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Equality of Men and Women in Article 24 of the Japanese Constitution (1947): The Role of Beate Sirota (1923–2012) and Beyond

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Abstract

Beate Sirota has been described as the 'heroine of Japanese women's rights', because of her considerable contribution regarding the inclusion of a forceful provision on the rights of women in the new Constitution of Japan formulated in 1947. She performed this task as a member of the Government Section of the Supreme Commander for the Allied Powers (SCAP), a position held by General Douglas MacArthur. Her role was serendipitous because the US occupying forces did not initially intend to conduct a thorough revision of the Meiji Constitution (1890). Moreover, Sirota was not a constitutional scholar, let alone an expert on the rights of women. However, after she got involved in the drafting of a new constitution, her intimate knowledge of the position of women in Japanese society due to spending her youth in Japan proved useful. She proposed elaborate and detailed provisions on women's rights (Article 24) in the draft of the new constitution to counter the expected resistance. Since its introduction, the provision has been a firm anchor for the proponents of the emancipation of women in Japan. This paper aims to examine the determining factors and circumstances of Article 24 of the Constitution of Japan, Sirota's role in its realisation, and the aftermath.

1. Beate Sirota, a feminist heroine of Japanese women's rights?

In 1997, Beate Sirota published an autobiography under the following title: *The Only Woman in the Room: A Memoir*.²⁾ In this book, Sirota described the remarkable course

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- 2) B. Sirota Gordon, *The only woman in the room. A memoir* (Tokyo/New York/London: Kodansha 1997).

of her life. She was born on 25 October, 1923 in Vienna, Austria. She was the daughter of Leo Sirota (1885–1965), a Jewish pianist born in Kiev, and Augustine Horenstein, who also had roots in Ukraine. In 1929, her father was appointed lecturer at the Imperial Academy of Music in Tokyo, where Sirota subsequently spent most of her youth. Just before the outbreak of World War II, she left for the US to pursue a degree at Mills College in Oakland, California. She decided to major in literature and languages, including Japanese, French, Russian, and Spanish. In 1942, Sirota became a US citizen. In the same year, along with her studies, she started working at *CBS Listening Post*, where she translated radio broadcasts from Japan. Since Japan's attack on Pearl Harbor in December 1941, the US had become increasingly interested in Japan. After graduating in 1943, she joined the *Office of War Information*, where she provided radio broadcasts for a Japanese audience.³⁾ In March 1945, she started working for the *Foreign News Department of Time Magazine* in New York.

After Japan's surrender on 3 September, 1945, Sirota wanted to return to Japan to find her parents who were still resided there. She feared that her parents were in need of assistance, since Japan had suffered considerable damage during the war. In the days preceding Christmas in 1945, she left for Japan in the service of the *Government Section* (GS) of the *General Headquarters of the Supreme Commander for the Allied Powers* (SCAP), a position held by General Douglas MacArthur (1880–1964). She stayed in Japan for 18 months. On 4 February 1946, the GS was assigned the task of drafting a constitution for the Japanese within a week. Sirota was a member of the team that had to prepare a chapter on fundamental rights, including the rights of women and academic freedom.⁴⁾ In this capacity, she wrote a provision on the equality of men and women that was eventually adopted as Article 24 of the Japanese Constitution, albeit slightly changed. The English translation of this provision is as follows:

Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual co-operation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

The Constitution of Japan, which strongly resembled the draft prepared by the

3) Sirota Gordon, *The only woman in the room*, 88.

4) Sirota Gordon, *The only woman in the room*, 105-106.

Americans, entered into force on 3 May 1947.⁵⁾ In the same year, Sirota returned to the US, where she married Joseph Gordon; she became acquainted with Gordon, an American, while working for the GS in Japan. Apart from raising a family, she worked part-time for the *Japan Society* and the *Asia Society*; through her work, she endeavoured to familiarise Americans with Asian art, particularly dance. She had no involvement in the implementation of the Constitution of Japan after its promulgation.

