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Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender

Barbara Molony

S HE STANDS ON A commuter train platform in a dressed-for-success business suit, her feet apart in a decidedly undemure pose, with a large briefcase resting at her side. She gulps the high-potency vitamin concoction marketed to legions of businessmen, hung over from the previous evening's obligatory night out with the boys. But for her skirt and high heels, she could *be* one of the boys (fig. 1). Her gestures, her dress, and her office destination are modeled on those, deeply embedded in Japanese imagination, of the male *sarariman* ("salaryman"), a catch-all designation for employed white-collar workers in private business and the public sector.¹ She is a creature of the press, inspired by but only tangentially related to the new professional women who, since the implementation of the Equal Employment Opportunity Law (EEOL) on April 1, 1986, have begun to enter the previously all-male ranks of *sōgō shoku*—"comprehensive employees" who enjoy the implicit though conditional promise of lifetime employment and seniority-based promotions.²

The EEOL, both in its textual formulation and implementation, reflects particular discourses on gender prevalent at the historical moment of its creation and contributes to the body of ideas that continue to inform discussion and actions related to women's employment and no-

I wish to thank Dorinne Kondo, Kathleen Uno, and Martha Tocco for their helpful comments on early drafts of this article. Martha Tocco also kindly brought to my attention the illustration of the *oyaji* girl. All errors of interpretation and fact are, of course, my own.

¹ For further analysis of the media construction of the *oyaji* girl, see Tocco 1990. For a study of the rapidly changing gender consciousness among middle-class Japanese women, see White 1992.

² The EEOL applies to all employees except those in the public sector, who are covered by separate legislation. See Ōwaki 1987, 229.

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FIG 1 This caricature of an *oyaji* girl appeared in a large-circulation Japanese newspaper in 1990. The characters in the bubble above her head translate to “*oyaji* girl,” while those in the box mean “increasing rapidly.” (Reprinted from *Mainichi Shinbun*, March 13, 1990, evening edition.)

tions of gender.³ In this article I will examine the intersection of gender and employment law, especially the EEOL, in four ways: first, I will discuss contemporary media images of women and men to suggest how the EEOL has affected gender discourse; second, I will analyze the changing meanings of motherhood and how motherhood as an inherent, gendered attribute is salient to both opponents and proponents of the EEOL; third, I will examine the political and consultative process by which the EEOL was brought into being; and fourth, I will interpret what the law means to employers, employees, and feminists in the years since its passage.

Although their numbers are still small—and appear to have been adversely affected by the recession of the early 1990s (Sanger 1992)—professional women have become one symbol of contemporary Japanese womanhood, although as the illustration above shows, the symbol can be a caricature. Unlike the dominant discursive category for women—motherhood (conspicuous in the creation of the EEOL and conspicuous by its absence in the drawing)—the caricature crosses gender boundaries. The woman in the caricature is called an “*oyaji* girl.”⁴ An *oyaji* is an old chap, one of the boys; the term has an avuncular ring to it. Since the *oyaji* girl is always depicted as a woman in her late twenties, to call her an old fellow is a bit of a stretch. The creators of the image appear to applaud the entry of young women into professional ranks, although these women must become manlike in the process. This image demands no change in the workplace and does not question the equation of male behavior and professionalism, although it does suggest that male behavior (is it “work” behavior or “male” behavior?) is not limited to the male sex.

The image of the professional woman is resolutely middle class and unreflective of the conditions of factory-working women, many of whom do not enjoy permanent employment status despite long years of service to their companies.⁵ The frequent representations of this image in the media, however, make it equally available, though not necessarily equally compelling, to working-class and middle-class women. Similarly, while the provisions of the EEOL apply equally to factory and office workers,

³ The text of the EEOL is lengthy and is therefore not reproduced here. Particularly significant articles are discussed and highlighted on pages 285–90 of this article. The law covers the promotion of equal treatment of men and women in employment, methods for settling grievances, maternity and child-care leave, dissemination of information about the law and the welfare of women workers, retirement policies and vocational guidance, and research about women workers. For the full text of the law in English translation, see National Institute of Employment and Vocational Research 1988, 95–101.

⁴ Alternately, she has also been characterized as an *ojingyaru*. *Ojin* is a slightly pejorative term for an over-the-hill man; *gyaru* is a “gal.” See Ekusa 1990.

⁵ An informative study of factory women who did have permanent status was published as this article was completed. See Roberts 1994.

the law's greatest impact appears at present to be on office workers. It is among middle-class, white-collar workers that the possibility of entering or transferring to the careerist corporate track appears most likely—and also raises the most controversy. Hence, the EEOL appears to many observers to be aimed at white-collar professionals. The law's focus on equality of opportunity for employment, training, and promotion suggests careerists would be most interested in using it.

Other images of employed women abound in Japan's popular culture, raising additional questions about gender-appropriate behavior. While the *oyaji* girl is assumed to be single—she has the freedom to go out drinking with her co-workers and need not rush home to care for children or husband—there are also images of employed mothers available in contemporary Japanese discourse. These tend to contain contradictory and problematic elements and are not as simple as the *oyaji* girl. One such image shows working mothers unencumbered and free to spend their time and money. Although this optimistic depiction does not question the definition of the workplace as a male domain unable to accommodate family needs, it presents mothers as being able to work part-time and thereby able to approach the rigid workplace tangentially without becoming part of it. This image minimizes the enormous conflict between work and family because it fails to problematize the structure and demands of the workplace.

According to the Tokyo Metropolitan Government, “new mothers . . . skillfully balance part-time work, hobbies, and family life. The ‘new mother’ is a versatile cook and an able parent; she also enjoys socializing with friends from various outside activities” (Takada 1989, 44). For four out of five employed women in Japan—including a majority of married mothers with children—having part-time work is as close to reality as doing housework while wearing pearls in the style of June Cleaver was for American women of the 1950s. In fact, though their numbers are growing, only 23.6 percent of employed women in Japan work part-time (Nuita 1990c). Moreover, the “parlite” (a Japanese abbreviation for “part-time elite”) jobs in such areas as consulting, research, or programming suggested by this image are rare; most employed women with children have full-time manufacturing or service-sector jobs requiring few skills and conferring little prestige.⁶ Despite its unreality, this leisurely image of working mothers, like June Cleaver's pearls, has helped to frame the discourse on adult womanhood, which in turn has affected notions of gender-appropriate behaviors and activities.

⁶ Part-time employment is far more common in some sectors than others. In 1986, part-timers accounted for 37.1 percent of women in sales, 44.9 percent of women in technical and processing jobs, and 48.4 percent of women in service jobs. See Takenaka 1992, 5.

A second image of employed mothers appears to differ radically but has several similar characteristics. Just as the professional workplace is viewed as a male sphere, the family is viewed as a female sphere, or at least as a place of predominantly female responsibility, in which few allowances are to be made for the demands of the workplace. Full-time work and motherhood—at least middle-class motherhood—are assumed to be so incompatible that most mothers would not have jobs or careers. While this scenario appears to differ from the optimistic one described above, it similarly minimizes the possibility of a conflict between work and family demands. But conflict does occur; rather than minimizing conflict, the assumed gender segregation of work and home exacerbates conflict because so many Japanese women fail to be entirely either work-identified (i.e., acting according to the male stereotype) or family-identified (the female stereotype). In fact, three-fifths of all Japanese mothers violate these stereotypical boundaries by joining the workforce, and many consider balancing home and workplace demands a major difficulty indeed.

Contemporary women in the workplace, in both white-collar and factory settings, are viewed by many as mothers or future mothers. This view is held by many women workers and most of their feminist and union supporters, on the one hand, and by employers' federations and conservatives within the government, on the other. At the same time, an acceptance of separate spheres (the home and the public domain) presupposes male behavior, though no longer exclusively male gender, in the workplace. These two discursive notions—motherhood and separate spheres—have created a dilemma for working women that remains unresolved in Japanese law and Japanese feminist theory. For most feminists, the Equal Employment Opportunity Law of 1986, which reflects the incompatibility of these two discursive notions, fails to address their major demand, *danjo byōdō* (male-female equality) irrespective of class. Nevertheless, as the *oyaji* girl image suggests, the EEOL has inspired thousands of well-educated women in their twenties to attempt previously undreamed-of careers.

