p>“With all of this <i>group</i> mentality in place, litigation, as an attempt to right <i>individual</i> wrongs, is a very unattractive option for most Japanese women” (p. 3).</p> <p>“Any woman who attempts to litigate instead of going through the consensus system will likely receive criticism from others, thus giving rise to the Japanese saying, ‘the nail that stick out gets hammered down.’ A woman litigating a sexual discrimination case could fear humiliation and embarrassment from her peers such that should likely not bring suit at all” (p. 3)</p>	<p>Reluctance: Nonlitigious (gender unspecified)</p> <p>Reluctance: Nonlitigious (gender specified)</p> <p>Reluctance: Social stigma</p>

Author	Year	Source	Text	Type/Code
Starich	2007	Weathers	“The threat of a lawsuit is not necessarily a serious concern for an employer. Though it is possible that an employer’s failure to attend and comply with EEOC proceedings will prompt the employee to file a lawsuit in the courts, discrimination is difficult to prove in the courts and the trial process is often very lengthy and costly. These factors may discourage potential litigants, removing the threat to employers of potential lawsuits” (p. 571).	Reluctance: Barrier/ access  Deterrence
Geraghty	2008	Starich	“Although litigation is always an option, Japanese culture is not fond of the litigious approach to dealing with problems and litigation is incredibly long and costly” (p. 523).	Reluctance: Nonlitigious (gender unspecified)  Deterrence

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