The title of Sirota's autobiography refers to her contribution to the Constitution of Japan. Her role was significant as she was the only woman who attended the important meeting between the members of the Japanese committee and the representatives of the GS regarding the formulation of new constitution on 4 March 1946. During that meeting, the constitution drafted by the Americans was discussed, including the above-mentioned provision on the equality of men and women proposed by Sirota. Sirota attached considerable value to this episode in her life. Others have also highlighted her role in the successful incorporation of this provision in the Constitution of Japan and its contribution to the emancipation of Japanese women. On 1 January 2013, an *in memoriam* was published in *The New York Times* with the title 'Beate Gordon, long-unsung heroine of Japanese women's rights'.⁶⁾ The author of the article remarked that Sirota 'almost single-handedly wrote women's rights into the Constitution of modern Japan', and that as a result she was now considered a 'feminist heroine'. Previously, in 1987, the political scientist Susan Pharr noted that it was Sirota 'who, in the end, must be credited with setting an extraordinary set of reforms in motion'.⁷⁾ Therefore, this paper aims to conduct an in-depth investigation of the determining factors and circumstances of Article 24 of the Constitution of Japan, Sirota's role in its realisation, and the aftermath.

The following section describes the legal status of Japanese women in the era before the Allied victory in 1945, focusing on both constitutional law and private law.

- 5) R.E. Ward, 'The origins of the present Japanese Constitution' in: *The American Political Science Review* 50/4 (December 1956), 980-1010 (1000 and 1008).
- 6) The *in memoriam* is written by Margalit Fox. See: http://www.nytimes.com/2013/01/02/world/asia/beate-gordon-feminist-heroine-in-japan-dies-at-89.html?pagewanted=all&_r=1& (retrieved on 24 January 2021).
- 7) S.J. Pharr, 'The politics of women's rights' in: R.E. Ward/Y. Sakamoto (eds.), *Democratizing Japan. The allied occupation* (Honolulu 1987), 221-252 (229). J.W. Dower, *Embracing defeat: Japan in the wake of World War II* (London 1999), 369, also praises the contribution of Sirota: 'Thanks largely to Beate Sirota, it [the chapter on fundamental rights] even affirmed "the essential equality of the sexes" – a guarantee not explicitly found in the U.S. Constitution'. See also R.A. Moore/D.L. Robinson, *Partners for democracy. Crafting the new Japanese State under MacArthur* (Oxford 2002), 97-98 and 104.

It will be of particular interest to examine whether there was already some criticism with regard to Japanese women's legal position and, if so, whether there had been any attempts at any pertinent reform. This will enable a proper assessment of the effect of the legal changes brought about by the Americans and particularly by Sirota in Japan. The third section identifies the circumstances under which Sirota drafted Article 24 of the Constitution of Japan as well as her method of working. Specific attention has been devoted to the opposition provoked by her proposals, both from the Japanese and from within the SCAP. The fourth section examines the impact of Article 24 after its promulgation. First, attention has been paid to the revision of the Japanese civil code, particularly regarding the provisions concerning family law, which became necessary in light of the new constitution. Second, the subsequent attempts to debilitate Article 24 of the Japanese Constitution have been discussed. Thus, the endurance of this provision, which was included at the instigation of the Americans, can be assessed. The final section includes the concluding remarks.

2. The legal status of women in Japan until 1945

The civil wars that had haunted Japan for over a century ended in approximately 1600, ushering in the Edo (or Tokugawa) period. Since then, while Japan was ruled in name by an emperor who resided in Kyoto, the actual power rested in the hands the *Shogunate*, a government of a feudal lord, the *shogun*. The *Shogunate* had its headquarters in Edo, which is present-day Tokyo. The political system had feudal characteristics; in other words—although the *daimyos*, the leaders of the local nobility, were subordinate to the *shogun*, they had a considerable autonomy in their own territory; this included rights regarding the development of the law and the administration of justice. Additionally, Japan was a class society, where the nobility and the class of the *samurai* enjoyed special privileges, such as the right to bear arms. Similar to European countries of that period, any representation of the political community by means of elections was absent.