Discussion of female gender, particularly in the context of the EEOL, has been lively during the past half decade in Japan; even a casual glance at a newsstand indicates the saliency of the topic. Gender inequality has been so pervasive (Smith 1987) that popular discussion of maleness has been—by its being taken for granted—comparatively muted. Yet one image of heterosexual male gender, explicitly constructed, has demanded by its frequency of presentation that it become part of popular discourse on gender. Twice a year since the mid-1960s, a frumpy character named Tora-san has been featured in a movie series in which each movie is titled *Otoko wa tsurai, yo* (It's tough being a man), followed by some subtitle distinguishing the film from the forty or so other movies with the same title. In each movie, lower-middle-class Tora-san somehow finds himself

in a distant place—until 1988, always Japan but since then overseas as well. No matter how involved he becomes with the people he meets on his travels, he always comes home in the end. Tora-san is not married, although by now he is a bit long in the tooth; he seems the type who needs nurturing, or more specifically, mothering. His aunt and younger sister, two of the other constant characters in the series, are always waiting for him to return. At the start of the series, the sister was an unmarried “OL”—literally, “office lady,” a general office worker who makes the workplace homey by pouring tea, acting as a receptionist, and doing light secretarial work. She is now a married career woman. His mother works part-time, which is appropriate for the lower-middle-class socioeconomic setting of the movie series, but despite her employment she, like the sister, creates a home that is a symbolic haven to which Tora-san can always return. Tora-san may be a cuddly character—and both women and men moviegoers seem to love him, which has kept the actors in the series employed for decades—but Tora-san is not the one who makes and maintains the home. He cannot because, like the stereotypical Japanese *sarariman* (professional white-collar employee), he is never home. Of course, he is not a salaryman, nor, despite his unmarried status, is he one of those upscale, free-spending yuppies who frequently appear in Japanese discourse.

Tora-san does not appear work-identified, so although the series claims that his lot is bitter or tough (*tsurai*), he at least appears to have sprung the boundaries of the stereotyped male gender role. The women are not so lucky; they do have work outside the home, but they also make the warm home to which Tora-san returns from the road. In the movie series as in contemporary Japanese life, it is taken as natural that mothers or motherly women create a nurturing household. The Equal Employment Opportunity Law, while focusing on women’s work lives, was framed within the dominant discourse on gender that naturalizes the role of mothers in creating and running a nurturing household. Although increasing numbers of women have interpreted the law in such a way as to de-emphasize female nurturance and home-centeredness, the opinion leaders and framers of the law did not. This discourse on gender was by no means limited to the social aspects of womanhood—for example, female nurturance—but also included physical attributes judged peculiar to women. As I shall show, what was called “motherhood protection” (*bosei hogo*) played a significant role in shaping the debate over the Equal Employment Opportunity Law.

Equality and difference in the search for gender equity

The Equal Employment Opportunity Law was widely discussed for six years before it was taken up by the Diet in 1984. It was passed on May 17, 1985, and implemented on April 1, 1986. During the long period of

advocacy and discussion, the question of gender was central. Most of the advocates of legislation for improved employment conditions for women as well as most of the opponents of such legislation articulated their objections to the proposed bill within the same discourse on gender despite their greatly diverging goals.

Most employers opposed legislating equality of employment opportunities, however weakly that might be defined. Many stated that women were both physically and emotionally different from men and therefore should be treated differently in the workplace. It should be pointed out, however, that many other employers made the unlikely claim that workplace protection for women—not discrimination—was the main cause of women's inability to advance in their companies and that the removal of this protection would obviate the alleged need for legislating equality (Ōwaki 1987, 102). Feminists opposed the proposed bill and many have continued to oppose the law as passed because it contains no sanctions against employers who violate the law by discriminating against women in the workplace. Many feminists also felt the bill gave insufficient consideration to the need for motherhood protection. They believed that equality could only be attained within a framework that recognized women's particular present and future maternal needs.⁷ The hard-won workplace protections women had gained in the previous fifty years, many of which would be diluted or canceled out by the EEOL, had been based on the concept of motherhood protection. Although both feminists and employers felt the EEOL gave too little consideration to male-female differences, employers believed those differences were a reason to keep women from the workplace, while many (though not all) feminists believed that more women could be brought into the workplace under conditions of greater equality if women's particular needs were met.

The defining of those needs reflected the twentieth-century Japanese discourse on female gender that stressed reproduction. This discourse emphasized reproduction not only as the bearing of the next generation but also as its nurturance and preparation for becoming economically competent in adulthood. Before the twentieth century, the meaning of reproduction included the continuation of the economic capacity of the household. This could be accomplished by bearing, rearing, and educating children, functions that could be carried out not only by the biological mother but also by other members of the household, or by adoption of a new family member to reproduce the economic capacity of the household (Uno 1991, 22–35). The adult married woman's role was

⁷ The equality and difference debate has been a mainstay of feminist scholarship and activism in the United States and Europe as well. For examples of the uses to which both difference and equality have been put in the service of women's rights, see works by Scott 1988; Offen 1988; Koven and Michel 1990; Vogel 1990; Cott 1991.

intensified by the creation and reification of the late nineteenth-century ideology of "good wife, wise mother" (*ryōsai kenbo*), which demanded that she not only serve the economic ends of the family but also educate its children (Miyake 1991, 273–74; Uno 1993, 293–322). Interestingly, in the ordering of the terms, she was first a good wife (an economic role in the Japanese household) and second a wise mother.⁸

By the post–World War II era in Japan, reproducing the household as an economic unit was no longer necessary, as children often grew up to become employees of a company rather than successors to the farm or family business. It came to be commonly accepted that mothers were responsible for creating a warm, nurturing home in which children were reared and educationally prepared to serve the larger society (either the state or the economy or both) rather than the immediate family. The focus on women's role in both bearing and rearing the next generation continues to dominate the Japanese discourse on women: it is discussed in the context of work for mothers and potential mothers; it is institutionalized in the "education mama" (*kyōiku mama*) and the regularized functions connected with the education of children (White 1987); it is, to borrow a phrase from Joan Scott's discussion of the equality-versus-difference debate for American employed women, "expressed in organizations and institutions as well as in words" (1988, 35). "Wise motherhood" became increasingly important for several decades after World War II, while the need to be a "good wife" in the sense of a producer of income for the premodern household economy diminished.⁹

So deeply ingrained had this ideology of motherhood become that even feminists, when opposing the Equal Employment Opportunity Law, argued within the ideology's discursive boundaries. Motherhood protection (*bosei hogo*), many argued, would be destroyed by the law that was eventually passed. Feminists demanded greater protection for women than men currently had in Japan's high-pressure employment system—many thought men should be protected as well—but most framed their arguments in terms of protecting "motherhood," a word that encompassed many different meanings. Among the definitions: (1) potential fertility: the ability to bear children, a health issue for women; (2) maternity: being pregnant, giving birth, and recovering from birth, a health and socialization issue for mothers and infants; and (3) child rearing, a

⁸ This phrasing may have been characteristically Japanese. In Korea, where a new discourse on womanhood gained currency in the 1920s under Japanese political and cultural colonialism, the characters were inverted, and "wise mother" preceded "good wife." See Cheon 1990.

⁹ The best definition of "good wife, wise mother" in the postwar period is that of Uno 1993. My observations of maternalism among feminist groups closely parallels her analysis of good wife, wise mother ideology among women's groups affiliated with political movements.

household issue not necessarily of interest to women alone. There were other reasons that feminists objected to the bill that was eventually passed, and I shall return to these later. But the discourse on motherhood is particularly significant in shaping not only how the law was phrased and responded to by various interest groups before its passage, but also how it has been used in the eight years since its implementation. Motherhood has been a pillar of the discourse on female gender throughout the twentieth century in Japan.

Moreover, legal provisions for motherhood protection drew the particular attention of both opponents and proponents of the EEOL because of the paucity of other types of legislation governing workplace and employment conditions for women. Article 14 of the Japanese Constitution (1947) prohibits discrimination on the basis of sex, and Article 4 of the Labor Standards Law of 1947 mandates equal pay for equal work.¹⁰ The Working Women's Welfare Law of 1972 called for the end of discriminatory practices and for counseling and training of women workers. But other than these three cases, there was little mention in Japanese law of the problems of workplace discrimination in the areas of hiring, firing, training, and promotion.¹¹ Thus motherhood protection was important not only because it belonged to the set of popular expectations about women and work but also because it was the only significant body of law dealing with women and work. It comes as no surprise that tampering with it engendered debate.

Motherhood protection in historical context

Motherhood protection is one of those phrases rarely problematized. But motherhood protection has had a long and dynamic career in Japan, and its meaning has not been static. The phrase was used in specific contexts by feminists with differing political agendas in the 1910s and 1920s, resurrected in the late 1930s, and reshaped in the immediate postwar years. It is currently undergoing another shift in meaning as the societal views of what constitutes "motherhood" have changed.¹² That motherhood needs protecting, however, is rarely challenged. Even strong advocates of workplace equality through elimination of unnecessary protections state that no one denies that "women, as opposed to men, have maternal faculties for pregnancy, childbirth, and lactation as well as their

¹⁰ Bergeson and Oba 1986, 869, note that Article 4 of the Labor Standards Law was included to conform with International Labor Organization (ILO) Treaty No. 100.