In this era, Japan's social structure was founded on the *Ie*, or 'house', a social unit that can best be described as an 'extended family', usually consisting of three generations.⁸⁾ The notion of *Ie* also had religious connotations, since the deceased ancestors and the future offspring were equally considered to belong to the *Ie*. The *Ie* was led by an authoritative member of the family, who had the competence to decide on all matters concerning family law, such as marriage, adoption, and property rights. Women were completely powerless in the *Ie*. As an individual member of the *Ie*,

8) Röhl, *History of law in Japan since 1868* (Leiden 2005), 262-263, 268 and 311.

women had no rights, similar to most of the male members of the *Ie*. Moreover, during the Tokugawa period, a woman could not be the head of the *Ie*; if a male heir was absent, the 'house' was at risk of disappearing, even if there were daughters. The adoption of the husband of one of the daughters was a popular solution for this problem.⁹⁾ Consequently, women were deprived of the right to inherit and of the capacity to perform juridical acts. They were also disadvantaged in the area of family law. For example, the rules with regard to divorce were considerably more lenient for men than for women. Additionally, women had no say in a possible adoption of a daughter or a son; additionally, boys were much more likely to be chosen for adoption as compared to girls.

During the Tokugawa era, while the relationship between Japan and the West was complex, it was to a large extent equal. The first contact with visitors from Europe dates from the second half of the sixteenth century. However, in 1639, the *shogun* decided to sequester Japan from the outside world to promote political stability; this policy was known as *Sakoku* and aimed at controlling the trade of the powerful *daimyos* with foreign powers and prevent the religious influence of especially Spain and Portugal. The Dutch were the only Europeans with whom communications were allowed. They were granted permission to run a commercial outpost in Dejima, a small island near Nagasaki. The Dutch residents of the island were consulted for advice on practical matters occasionally. It should be noted that these contacts took place on Japanese conditions. The Dutch were forbidden to leave the island without the consent of *shogun*. The Western countries adapted to this situation for over 200 years. Thus, the Western countries advising the Japanese regarding the position of women was out of the question. It must be noted that during this period, women in Western countries were similarly disadvantaged. Considering the year 1900, for example, only a few Western countries had granted suffrage to women.¹⁰⁾ Additionally, after women were granted suffrage, a considerable number of years went by until married women became fully legally competent.¹¹⁾

In the second half of the nineteenth century, the relationship between Japan and the Western powers changed, mainly due to the growing military dominance of the West. In 1854, Japan was forced to open its ports to foreign ships. Treaties were written, with provisions that declared Western laws applicable in Japan regarding cases in which Westerners were involved. Japanese law was depicted as uncivilised

9) Röhl, *History of law*, 305-306.

10) In 1893, New Zealand was the first country to grant voting rights to women. The Netherlands followed in 1919, while in England, suffrage was granted to women as late as 1928.

11) In the Netherlands, for example, this was achieved as late as 1957.

and thus unsuited to Europeans and Americans. The *Shogunate* was held responsible for these unequal treaties, which resulted in its downfall in 1868. Consequently, Emperor Meiji's role was strengthened, leading to the inauguration of the Meiji era. In this period, many reforms were implemented with the specific purpose of putting an end to the unequal treaties between Japan and the Western countries. In 1890, a constitution was promulgated, followed by a civil code framed in the years between 1896 and 1898.¹²⁾ However, during this period, Japan found itself in a conflicted situation: while it felt compelled to modernise after the Western model, at the same time, it was reluctant to give up its own identity.¹³⁾