¹¹ See Ōwaki 1987, 7–8. Article 90 of the Civil Code was routinely used before passage of the EEOL to strike down discriminatory laws and practices as "contrary to public policy or good morals" (see Bergeson and Oba 1986, 870–71), but it made no specific mention of sex-based discrimination.

¹² For a fuller discussion of motherhood protection, see Molony 1993.

associated attributes" and imply that these should be protected (Ōwaki 1987, 117).

The 1910s were one of the few eras in which the need to protect motherhood was challenged. The motherhood protection debate was first taken up between 1915 and 1919 in the pages of several large-circulation journals aimed at an intellectual audience, including *Taiyō* (Sun) and *Fujin Kōron* (Women's review).¹³ Poet Yosano Akiko, a mother of eleven children and wife of an unemployed poet, stressed the need for women to be economically independent. She wrote: "I cannot agree with the European women's movements' demand for special economic protection from the state for women during pregnancy and childbirth. I, who feel that it is slave morality for women to be dependent on men because of their procreational role, must refuse dependency on the state for the very same reason" (Rodd 1991, 192).

Her major feminist opponent was Hiratsuka Raichō, who argued that most women were not so fortunate or talented as Yosano and could ill-afford to support themselves. Thus, Hiratsuka emphasized, the state, concerned that women produce healthy children, must protect mothers by giving them payments to reduce their need to work. Yamada Waka, a more conservative advocate for women, countered by stating: "It is a woman's natural right as a mother to receive funds for her daily needs from her husband or from the state" (Rodd 1991, 195). While the debate centered on the question of equality versus difference, all three women defined motherhood protection in economic, not physiological, terms.¹⁴ In addition, although feminist writers and activists did not ignore the issue of women's potential fertility, they mainly considered motherhood to be a condition of those who were already mothers, for whom economic support was necessarily a more important consideration.¹⁵

Their male contemporaries, however, viewed motherhood protection primarily as safeguarding women's bodies for future motherhood for the sake of the state (Garon 1987, 26). When the Factory Law, Japan's first protective legislation, was being debated in 1911, one bureaucrat claimed that the state must protect women "who are the future mothers of the nation" (Hunter 1989, 251). A Tokyo University professor demanded

¹³ See Kōuchi 1984. A more complete discussion of the 1910s debate may also be found in Rodd 1991, 178–98.

¹⁴ Feminist socialist Yamakawa Kikue was a fourth participant in the motherhood protection debate. Yamakawa wrote that women's conditions could not be improved in the absence of a socialist revolution, although she changed her position to support reform of women's labor conditions by 1925. See Molony 1993, 128.

¹⁵ Several feminists, notably Hiratsuka, did work on behalf of women's physical needs in their struggle for legislation to protect women from marrying carriers of syphilis; this struggle was conducted as much for future children as for women's own health. See Molony 1978, 17.

protection for "our fragile womenfolk" lest they fail to become "healthy mothers" (Hunter 1989, 251). Others worried about women's moral fitness for motherhood if they had to work late hours in the presence of male workers (Hunter 1989, 252).

The Factory Law, passed in 1911 though not fully implemented until 1929, outlawed work between 10:00 P.M. and 5:00 A.M. for women and for boys and girls under twenty years of age, stipulated that women workers could not be fired within five weeks of giving birth, and noted that women had to be offered four weeks off work before childbirth and six weeks off after childbirth.¹⁶ Thus, by the late 1920s the term *motherhood protection* as codified in law basically meant protection of potential fertility, although it was somewhat extended to include childbirth.

A variant of the concept of motherhood protection was taken up in the late 1930s. A rash of mother-child suicide-murders, carried out by desperate, destitute single mothers, shocked women's rights advocates, including egalitarian feminists like Ichikawa Fusae, into working for a Mother-Child Protection Law (*Boshi hogo hō*) granting economic assistance to single mothers. This law passed in 1937 (Miyake 1991, 272–73). Like the feminists' debate of twenty years earlier, the law focused on mothers' economic dependence rather than on women workers' physiological (and moral) ability to bear children, the focus of the Factory Law.

The type of motherhood protection that lasted until the 1980s for the most part took shape in the immediate postwar decades. Postwar motherhood protection stressed women workers' potential for becoming mothers and sought to protect every aspect of female physiology that might affect reproduction. Motherhood protection included much more than the economic implications stressed by prewar feminists, adding physical protections peculiar to women workers. Child care and elder care joined the list of working women's needs, although with the exception of unpaid child-care leave these have not been reified in law as have the physiological aspects of reproduction.

Legally, motherhood protection was codified to deal with what were identified as specific problems of working women in both the prewar and

¹⁶ Although the Factory Law was passed in 1911, employers managed to hold off until 1929 the full implementation of the part of greatest concern to women workers and their activist supporters—the restrictions on night work for women and minors. Employers received extensions, claiming they needed time to adjust to their decreasing ability to compete internationally if they were unable to run their factories around the clock. The first delay was until 1916, when the law was promulgated. (Passage of a law in prewar Japan did not imply immediate promulgation.) Although parts of the law were implemented in 1916, companies were granted a fifteen-year extension until 1931 before they had to implement the night-work provisions. Revisions in 1923 (promulgated in 1926) accelerated the clock, and night work for women and children was ended on July 1, 1929. See Hunter 1989, 247–48. For a discussion of maternity-leave provisions of the law, see Sakurai 1987, 41–42.

postwar periods. Until the mid-1950s, working women were overwhelmingly working class or fresh from the farm, far outnumbering school teachers, secretaries, nurses, doctors, artists, and other middle-class working women. By the mid-1980s, women teachers, nurses, kindergarten teachers, and doctors had earned maternity leave and other provisions like child-care leave through separate negotiations, but many of these benefits were not applied to working women in general. Rather, working women generally were covered by other legislation, much of it in response to problems women encountered in manufacturing industries under particular historical conditions. Some of this legislation remains in place and continues to inform the discourse on employment and motherhood protection even for different types of work and under different historical conditions.

One protection peculiar to Japan (and a few other Asian countries) implemented in the immediate postwar period was menstruation leave (*seiri kyūka*, literally “physiological leave”). Although the EEOL has severely limited this type of leave, it was seen as an integral part of motherhood protection for nearly four decades. Menstruation leave came to be viewed as part of the legal system protecting women’s fertility, although it was not originally established for that purpose. (The medical connection between fertility and menstruation has been abandoned in the last decade.) Rather, the codification of menstruation leave in the late 1940s was an attempt to help women stay at their jobs, not a means to protect their fertility. Discussion of the need for working women to take menstruation leave has been traced to 1928, when female conductors for the Tokyo Municipal Bus Company struck for menstruation leave (among other demands) so they would not have to abandon their jobs altogether due to monthly absences (Molony 1993, 135). Feminists joined the call for menstruation leave in the 1930s, but physiological protections for women were generally set aside during World War II, even if they had their supporters in the government. The issue was revived in the immediate postwar period, when impoverished women, desperate for jobs, found that the lack of both adequate toilet facilities and sanitary napkins made work impossible during menstruation. Intense lobbying by representatives of labor unions succeeded in getting a three-day (later changed to two-day) menstruation leave included in the Labor Standards Law of 1947. Stressing the need for this privilege, however, was not without its pitfalls; women workers’ entitlement to equal pay, if they were so different as to require menstruation leave, was contested in Diet (parliamentary) debate on the Labor Standards Law (Ōba 1985, 111–14).

Proponents of motherhood protection took up the issue of pregnancy and maternity leave in the mid-1950s. The Labor Standards Law of 1947 had granted six weeks of pregnancy (prebirth) and six weeks of maternity

(postbirth) leave, as well as permitting a lighter work load for pregnant workers and allowing mothers of infants under one year to take two thirty-minute nursing breaks per day. The 1947 law emphasized a mother's ability to give birth to a healthy baby, not her having time to rear it. This emphasis shifted during the mid-1950s, when unions began to demand time off, though for women only, to take care of their babies (Sakurai 1987, 210).

Child-care leave is relatively recent in Japan, dating to the mid-1970s, and was first realized only in professions like teaching that had strong unions conscientiously representing their female members. The EEOL encouraged employers to give a one-year child-care leave to mothers, but few companies actually implemented it in the first five years after the law's passage. Two hundred companies in the electrical machinery industry made national news in April 1990 when, in response to union pressure, they introduced a system permitting the reemployment of women workers after an unsalaried one-year child-care leave, during which time the companies would pay their workers' social security and health insurance fees (*Mainichi Daily News* 1990b). But the electrical machinery industry's benefit of time off for child care was gendered; only women were given the leave because of their presumed nurturing role. Child care and elder care are handled overwhelmingly by women, but few special provisions, except in selected professions like teaching, were made in the workplace.

Until recently, the solution for one-quarter of all working women has been to make individual adjustments by working only part-time in jobs close to home; the gendered division of the workplace into the prestigious (usually male) full-time ranks and the less glamorous part-time (usually female) ranks remains problematic under the EEOL. Management and professional positions have been entirely full-time, while both white-collar support jobs as well as factory jobs have frequently been defined as less than full-time. Some recent legislation attempts to eliminate child-care demands as one cause of the gendered workplace. According to the deputy director of the Tokyo branch of the International Labor Organization, the April 1992 implementation of the Child-Care Leave Law, passed on May 8, 1991, will have a "considerable impact" (Fujii 1991, 14). The law stipulates that either parent may request unpaid leave to care for infants under one year of age without fear of dismissal; however, employers are only asked to "endeavor" to stipulate the wages and type of job a worker will return to following such a leave. There are no income guarantees or penalties for noncompliant employers. Although the law represents some progress, it fails both to address the child-care needs of parents with older children and to reassure career-conscious employees that their careers will resume where they were at the time of the leave

taking. Thus, there is little expectation that this law, if it remains unrevised, will materially affect the gendered division of the workplace into a largely male cohort of careerists and a female cohort of part-timers bearing responsibility for family matters. Like the EEOL, however, the Child-Care Leave Law may in the long term help create a popular perception of the acceptability of leave for careerist women and even men.

The issue of child-care leave intersects with other significant issues in Japanese political discourse, including (1) that of Japan's plummeting birth rate and its relationship to women's employment and (2) that of the clash of the meritocratic thrust of the EEOL and the (typically male) employment practice in which employees are judged on their longevity of employment together with merit rather than on merit alone. I shall return to these issues in the last sections of this article.

Creating the Equal Employment Opportunity Law

Women's rising concern with employment discrimination after 1975 drew attention to the scanty bits of legislation that dealt with sex discrimination and the somewhat more extensive legislation that dealt with conditions of employment and protection against dangerous work. In 1976, advocates of equality attempted unsuccessfully to have "sex" added to "nationality, creed or social status" as categories of discrimination prohibited (with penalties) under the Labor Standards Law (Bergeson and Oba 1986, 865, n. 5). Discrimination continued to be handled judicially rather than legislatively. Beginning with a 1966 case against Sumitomo Cement for its policy of retiring women upon marriage, Article 90 of the Civil Code was used by women workers to fight explicitly discriminatory policies deemed "contrary to public policy." Plaintiffs have won rights such as that of continuing to work throughout a lifetime career; however, workers have not been able to use Article 90 to fight more subtle discrimination not explicitly articulated in policy.¹⁷ Although individual women have won suits against their employers' policies, accepted wisdom has said men should go out to work and women should ideally stay at home. Even labor unions before the mid-1970s did not support the idea that the right to work even after marriage and childbearing was a basic human right, not just a man's right.

But the numbers of women joining the workforce continued to rise after the end of a temporary though major dip in the late 1970s caused by the coincidence of maturing baby boomers and the recession induced by the oil crisis. Women began to express concerns about discrimination

¹⁷ Parkinson 1989, 615, n. 33, lists cases establishing the rights of equal pay and equal retirement ages.

vocally as more of them sought work outside the home. Their perceptions of discrimination coincided with the beginnings of the current wave of the women's movement in Japan; the United Nations International Women's Year, which kicked off the International Decade for Women in 1975, had a far stronger impact on Japan than on the United States, where it was hardly noticed by an already active women's movement. In Japan, the International Women's Year Liaison Group coalesced, loosely uniting forty-one nationwide women's organizations and women's sections in the labor unions. (There are now fifty organizations with 23 million members in the Liaison Group [Nuita 1991b].) In 1978, the feminist Group to Create Our Own Employment Equality Law (*Watakushi-tachi no koyō byōdō hō o tsukuru kai*) was established. In the fall of 1978, the labor minister called for a Male-Female Employment Equality Law (*Danjo koyō byōdō hō*), and the Labor Standards Law Research Association (*Rōdō kijinhō kenkyūkai*) put out a paper entitled "Basic Problems concerning Women in the Labor Standards Law" on November 20, 1978 (Ōwaki 1987, 9; Kashima 1989, 15). This report carefully examined the motherhood protection provisions of the Labor Standards Law and the 1972 Working Women's Welfare Law (*Kinrō fujin fukushi hō*). In these 1978 discussions, many motherhood protection provisions were viewed as harmful to women and their chances for promotion, although this attitude would later change.¹⁸

Shortly thereafter, the United Nations called on member states to ratify the 1979 Convention to Eliminate All Forms of Sex Discrimination, which Japan (whose leaders had signed the convention in July 1980) was initially unable to do because it had no legal guarantees of employment equality and plenty of empirical evidence of employment inequality.¹⁹ Japan later ratified the convention in June 1985.²⁰ In May 1982, a committee of specialists on gender equality in the workplace, including labor representatives, managers, academics, and lawyers, began a two-and-a-half-year series of meetings culminating in the publication of a report, subsequently adopted by the Women and Minors' Advisory Council, Women's Section, as the basis for its equal employment opportunity bill (Ōwaki 1987, 9). At that time, many feminists still opposed

¹⁸ The belief that "excessive" protection had resulted in discrimination against women was voiced as early as 1970 by the chair of the Tokyo Chamber of Commerce, following a survey of two thousand companies. See Robins-Mowry 1983, 181-82; Bergeson and Oba 1986, 879, n. 82.

¹⁹ See Nuita 1985b, 1-2. The best studies of gender stratification in Japanese employment are by Mary C. Brinton. See esp. Brinton 1988, 1989, 1993. For a brief discussion of the impact of the U.N. Convention, see Akamatsu 1990, 16-20.

²⁰ The pressure to conform to international standards was a major factor in the creation of the EEOL. Pressure was not new in Japan; the equal pay provision of the Labor Standards Law was included partially in response to the ILO Treaty No. 100. See Bergeson and Oba 1986, 869, n. 24.

protective legislation and focused more on equality without the difficult analysis of what that meant in the context of male-female differences that would characterize later debates on motherhood protection.

While feminists were enthusiastic about legal promotion of workplace equality, the employers' associations mobilized to combat any changes in existing laws dealing with women workers. Nikkeiren (Japan Federation of Employers' Associations) started the attack, claiming that to give employment rights to women would be disastrous because women had no work consciousness; that applying existing protective laws to an enlarged female workforce would be unprofitable since women could not be forced to work overtime and needed maternity breaks; and that women were by nature not interested in long-term work (Kashima 1989, 11). Keidanren (Federation of Economic Organizations) also criticized the bill.

Leaders of big business were not alone in their criticisms. Some intellectuals charged that an equal employment law was a form of Western encroachment because it could destroy Japanese customs (Kashima 1989, 11–12). In addition, although the Labor Ministry pushed for the bill, bureaucrats in other ministries objected to it. One such bureaucrat phoned a journalist in 1983 to ask him to write a column saying the law would destroy the nation. If such a law were passed, the bureaucrat said, he would make sure it would end up toothless (Kashima 1989, 10). The criticisms of the bill now seem almost absurdly extreme, yet they should be understood in their context. Companies had long used women in poorly paid, nonregular positions with no chance of promotion as a buffer against economic downturns. Many businesses had earned the long-term loyalty of their regular male employees by refraining from laying them off in recessions. In exchange for generous fringe benefits and the expectation of eventual promotion, male workers agreed to work long hours, making it necessary for their wives to take the primary responsibility for family and home. Thus, many companies supported a division of labor whereby employed women worked for low wages in insecure jobs while other women were discouraged from employment in order to be supportive homemakers for their overworked but highly remunerated husbands.

Whether this division of labor was actually profitable or beneficial either for companies or for the nation is beside the point; what is important here is that companies, in seeking to preserve this division, acted as if it were both profitable and beneficial. Motherhood protection legislation gave employers who opposed workplace equality a convenient excuse for denying women equal treatment. Misogyny or at least discomfort with women workers was accompanied by rhetoric concerning the inappropriateness of married women and mothers working in full-time

positions. Some women wished to have careers but were prevented from doing so by company policy; others had little wish to fight for positions as comprehensive employees (*sōgō shoku*) because they had accepted the dominant discourse on the gendered division of labor, because they did not wish to stand out as exceptional women, or because they accepted autonomy and power in the running of their homes as a substitute for workplace achievement.²¹ This last group came to be known as “professional housewives” (*senkyō shufu*), who often did work outside the home but in limited ways because they were primarily identified as housewives.²² Professional housewives outnumbered working women until 1984, so the business federations may have had some justification for their fear of employing large numbers of women whose company loyalty potentially may not have been as guaranteed as that of their male working counterparts. The assumption of women’s lack of commitment, however, was probably overstated; a pre-EEOL survey (conducted in November 1985) of a small number of Japanese women managers (400 questionnaires sent out, 130 returned) indicated that these women managers had strong career aspirations (Takagi 1988–89). The opponents of employment equality in the business federations were simply using gendered arguments focusing on women’s reproductive or family roles—their motherhood—to make their case against employing women managers.