In accordance with this somewhat ambivalent attitude, the legal status of women was only slightly improved. The Constitution of Japan of 1890, for example, introduced a system of political representation on the basis of elections—however, women were still deprived of suffrage. The successive drafts of a civil code also illustrate this ambivalence. At the end of 1869, the French *Code civil* was taken as a starting point for the codification of private law. This *Code* was indecisive regarding the position of women.¹⁴⁾ In line with the ideals of the French Revolution, the principle of equality of women and men was adopted in theory. However, simultaneously, it was determined that a woman would lose many of her rights the moment she entered a marriage. A married French woman was completely subordinate to her husband¹⁵⁾. Nevertheless, she was in a better position than a Japanese woman, such as with regard to the possibilities of divorce. The French jurist George Hillaire Bousquet (1845-1937), along with Gustave Émile Boissonade (1825-1910), advised the Japanese government

12) Heuser, 'Die erste Phase des japanischen Konstitutionalismus: zum 100. Geburtstag der *Meiji*-Verfassung vom 11. Februar 1889' in: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 49 (1989), 87-97. P.A.J. van den Berg, 'Politics of codification in Meiji Japan (1868-1912). Comparative perspective of position of customary law in Japanese civil code' in: *Osaka University Law Review* 65 (2018), 69-87.

13) See R. Epp, 'The challenge from tradition: attempts to compile a civil code in Japan, 1866-78' in: *Monumenta Nipponica* 22 (1967), 15-48. J. de Jong, "'The principles of steam': political transfer and transformation in Japan, 1868-89' in: *European Review of History* 12 (2005), 269-290 (269-290).

14) J. Boineau/J. Roux, *200 ans de Code civil* (Paris 2004), 187. M. Garaud/R. Szramkiewicz, *La Révolution Française et la famille* (Paris 1978), 170-174.

15) See M.A. Plessner, *Jean Etienne Marie Portalis und der Code civil* (Berlin 1997), 55 and 139-140. E.K.E. von Bóné, 'De vertegenwoordiging van de vrouw in de familieraad en haar positie in voogdijzaken in de negentiende eeuw' in: R. Pieterman e.a. (eds.), *Bijdragen tot de rechtsgeschiedenis van de negentiende eeuw* (Arnhem 1994), 127-138 (129-130). B. Bakker-Nort, *Schets van de rechtspositie der getrouwde vrouw in Duitsland, Zwitserland, Engeland, Frankrijk en Nederland* (The Hague 1914), 194-251.

on the codification of private law, pushing for better protection of women, but to no avail¹⁶⁾. Soon, traditional Japanese customary rules found their way into the drafts, particularly concerning the leadership of the *Ie*, marriage, adoption, and inheritances. In 1890, the draft of the new civil code was published. It was clearly a compromise; the ‘*Ie* system’ was retained, but it also included some important reforms. For example, individual ownership became available to members of the *Ie*. Moreover, although women remained essentially legally incapacitated, they were granted some rights in the case of the absence of their husbands.

Immediately after the publication of the code, a fierce battle erupted.¹⁷⁾ Opponents feared that the introduction of the new civil code would result in the downfall of crucial Confucian values, namely the respect for family ties and familial hierarchy. This opposition was significant because a link was made between the destruction of these moral values and the demise of society at large. The conservative resistance was successful and led the legislators to turn to autocratic Germany for inspiration, with regard to both constitutional law and private law. In the final draft of the civil code that was eventually brought about at the end of the nineteenth century, the *Ie* as a legal entity with a male leader in charge once again occupied a central position. The complete subordination of married women to their husbands was re-established.¹⁸⁾ Only a few of the reforms of the earlier drafts remained, such as the arrangement that a woman could be the head of an *Ie* until her marriage.

With the death of Emperor Meiji in 1912, the Meiji period came to an end. The subsequent Taisho era is characterised by a grassroots movement for more democracy and better protection of the rights of women.¹⁹⁾ The critics of the political system of that era pointed out the connection between the flawed democracy and the phenomenon of the *Ie*. In 1919, the pressure for reforms had become so intense that the government decided to appoint a committee in charge of revising the civil code. The recommendations of this committee were published between 1925 and 1927. The committee was in favour of improving the position of married women and strengthening the rights of

16) Epp ‘The challenge from tradition’, 29.