By 1984, feminist groups also began discussing motherhood issues, but for the general public, many government officials, and even some feminists, *motherhood* had multiple and often rather different meanings. What was at stake was both potential motherhood—protecting women’s bodies for future reproduction—and actual motherhood—creating employment conditions like child-care and maternity leaves that might facilitate mothers’ working. The effects of each type of protection were quite different; the first discouraged women from working and the second intended to support it. Yet these two types of motherhood protection were frequently commingled in the debate of the 1980s and continue to inform discussion in the 1990s.

While the Equal Employment Opportunity Bill was being discussed in the Social Labor Committee of the House of Representatives on July 24, 1984, Representative Inoue Takako asked the labor minister about permitting women to work at night. The labor minister replied that protective legislation should be phased out slowly. In further questioning, he added that equalization of labor conditions for men and women required

²¹ For a discussion of the “back to the home” phenomenon among Japanese women of the early 1970s, see Saso 1990, 99.

²² For more discussion on the professional housewife, see Vogel 1978; Ueno 1987; Kondo 1990.

that women adopt the male work model rather than the reverse—having men adopt women's conditions (Ōwaki 1987, 11). This response tells us a great deal about Japanese conceptions of gender at that time; in other words, a third and obvious option—that both men and women be subject to similar conditions of employment that would be both profitable and humane—was not mentioned either by the questioner or by the labor minister. Thus, the Equal Employment Opportunity Bill, and later the law, although criticized as dismissive of women's different experiences and needs, are in fact based on an ideology of difference, that men work outside and women work in the home. If women want to work, the labor minister said, they should use the "work" model, which was created for men; the male model should determine what working conditions should be.

Feminists criticized the androcentricity of the labor minister's official interpretation, saying that the bill so interpreted made no allowances for motherhood protection (Tanaka 1984, 5–7). While the bill was indeed male-defined, it did make allowances for childbirth and other physiological protections for women. Some previously allowed physiological protections (such as menstruation leave) were dropped or modified, but others were retained. What the bill ignored was the social side of motherhood—a mother's desire and responsibility to care for her children. The birth of healthy children was not overlooked, but a mother's ability to maintain a career as a comprehensive employee (*sōgō shoku*) while rearing children was. In the words of the law, women were told to "harmonize" the home and the workplace, but employers were not required to supply the mechanisms whereby this could be done. If, for example, company promotions and standards of performance, already developed for the male workforce, required long hours of work and travel to distant offices, then women in accordance with these male standards would be required to perform similarly or risk losing their positions on the promotion track. These requirements could be met by women who were not mothers but would be virtually impossible for mothers.

The government's emphasis on the male model helped to define the general feminist opposition to the EEOL. In 1985, the forty-eight women's groups then under the umbrella of the International Women's Year Liaison Group opposed the bill, as did several other women's groups. Feminist criticism had two components: opposition to the bill's "spinelessness" (*honenuki*) and opposition to its downplaying of motherhood protection. The spinelessness or toothlessness refers to the lack of sanctions against employers who fail to abide by the guidelines in the law. The law itself is fairly weak. The title of the law, *Danjo koyō kikai kintōhō* (literally, Male-female employment opportunity parity law), is much

weaker than the title used by feminists in their earlier discussions: *Danjo koyō byōdōhō* (literally, Male-female employment equality law). The government granted parity of opportunity to be employed, not equality of employment itself. Moreover, the law calls for employers to “make efforts” to give women equal opportunity in recruitment and hiring (Art. 7) and assignment and promotion (Art. 8). Employers are forbidden to discriminate against women in regard to vocational training (Art. 9), fringe benefits like housing (Art. 10), and compulsory retirement or dismissal, and marriage, pregnancy, and childbirth (Art. 11). Equality of pay is mandated by earlier legislation from 1947.

It is not clear why equal treatment in recruitment, hiring, assignment, and promotion was not required unless the intent was to water down the law under pressure from employers. Feminist lawyer Ōwaki Masako states that employers can only be expected to “make efforts” in these four areas because they do not act alone but rather together with individual employees who must take the initiative to apply for employment or promotion; in contrast, she says, the granting of training opportunities or fringe benefits and treatment regarding dismissal are entirely in the employers’ hands, who can therefore be compelled to offer equal conditions (Ōwaki 1987, 30). It should be pointed out, however, that employees are less free to choose to apply for internal placement and for promotion than the EEOL suggests. Requests by male workers for assignment to the non-promotion track and by female workers for assignment to the management track are routinely rejected in many companies (Masuda 1990, 6).

Legal scholar Loraine Parkinson argues that the weakness of the law is intentional. The framers of the law represented a variety of interest groups and, she writes, believed that a noncoercive approach would be more successful in achieving social change (Parkinson 1989, 604). She argues convincingly that women themselves would have to reify the provisions of the EEOL by demanding equal treatment and behaving in an ambitious way and that incremental change is always more successful than forced, rapid change. But Parkinson’s assertion that the noncoercive nature of the law was “Japan’s choice” is not convincing. Rather than having in mind a gradual elevation of standards of employment equality by repeatedly revisiting and strengthening the law, as Parkinson suggests (1989, 655–58), the framers were attempting to balance conflicting interests, including demands for absolutely identical treatment of men and women, retention of motherhood protection, and preservation of the privileges (and stresses) of managerial-track male employees that many companies insisted had guided them to international success. Parkinson is correct that the EEOL will likely be reexamined, but its framers did not plan that. Moreover, the lack of penalties for noncompliant employers reflects a compromise among the consultants and framers of the law and a recognition that no stronger law would succeed in passage.

The EEOL and its meaning to employers, employees, and feminists

Despite their objections to the bill when it was proposed in 1984, employers grudgingly accommodated the law by 1986. The employers' association Nikkeiren discussed the pending law in a book published just two months before the implementation of the EEOL in April 1986 (Nihon Keieisha Dantai Renmei Jimukyoku 1986). The book targeted business owners and offered guidelines for dealing with the law. The authors state that the EEOL is intended to "harmonize" (*chōwa*) women's home life and work life while improving women's welfare. Women's welfare is defined as "respect for motherhood while not meaning sexual discrimination" (Nihon Keieisha Dantai Renmei Jimukyoku 1986, 16). The book explains that while the EEOL prohibits "treatment of men and women that is different for irrational reasons," the law allows "treatment that is different for rational reasons."²³ According to the Nikkeiren authors, recruiting ads cannot call for "men only" but can require "physical strength" (Nihon Keieisha Dantai Renmei Jimukyoku 1986, 30). Age limits for men and women applicants for the same job may not be different. But certain jobs may be restricted to men, including roles for male actors and sports performers, the Catholic priesthood, certain jobs formerly prohibited for women, and jobs that would require working in Islamic countries (Nihon Keieisha Dantai Renmei Jimukyoku 1986, 32–34). Jobs that require frequent late night hours might be considered open only to men (Nihon Keieisha Dantai Renmei Jimukyoku 1986, 38).

The Nikkeiren authors attempt to explain ways to circumvent the law, noting that the EEOL only asks companies to grant women an opportunity not a guarantee of employment. In other words, companies do not have to hire women, only recruit, interview, and test them. If after "several years" no women have been hired, then it may appear, the Nikkeiren authors report, that the company may not intend to hire women (Nihon Keieisha Dantai Renmei Jimukyoku 1986, 36). Women and men applicants may be tested and interviewed in separate locations, but the tests must be the same (Nihon Keieisha Dantai Renmei Jimukyoku 1986, 51). Separate but equal.

By contrast, feminist attorney Ōwaki's 1987 book argues that various actions that the Nikkeiren book says are permissible under the EEOL are in fact prohibited. For example, she writes, requiring women to pour tea violates Article 8, and offering dormitory space to men and not women

²³ Nihon Keieisha Dantai Renmei Jimukyoku 1986, 14. This distinction between rational and irrational resembles the legal precedent of permitting "reasonable" discrimination (Bergson and Oba 1986, 869). The Nikkeiren authors failed to see that such distinctions were no longer permitted under the EEOL except in the case of maternity.

violates Article 10.²⁴ If the EEOL is spineless or toothless, how are such violations to be redressed? The EEOL calls for a multistep procedure whereby complaints are taken through a company grievance committee, then the directors of the prefectural Women and Minors' Bureaus, the Equal Opportunity Mediation Commission, and finally the Minister of Labor. When I discussed the grievance procedure with a member of the Tokyo Women and Minors' Bureau in early 1989, she told me that hundreds of complaints had already been filed with her office.²⁵ An activist lawyer, Sugii Shizuko, has argued that the law can be used to redress sexual harassment, and sexual harassment cases were being tried in the courts at the time of this writing (Nuita 1990b; Sugii 1990, 24-28). Parkinson praises the use of conciliation as a means of enforcing the EEOL because an "enforcement mechanism rooted in a private right of action or in legal suits prosecuted by [the minister of labor]" may have a "detrimental effect on individual workers" by dissuading them from taking action against discriminatory treatment (Parkinson 1989, 637). The grievance resolution procedure of the EEOL permits women to avoid a suit, which Parkinson describes as a form of "social suicide" (1989, 654). Parkinson expects that in time the courts will recognize the weaker clauses—"duty to endeavor," for example—as absolute rights that can be upheld in legal suits. This argument is convincing to a historian but potentially unsatisfactory to a worker with a grievance or a feminist labor lawyer seeking stronger protection against discrimination. Lawyer Nakajima Michiko, for example, has stated that "the only way to make the law work is to give it the power to punish companies" (Sanger 1992). Moreover, there is the possible danger that the law's use of conciliation through government agencies may make it more difficult for women to use the courts even in cases where a legal suit might be best. Conciliation and vague guidelines to "endeavor," therefore, have both helpful and harmful implications.

The power of the law, or lack of it, is still being tested. While some observers feel the EEOL has empowered women, others feel the law has been ineffective and "stupid" (*manuke*).²⁶ A group of lawyers and academics calling themselves the Women Workers Research Group (Fujin rōdōsha mondai kenkyūkai) reported that 80 percent of women surveyed in 1988 said the EEOL had had little effect on conditions in their workplace (Kashima 1989, 7). A female student at a 1989 equality law sym-

²⁴ See Ōwaki 1987, 56, 70. Many young professional women are still pouring tea, and many do not complain about it. See Ono 1991.

²⁵ This discussion took place with Ogino Sumiko, Tokyo, January 1989. See Parkinson 1989, 641-42, for types of complaints made by employees and requests for legal clarification by employers.

²⁶ A writer for the guide to job hunting published by women students at Waseda University used this term to describe the EEOL. Quoted in Masuda 1990, 4.

posium in Osaka reported her discouraging experiences with job interviews; one interviewer told her, "Our company has a long history, and the Equal Employment Opportunity Law is not entirely accepted here"; another told her his company hired women to "comfort the men when they came back to the office after a hard day of selling"; and another unabashedly informed her of his company's (illegal) differential salaries and promotion opportunities for men and women (Masuda 1990, 4-5). A September 1990 survey of five thousand men and women, all aged twenty, conducted by the prime minister's office, found great disappointment with the level of sexual equality in the workplace; just 12.7 percent of women (26.6 percent of men) believed equality had been achieved in the workplace.²⁷

In addition to their objection to the EEOL's lack of enforcement power, feminists have been concerned about the law's treatment of motherhood protection. Americans may perceive the benefits stipulated by Japan's EEOL as generous, but Japanese feminists believe they are inadequate. Automatic menstruation leave has been eliminated and replaced with provisions to grant sick leave to women who have particularly serious medical problems associated with menstruation; fertility protection has been abandoned as a reason for menstruation leave. Maternity leave has been changed from six weeks before and six weeks after birth to six before (ten weeks in the case of multiple births) and eight weeks after. During the first six weeks, a new mother may not return to work. While on leave, women workers are to receive 60 percent of their regular wages (80 percent for workers in the public service sector, 100 percent for government workers); many women employed by small companies or working part-time (under thirty-five hours per week), however, receive nothing. As noted above, ungendered child-care leave provisions were changed under separate legislation in May 1991, with unpaid leave extended to one year. Pregnant women may request exemption from compulsory overtime and "heavy work" and must be given time off for the prenatal medical examinations required under another law, the Mother-Child Health Law (*Boshi hokenhō*) (Ōwaki 1987, 123-26). Whereas previous regulations protected potential motherhood by limiting all women's access to certain dangerous jobs, current Ministry of Labor regulations restrict only pregnant women and mothers during the first postpartum year from stipulated jobs.

Another part of the previous definition of motherhood protection—limitation of the number of hours women could work, regardless of their potential for motherhood—has been altered by changes in the amount of

²⁷ See Nuita 1991c, 3. The high percentage of dissatisfied women and men indicates a strong awareness of sexual discrimination.

overtime permitted. The EEOL does not stipulate limits on overtime for women in bureaucratic and technical jobs, while women in service industries like banking are limited to twenty-four hours of overtime every four weeks or 150 hours per year, and women in manufacturing to six hours per week or 150 hours per year (Kashima 1989, 8–9). Men's hours are not discussed in the EEOL; women in technical and bureaucratic jobs and all men, however, are regulated by Ministry of Labor guidelines (July 29, 1992) that limit overtime to 360 hours per year (*Understanding Japan* 1992b, 4).

The big problem is not in protecting the physical health of potential mothers, new mothers, and babies, an area in which Japanese law is quite inclusive. Rather, advocates for women workers cite the difficulty of reconciling women's roles as mothers of children of various ages with the demands of the workplace. Improving women's fertility is not much of an issue for feminists, although it apparently is for some male politicians. Concerned about Japan's declining birthrate (1.53 children per woman in 1991, a 26 percent decline from fifteen years earlier) as women marry later and prefer smaller families, the Ministry of Health and Welfare advocated offering fertility incentives through changes in the child allowance system.²⁸ (Former Finance Minister Hashimoto Ryūtarō had claimed that higher education was to blame for turning women away from childbearing [Masuda 1990, 7].) Feminists and other women dismissed fertility incentives, commenting that paltry sums would not dissuade women from working. Moreover, women in their sixties and seventies spoke out against government intrusion, drawing ties between the call for more babies and the wartime government's demand that women "breed and multiply" in the national interest (Arioka 1991, 51). The Economic Planning Agency, in its November 1992 White Paper on life in Japan, took a more enlightened approach than the finance minister. Calling for a better environment in which to raise children, the White Paper authors acknowledged that child-care provisions must be improved, corporations must reduce working hours and create opportunities for women to reenter the workforce after childrearing, and men's and women's roles in the household should be changed (*Japan Times Weekly International Edition* 1992a, 4). The writers of the White Paper recognized that many women believed the workplace to be at odds with maternal life as commonly constructed.

²⁸ See Naita 1990a, 3. Economic disincentives to women's work also failed to stem the decline in the birthrate. Revisions of the National Pension Law in 1986 and the tax code in 1987 put working wives in a position inferior to unemployed wives. Widows who had been housewives were entitled to their own pension (the law's revisions exempted housewives from paying premiums) plus a survivor's benefit of 75 percent of their husband's pension. The tax code revision doubled the tax exemption for households in which one spouse earned less than 1 million yen (about \$8,300 at that time) but not for those with two higher-earning spouses. See Takenaka 1992, 15, n. 15.

Feminists' criticism of the EEOL centers more on its denial of the social aspects of motherhood, or more properly, parenthood. Work hours for men and for women who desire equal treatment are long; on average, men (both factory and white-collar workers) work eight hours and forty-six minutes and commute an hour and fifteen minutes each day, while the comparable times for women are seven hours and one minute at work and forty-four minutes commuting (Masuda 1990, 7). Women tend to seek work closer to home because the expectation that they are responsible for care of the home translates into longer hours devoted to housework (three hours and thirty-one minutes per day for employed women as opposed to eight minutes per day for men) (Masuda 1990). In 1985, the Tanashi City government in suburban Tokyo became the first public employer to offer child-care leave to men, and in 1986 the giant Seiyu department store chain granted men child-care leave as well (Nuita 1985a, 3; Saso 1990, 129). But men did not take advantage of these policies. Recent surveys show that young people increasingly reject the idea that men work out of the home while women work in the home, although many have not yet applied their convictions to their own lives. In a 1987 poll, 51.7 percent of men and 36.6 percent of women agreed with the statement "men work outside of the home while women work in the home." By September 1990, just 34.7 percent of men and 25.1 percent of women agreed with that statement (Nuita 1991c, 3). A summer 1992 survey released by the prime minister's office in November 1992, however, indicated a significant difference of opinion between men and women in their twenties over the issue of mothers returning to work after maternity leave; 69 percent of the young women surveyed believed that mothers should return to work, compared with 44 percent of the surveyed men (*Japan Times Weekly International Edition* 1992b).