17) K. Steiner, ‘The occupation of Japan and the reform of the Japanese civil code’ in: R.E. Ward/Y. Sakamoto (eds.), *Democratizing Japan. The allied occupation* (Honolulu 1987), 188-220 (189-190).

18) Röhl, *History of law*, 283. K. Steiner, ‘The revision of the civil code of Japan: provisions affecting the family’ in: *The Far Eastern Quarterly* 9/2 (February 1950), 169-184 (172).

19) See K. Matsumoto, ‘Development of parliamentary democracy and the modern party state in Japan up to 1945’ in: *Jahrbuch des öffentlichen Rechts* NF 16 (1967), 513-565 (542-551).

women within the *Ie*.²⁰⁾ It suggested granting legal capacity to women, in addition to enabling them to become the permanent head of an *Ie*. The recommendations of this committee were received favourably. However, in 1935, the political climate had changed and a reactionary regime came to power. Although the committee continued working and presented a detailed draft of the reform act in 1943, revision of the civil code had to wait until after the Allied victory in 1945.

3. Sirota and the realisation of the Constitution of Japan of 1947

3.1 The draft of the *Government Section* (GS)

Sirota was hired for a position in the GS because of her familiarity with the situation in Japan, her extensive knowledge of languages, including Japanese, and her previous employment with the *Office of War Information* in the US. However, she was not trained as a jurist and did not have any expertise in the field of constitutional law. In other words, there was no indication that she would be involved in the preparation of a new constitution for Japan. Indeed, when the Americans arrived in defeated Japan, in September 1945, although there was a directive regarding the reformation of the poisoned constitutional legislation of Japan, they had no plans to draft a constitution themselves.²¹⁾ After all, in the 10th provision of the Declaration of Potsdam of 26 July 1945, the following was stated:

the Japanese government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for fundamental human rights shall be established.²²⁾

This implied a reform of the Meiji Constitution of 1890, which, according to the Americans, showed too many similarities with the autocratic constitution of Prussia. Initially, MacArthur intended to leave this revision mostly to the Japanese. This is perceived from documents of the period of October 1945, which show his informally encouraging Fumimaro Konoe (1891–1945) to do some preparatory work on the revision.²³⁾ At that time, Konoe was a Minister without Portfolio in the government led

20) Röhl, *History of law*, 284. Steiner, ‘The occupation of Japan’, 191. Y. Kawashima, ‘Americanization of Japanese family law, 1945–1975’ in: *Law in Japan* 16 (1983), 54–68 (56–57).

21) T. McNelly, *The origins of Japan’s democratic constitution* (Lanham/New York/Oxford 2000), 1–2. R.B. Finn, *Winners in peace. MacArthur, Yoshida, and postwar Japan* (Berkeley/Los Angeles/Oxford 1992), 90.

22) Dower, *Embracing defeat*, 347.

23) See for the work of Konoe on the revision of the Constitution of 1890: McNelly, *The origins* ↗

by Naruhiko Higashikuni (1887–1990). In the same month, the Japanese government appointed a committee that aimed to analyse the problems assailing the Meiji Constitution. This committee was called the Matsumoto committee after its chairman Joji Matsumoto (1877–1954).

Konoe's activities came to an abrupt end in December 1945, after he was included in a list of major war criminals. On 16 December 1945, he committed suicide. The Matsumoto committee continued its work for some time, but MacArthur intervened in the first week of February 1946.²⁴⁾ He strongly favoured the preservation of the emperor as head of the Japanese state, hoping that this would enable him to use the Japanese bureaucracy for the reconstruction of the country. The alternative was an American military administration, that would require a significant number of resources and personnel. However, to have this strategy accepted by the other Allied powers and by his own government, MacArthur had to convince them that Japan would adopt a constitution that fulfilled the requirements of the Declaration of Potsdam. In other words, the new Japanese constitution would need to introduce a viable democracy and properly enshrined fundamental rights.