Despite attitudinal changes among the general populace, employers have made few efforts to accommodate men or promotion-track women who wish to alter the gendered balance of work and home responsibilities. In 1987, only 9 percent of all Japanese companies offered child-care leave to women and 0.8 percent to men. Worse, 89 percent of companies stated that it would be impossible to institute child-care leave for men, and 62.8 percent said it would be impossible to do so for women (Saso 1990, 128). Legal changes will soon force companies to make such provisions. The Child-Care Leave Law of 1992 permits unpaid leaves for either parent; companies with fewer than thirty employees were granted a postponement of enforcement until 1995. But the Child-Care Leave Law was used by workers at a mere 21.9 percent of companies (37.5 percent of companies with over five hundred employees) between its April 1992 implementation and the end of 1992. A tiny number of fathers have taken the leave, and in the first half year of the law's implementation most new mothers preferred reduced hours to time off, in

order to keep their careers on track (*Understanding Japan* 1992a, 5). Those women who chose to take leave also attempted to keep their careers on track, with 88.4 percent returning to their workplaces, according to the Ministry of Labor. But the general workplace still makes few accommodations for parents with young children. Because the EEOL makes no demands for greater gender balance in the workplace—only that employers endeavor not to discriminate against individual women—employers are under no pressure to make job requirements more flexible for managerial women (except during pregnancy) so that they can blend home and work in the demanding promotion track. Nor do employers make job requirements more flexible for men so that they can relieve their wives at home, facilitating the careers of those women. In fact, there is evidence that companies may be actively discouraging women who hope to get on the promotion track by forcing them to make immediate intracompany transfers, a typical job requirement for men (Inaba 1988, 77). Japanese families have long suffered the absence of the father while he worked in a distant office for several years, but few families believe that they can survive the absence of the mother. Indeed, many mothers choose to abandon the promotion track under such conditions.

Many companies have formally instituted a two-track system for women since 1986: a managerial promotion track and a less pressured, although full-time, general employee track. When many women choose the latter, companies claim to be obeying the letter of the EEOL. This two-track system is, in fact, an employer's most effective way to circumvent what feminists had hoped would be the spirit of the EEOL because this latter track, a Japanese version of the "mommy track," can appear to be a woman's own choice. The Women's Rights Committee of the Japan Federation of Bar Associations calls for the abolition of the two-track system, which it considers a form of "indirect discrimination."²⁹

The EEOL has opened up access to the *sōgō shoku* (comprehensive employee) positions, but in most companies women hold fewer than 10 percent of these jobs. Even fewer women are in management positions. In the fall of 1988, the financial newspaper *Nikkei Shinbun* conducted a survey of 1,942 of Japan's largest firms and found that women were just 1.2 percent of all managers; most of them were at the lowest levels and concentrated in just two sectors, finance/insurance and communication/media. Almost half the firms surveyed had women managers, but they were merely tokens (Kashima 1989, 36). Most full-time women employees remain as *ippan shoku* (general workers) or a new category in some companies called *jun sōgō shoku* (associate comprehensive employee).

²⁹ See Masuda 1990, 7. The two-track system is technically gender neutral, but in virtually all companies new male employees are routinely placed in the *sōgō shoku* (regular) track, while women are given a "choice."

Both of these titles mask the reality of these jobs—that of the mommy track, where women can leave the office at 5:00 P.M., take breaks and legally granted leaves of absence, and be exempt from transfers. In a survey of 100 personnel managers in November 1986 (the author of the survey did not provide specifics on the surveyed firms), 70 percent said that few women wished to become *sōgō shoku*, citing such reasons as not wanting to transfer (86.8 percent), wanting to work only until marriage (55.3 percent), and preferring to work for fun rather than assuming responsibility (47.4 percent) (Kashima 1989, 25). Personnel managers who assumed that women would not want promotion-track jobs often discouraged women who applied for *sōgō shoku* status, at times bullying those who did seek such a promotion. A few examples of behavior replicated hundreds of times each day indicate the institutional problems women face when attempting to take advantage of legally permitted opportunities for promotion. In one cited case, a woman who applied for a promotion-track position at a bank was warned, “If you are transferred tomorrow to a remote area . . . your family will fall apart” (Masuda 1990, 60). Another received a steady stream of men—her supervisor, head of personnel, union representative—past her desk to warn her against applying for *sōgō shoku* status, and when she was finally promoted after six months, she feared that her new subordinates might sabotage her work (Kashima 1989, 150–51).

For women who do succeed in starting management-track careers, child care continues to be a serious problem. In an October 1989 survey of management-track women conducted by the prime minister’s office, 58 percent of the respondents said working conditions were favorable, despite the 88 percent who reported gender discrimination in the workplace—a clear indication that sexism is to some extent taken for granted. But of those who reported unfavorable conditions, 49 percent cited lack of job opportunities, followed by 43 percent reporting lack of child care as reasons for unfavorable conditions (*Mainichi Daily News* 1990a). Some women reported snide comments from colleagues as they left work to pick up children at day care and said it was far easier to say they were taking sick leave for themselves rather than to care for a sick child (Kashima 1989, 162–67). Day care is widely available, subsidized in most locations, and high in quality. But the hours of the best programs usually range from 8:00 A.M. to 5:00 P.M. or 6:00 P.M., times that are inadequate for women on the fast track in their companies.³⁰ Moreover, elementary schools and kindergartens pressure mothers to attend frequent school functions.

The EEOL, created in a highly gendered context acknowledged by its governmental proponents and feminist and big-business opponents, has

³⁰ See Atsumi 1988, 58. Day care has a long history in Japan. See Uno, in press.

not eliminated workplace discrimination. It has, in fact, had some undesirable consequences, such as the creation of two tracks for women workers, one privileged and one no better off than before. But the law's effects in altering the terms of discourse about women and work, and ultimately about what female gender means, are significant. As increasing numbers of women view the *oyaji* girl and managerial woman as natural, these women themselves accelerate the shift to promotion-track positions. Resistance from male co-workers, resentment expressed by female colleagues not entering prestigious positions, and, especially, blatant company discrimination will continue to impede women's progress toward work equality. But by suggesting, though unfortunately not requiring, a nondiscriminatory workplace, the EEOL creates an ideal toward which employers and employees might strive and for which more affirmative policies will likely be acknowledged as necessary in the future.³¹

Moreover, the EEOL, though formulated in a context of gender inequality, offers many women a new way of understanding gender. The phrasing of the second clause of the preamble of the law already suggests important changes from earlier legal formulations: "As members of households, female workers have an important role in the nurturing of the next generation." While this phrasing recognizes the reproductive role of the married adult woman, it differs significantly from the 1972 Working Women's Welfare Law, which stated that "working women have an important role in the nurturing of the next generation." The 1972 law implies that women alone nurture, while the 1986 law says that women, as part of the household, are among those who nurture. Moreover, the 1986 law refers to "female workers" (*josei rōdōsha*) and the 1972 law refers to "working women" (*kinrō fujin*), a subtle but instructive difference in word choice.

Other subtle changes have occurred in the eight years since the law went into effect. *Shokuba no hana* (flower in the workplace), once a common term for the "OL," has become a pejorative term (Kashima 1989, 6). Even the OL has changed. A small pamphlet issued in 1987 titled "How to Become a Peerless OL" (*Muteki na OL ni naru hō*) discusses the need for knowledge and skill (Kinoshita and Ōtsuka 1987). Perhaps overly optimistic, the pamphlet nevertheless credits the Equal Employment Opportunity Law with permitting women to become *sōgō shoku*, describing this formerly male promotion-track position as a type of female office employee (Kinoshita and Ōtsuka 1987, 13).

Another indicator of changing concepts of appropriate behavior for women is the increasing number of college-age women who are opting for four-year college educations, up from 22.2 percent of total enrollment in 1980 to 27.3 percent in 1990 (Sōmuchō Tōkeikyoku 1991, 658, tables

³¹ Parkinson 1989, 658–59, makes this observation as well.

19-12 and 19-13). Women's attendance at two-year colleges, once a more certain route to immediate postgraduate employment than attendance at four-year colleges, climbed 32.7 percent between 1980 and 1990, while attendance at four-year universities by women climbed 43.1 percent in the same period. Increasing numbers of students believe that they have a chance to be employed in rewarding jobs requiring four-year college degrees. Although these numbers are still small, more women are studying engineering, up from 0.8 percent of all female students in 1975 to 2.7 percent in 1990. Just under 4 percent of all engineering students were female in 1990 (Sōmuchō Tōkeikyoku 1991, 661, table 19-16). In the late 1980s there were insufficient numbers of male engineers to fill all the positions at electronics companies, and the resulting opportunities for women attracted increasing numbers of women to those companies. At NEC, for example, 200 of the 932 engineers joining the company in 1989 were women (Lehner and Graven 1989). By late 1991, women graduates of four-year colleges had achieved parity with their male counterparts in finding jobs immediately after graduation; 81 percent of both groups did (Fujii 1991, 12). Although the recent recession has, disturbingly, slowed the gains in employment women have made since 1986—in late 1992, one large placement firm reported 2.2 job openings for each male graduate but less than one for each female graduate—the long-term trends point toward increased parity (Sanger 1992, 7).