MacArthur soon realised that such radical changes were not to be expected from the Matsumoto committee, at least not in the short term. The fear of losing the initiative and thus jeopardising the position of the emperor promoted him to make a decision of ordering his own staff to prepare a draft constitution.²⁵⁾ On 4 February 1946, the GS was informed that it had to prepare a draft constitution within a week. At that time, the GS consisted of only 23 odd members and given the time constraints, it is easy to understand that all of these members were involved in the constitutional drafting project. This also included the then 22-year-old Sirota, despite her limited experience with legal texts.

MacArthur provided the GS with succinct guidelines. The draft constitution had to be founded on the following three principles: the emperor would be retained as head of state, Japan would renounce warfare as a means to solve conflicts, and the feudal system would be abolished. No mention was made of fundamental rights and there was no reference to the principle of equality between men and women.

This did not indicate that MacArthur was against measures that would strengthen the position of women in Japan. On the contrary, in a paper given to Prime Minister

²⁴⁾ of Japan's democratic constitution, 31-53.

24) See for the Matsumoto-commissie: H. Tanaka, 'The conflict between two legal traditions in making the Constitution of Japan' in: R.E. Ward/Y. Sakamoto (eds.), *Democratizing Japan. The allied occupation* (Honolulu 1987), 107-132.

25) Dower, *Embracing defeat*, 362-363.

Kijuro Shidehara (1872–1951) on 11 October 1945, he ordered 5 basic reforms, including granting voting rights to Japanese women.²⁶⁾ The selection of these points was MacArthur's own, probably with some staff help.²⁷⁾ The instructions from Washington were silent on the issue of enfranchisement of women. Moreover, the criminal provision on adultery, which was only applicable to women, was removed as a result of American pressure.²⁸⁾ In his autobiography, first published in 1964, he wrote the following: 'Of all the reforms accomplished by the occupation in Japan, none was more heart-warming to me than this change in the status of women'.²⁹⁾

However, improving the rights of women in itself was not the primary priority of the SCAP.³⁰⁾ MacArthur and most of the other senior American policy-makers, either in Japan or in Washington, were only interested in the emancipation of women as an element of their strategy to democratise Japanese society as a whole.³¹⁾ This should not come as a surprise. Admittedly, voting rights for women were already constitutionally entrenched in the US since 1920 with the Nineteenth Amendment. However, the US Constitution did not include a general provision on the equality of men and women subsequently. In 1972, an amendment to that effect was adopted by the American Congress, but this amendment has still not been ratified by the required number of member states.³²⁾ In the 1940s and 1950s, women in the US were still disadvantaged in everyday life. Sirota, for example, writes in her autobiography that in the early 1950s, she made some enquiries at the company IBM about a vacancy and in response, was informed that the company did not hire married women.³³⁾

Among middle management, much attention was paid to the position of women, which, according to Pharr, was not unusual.³⁴⁾ On her first working day, at the end of December 1945, Lieutenant Colonel Pieter Kornelis Roest and Dr. Harry E. Wildes (1890–1982), both officers in the *Political Affairs Division* of the GS ordered Sirota to

26) Finn, *Winners in peace*, 40.

27) Finn, *Winners in peace*, 33 and 40.

28) Röhl, *History of law*, 623.

29) D. MacArthur, *Reminiscences* (New York 1965), 349. See also MacArthur, *Reminiscences*, 323. Finn, *Winners in peace*, 29.

30) Pharr, 'The politics of women's rights', 226-228.

31) Y. Tsuchiya, 'Democratizing the Japanese family: the role of the civil information and education section in the Allied Occupation 1945-1952' in: *The Japanese Journal of American Studies* 5 (1994-1995), 137-162, 138.

32) Pharr, 'The politics of women's rights', 225.

33) Sirota Gordon, *The only woman in the room*, 142-143. See also Sirota Gordon, *The only woman in the room*, 89.

34) Pharr, 'The politics of women's rights', 245.

investigate the role of women in Japanese politics as part of a project to describe the functioning of political parties in Japan.³⁵⁾ When the various subject matters that should be dealt with in the new constitution were allocated on 4 February 1946, it again became clear that Roest, a somewhat eccentric anthropologist, who was born in the Netherlands and had wide experience in Asia and the Middle East, attached importance to the rights of women. In order to advance the work on the draft, eight committees were established—seven specialist committees and a *Steering Committee* that was responsible for the coordination of these seven committees and the final result. Roest became the head of the committee charged with drafting a chapter on civil rights. Wildes and Sirota were both assigned to this committee. Subsequently, Roest ordered Sirota to work on the provisions concerning the rights of women because she was a woman.³⁶⁾ At her own request, Sirota was also entrusted with the task of preparing a provision safeguarding academic freedom.

While Sirota's involvement in the drafting of the Constitution of Japan was a coincidence, it was a happy coincidence for at least two reasons.³⁷⁾ First, as she was raised in Japan, she had become aware of the subordinate position of women in that country, as evidenced by her autobiography. In her autobiography, she mentioned that as a young woman, she had learned to avoid eye contact.³⁸⁾ Similarly, she wrote that she remembered from her youth the Japanese proverb that 'a man who has his pregnant woman working is not a real man'.³⁹⁾ As stated above, she had also experienced discrimination as a woman when she was looking for a job in the US during the war. However, it should be noted that these experiences had not turned her into an active feminist. She described her mother taking care of the household and supporting the career of her husband by maintaining an extensive social network in an understanding and compassionate manner.⁴⁰⁾ Neither before she entered the service of the GS, nor afterwards, Sirota presented herself as a fierce advocate of women's rights. She

35) Sirota Gordon, *The only woman in the room*, 23.

36) Sirota Gordon, *The only woman in the room*, 106. Pharr, 'The politics of women's rights', 229, left the question who took the initiative to draft a provision on women's rights unanswered. When she wrote this essay, the autobiography by Sirota had not been published yet.

37) See Dower, *Embracing defeat*, 365, who mentions 'her almost serendipitous presence'. See for the background and role of Sirota also: J.M. Gleich-Anthon, *Democratizing women: American women and the U.S. Occupation of Japan, 1945-1951* (Diss. Ann Arbor 2007), 35-41.

38) Sirota Gordon, *The only woman in the room*, 11.

39) Sirota Gordon, *The only woman in the room*, 143. See also Sirota Gordon, *The only woman in the room*, 109-111.

40) Sirota Gordon, *The only woman in the room*, 47 and 61.

rejected campaigns such as burning bras, which she called ‘undignified’.⁴¹⁾

Second, Sirota had an extensive knowledge of the major European languages, which made the constitutions of these countries directly accessible to her. After she was ordered to draft some provisions regarding the rights of women, she immediately went to the libraries that had survived the war to gather relevant documents.⁴²⁾ She returned with the constitutions of France, the Soviet Union, the Scandinavian countries, and the Republic of Weimar, among others. Additionally, she managed to get a copy of the Meiji Constitution and the Japanese civil code.

Sirota was particularly interested in the relatively recent Constitution of the Weimer Republic, dating from 1919, since Article 119 section 1 of this Constitution was clear and detailed concerning the equality of men and women⁴³⁾ Although Sirota was not a jurist, she realised that the provisions of the new Japanese constitution had to be implemented in further legislation, particularly in the civil code with its rules regarding family law and succession law. Based on her previous experience in Japan and on what she had read in the then prevailing Japanese civil code, she was convinced that this legislation would be fleshed out in a conservative way if the new constitution had room for different interpretations. Her assumption was based on provisions in the code due to which women were legally incapacitated and unable to own property.⁴⁴⁾ She therefore decided to take section 1 of Article 119 as a starting point for preparing a draft of provisions outlining women’s rights, subsequently strengthening this provision considerably. She wanted to make sure that there could be no doubt as to its meaning and the way in which it would be implemented in future legislation. Consequently, Article 18 of Sirota’s draft constitution was totally unambiguous:

The family is the basis of human society and its traditions for good or evil permeate the nation. Hence marriage and the family are protected by law, and it is hereby ordained that they shall rest upon the undisputed legal and social equality of both sexes, upon mutual consent instead of parental coercion, and upon cooperation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to

41) Sirota Gordon, *The only woman in the room*, 145.