The image of the new woman worker does not encompass the large number of mainly middle-aged women who either work part-time (4.32 million) or in family businesses or farms (7.84 million) (Nuita 1991a, 3). These categories together account for 40 percent of the female workforce. Nor does the new image address the significant numbers of women of ethnic minorities (mainly Koreans and more recently Southeast Asian immigrants) or stigmatized indigenous groups. The image of the new worker is of the young woman with few family cares. Nisshin Steel's in-house magazine, for example, surveyed male and female workers about preferred after-work activities and found that the most popular activity among the men surveyed was drinking, while half of the surveyed women liked either to shop, drink, or go to movies or concerts (*Japan Times* 1990). Women with children hardly have time for these activities, yet no mention was made of the limitations of the survey. Clearly, expectations run ahead of realities, but in order to change employment opportunities for women, women themselves will have to demand new jobs. And the changing discourse will in turn accelerate changes in actual work conditions.³²

³² Thousands of young Japanese women, partially or entirely educated abroad, are also currently in the workforce. Though sought after for their intercultural and linguistic skills, many of these employees are nevertheless in staff positions with limited opportunities for advancement or autonomy and often seek positions in foreign companies oper-

Societal gender expectations have also begun to change since the implementation of the law. Motherhood is decreasingly central to definitions of femaleness. Emphasizing motherhood was an effective strategy for women to gain power under the male dominance reified in law in the late nineteenth and early twentieth centuries in Japan. Increasing numbers of women now are beginning to see motherhood as less necessary in the current historical context as a way of carving out some power. Although the changes seem to move at a glacial pace, some perceive the 1986 law as an alternate route to power. The emphasis on motherhood has served an important function in gaining workplace rights for women, but that function should be historicized. If at one time the glorification of motherhood was a strategy for power, at another juncture it might produce a cultural feminism that could be subverted by antiwoman interests to less positive ends.

In any case, the role of motherhood has itself radically changed in Japan (Uno 1993). Until the mid-1970s, the discourse on normal adult womanhood admitted little deviance from the pattern of marriage and children. But this appears to be changing. Indeed, marriage rates in the big cities have tumbled in recent years. It was once common wisdom that 95 percent of all Japanese women married by age thirty-five, but many are marrying later or not at all. Whither motherhood if, according to the 1985 census, 43.4 percent of all Tokyo women aged twenty-five to twenty-nine, and 19.5 percent of all Tokyo women aged thirty to thirty-four had never married?³³ One-quarter of the thirty-to-thirty-four group said they wished never to marry. Marriage and childrearing are no longer universally viewed as essential to a successful life for women in Japan. A small but measurable minority may be seeking satisfaction in a career.³⁴ To be sure, one need not be unmarried to be a professional woman, but under current conditions, the Child-Care Leave Law of 1992 notwithstanding, being a mother while developing a career as a manager or other type of professional is particularly difficult in Japan.

Conclusion

The Equal Employment Opportunity Law of 1986 both contributed to and grew out of changing notions of gender. This can be seen in the new images of working women that stress a careerist orientation. In addition,

ating in Japan. A study of this group is beyond the scope of this article but is an important area for further investigation.

³³ See Yoshihiro 1987, 305. Nationwide in 1985, only 39 percent of men and 69 percent of women had married by age thirty. See also Arioka 1991, 54.

³⁴ This corresponds to Bankart's finding that young college-educated women "wanted more from life than identity as a mother" (1989, 65).

the law has interacted with changing meanings of motherhood. To be sure, *motherhood* and its *protection*, regardless of what these terms mean in particular historical contexts, have been central to Japanese discussions of women's employment throughout the twentieth century. Women workers have historically been viewed as mothers or potential mothers both by those who wished to encourage equality of career opportunity and by those who wished to restrict it. Motherhood has been consistently salient to images of and policies toward working women. In both its creation and implementation, the EEOL was informed by ideas about motherhood.

The creation of the law was also informed by feminists who believed in women's equality with men. Employment legislation was first proposed as a means of providing greater gender equity in employment. International pressure to improve the lot of employed women accelerated the government's efforts to get a law on the books. Although several women's groups initially viewed existing gender-based protections as limiting women's chances for career advancement, they also suspected that completely identical treatment of men and women would deny women the right to be mothers, a role viewed as incompatible with the male-defined workplace. Many Japanese feminists argued that the law, by not forcing the workplace to be more accommodating to the social aspects of motherhood, was actually discriminating against women, who had a right to motherhood. A duty to endeavor to avoid discriminating against women in employment and promotion because of their gender did not encompass a duty to endeavor to avoid discriminating against women fulfilling a gender role of motherhood. Other objections to the law have to do with the "duty to endeavor" formula itself, which treats women as individuals rather than as members of an affected class, thereby removing the imperative to show good faith by hiring women in numbers sufficient to produce gender balance in the workplace. Gender balance was never the EEOL's goal; equal treatment of the individual was the explicit aim, albeit according to unmodified gendered notions of the character of the workplace. In that climate, plain old sexism could flourish under the guise of arguments about employee loyalty as required by the male model of the workplace.

The law has had some interesting consequences, some anticipated and some not. The troublesome division of the workplace into an elite section and a mommy track was foreseen; many of the sexist barriers to women's employment have been lifted in the elite arena, but women in the mommy track are no better off than before. Images of working women have been evolving in the years since the implementation of the law, but they tend to reflect young women without children, not mothers who deserve equal opportunities to assume management positions—the very class that

women's groups felt was abandoned by the EEOL. Perhaps less anticipated results were the rise in women's four-year college attendance and the drop in the birthrate. It is reasonable, although not easily verifiable, to conclude that both of these were responses to perceptions of improved opportunities for women's professional employment. What we can say with greater certainty is that both results have created a larger pool of women qualified for managerial and professional positions. Employers' fears that women will take extended child-care leave are exaggerated, although that does not mean these same employers will abandon that notion as a justification for failing to hire women.

While gender discourse informed the creation of the law and gender assumptions affect its application, the letter of the law requires that individual merit alone be used to judge women employees and potential employees. Male white-collar employees, however, are usually evaluated on the basis of their performance within their narrow age cohort.³⁵ Although some scholars equate seniority in a general sense with individual merit, these two categories are not the same.³⁶ Considerations of seniority are still fundamental to men's promotions. Men cannot drop out of their age group for child-rearing reasons, although the EEOL presumably leaves that option open for women who are to be judged on merit. Indeed, merit can be and usually is defined as adherence to male job requirements, even in the absence of women's inclusion in the male age-based promotion cohort. The principles of the EEOL and the practices of male employment patterns clash; if women in managerial-track jobs were to take extended child-care leave (which they have not so far) or if men took any of the unpaid child-care leave permitted by law, the seniority-based employment system would then be undermined.

Not surprisingly, the current recession is promoting that erosion. "Belt tightening and employment reduction" have promoted shorter terms of employment and meritocratic hiring in the expanding service sector, particularly the information-processing industry (Takenaka 1992, 7-11). Many of the mobile workers are women with long work histories but short tenures at a particular company, making them exempt from benefits. In time, hiring by merit or proven skill level rather than future promise as indicated by success in high school or college may be adopted by more companies seeking to cut the high costs of promotion by seniority and lifetime employment. A prime minister's office survey conducted in the summer of 1992 indicated that a majority of men and women employees in their 20s would also applaud the use of merit rather than seniority in promotion decisions (*Japan Times Weekly International Edi-*

³⁵ For an analysis of promotion and lifetime employment among blue-collar women, see Roberts 1994.

³⁶ See, e.g., Dore 1973, 354.

tion 1992b, 1). While it is an overstatement to say that seniority-based promotions are standard for all men in all jobs, they are characteristic of most leading firms and, more important, are discursively normative. Currently, male and female employers and employees act as if *sōgō shoku* (comprehensive employees) were promoted more by seniority and loyalty than by skill. Indeed, it is by no means certain that the decline in importance of seniority will be helpful to all professional women, especially as more of them gain the seniority long denied them. In the aggregate, Japanese businesses may be the big winners.³⁷

Women seeking employment and attempting to integrate employment into their lives consider the 1986 law seriously. The existence of the law is one part of every woman's complex set of life experiences and learned ideas, whether she is conscious of that fact or not. How the provisions of the law are applied is affected by the values and patterns of socialization of the men and women who use it, and reciprocally, the law itself affects how men and especially women understand gender. The EEOL is a product of gender notions in a particular national and historical context, but its reification helps to inform discourse on gender in evolving historical contexts.

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³⁷ I am indebted to an anonymous reviewer for this insight.

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