42) Sirota Gordon, *The only woman in the room*, 106-107.

43) McNelly, *The origins of Japan’s democratic constitution*, 75. Section 1 of Article 119 of the Constitution of Weimar read, in the English translation: ‘Marriage, as the foundation of family life and of the preservation and increase of the nation, stands under the special protection of the constitution. It shall rest upon the equality of rights of both sexes’.

44) Sirota Gordon, *The only woman in the room*, 109.

marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.⁴⁵⁾

Additionally, she drafted another provision that was clearly designed to counter conservative Japanese tradition related to the *Ie*. This provision, Article 20 of her proposal, determined explicitly that for a decision of a family to adopt a child, the consent of both spouses was required. In the same provision, the abolition of the right of primogeniture was proclaimed.⁴⁶⁾

Sirota's interest in the Constitution of the Weimar Republic was also triggered by the fact that this constitution paid ample attention to social fundamental rights, similar to the Constitution of the Soviet Union. Sirota particularly looked at sections 2 and 3 of Article 119 of the Constitution of the Weimar Republic, dealing with the right of mothers to protection and care by the government. Both sections found their way to Sirota's draft as Article 19. Additionally, she included some social fundamental rights with regard to children, such as the right to free education (Article 21) and the right to free medical care (Article 24) in the draft constitution.

On 8 February 1946, the draft of the committee for fundamental rights, which had outlined no less than 41 provisions, was discussed in a meeting with the *Steering Committee*. It was to be expected that the latter committee would raise some objections against the nine provisions that had been prepared by Sirota. After all, the senior officers of the GS were all men and, as mentioned above, the issue of women's rights was not high on their agenda.⁴⁷⁾ The members of the *Steering Committee* were indeed critical of Sirota's draft provisions. They believed that the provisions suggested by Sirota were too detailed for a constitution. They also remarked that it was not possible to impose a 'new mode of social thought' on a country by means of legislation.⁴⁸⁾ However, Roest and Wildes fully supported Sirota.⁴⁹⁾ Roest explicitly reminded the members of the *Steering Committee* of the fact that 'legally women and children are the equivalent of chattel in today's Japan'.⁵⁰⁾ Eventually, the social fundamental rights in particular were removed from the draft constitution. Of the nine provisions prepared by Sirota, only two made it to the final draft of the GS: Article 17 concerning academic

45) Sirota Gordon, *The only woman in the room*, 109 and 117.

46) Sirota Gordon, *The only woman in the room*, 117-118, where the full text of all (nine) provisions drafted by Sirota is included.

47) See also Pharr, 'The politics of women's rights', 237-238.

48) Sirota Gordon, *The only woman in the room*, 114-116.

49) Pharr, 'The politics of women's rights', 231.

50) Sirota Gordon, *The only woman in the room*, 115.

freedom was included as Article 22, and the above-mentioned Article 18 on the equality of men and women in the context of the family as Article 23.

Despite the fact that Sirota was disappointed by the result of the meeting, it is remarkable that her draft of Article 18 concerning the rights of men and women was accepted practically unaltered by the *Steering Committee*.⁵¹⁾ After all, the text was rather strongly worded. Pharr offers an interesting explanation for this phenomenon. She points to the fact that opposition to an overly precise wording of a provision on the rights of women is often rooted in male fears of losing their privileged position, both tangible and intangible.⁵²⁾ However, the members of the *Steering Committee* were not exposed to this risk since they would only stay in Japan for a few years. They would not be adversely affected by an improvement in the position of Japanese women and could therefore easily take a more radical stance with regard to Japanese women's rights than was acceptable at home. Their opposition to Sirota's proposals was more likely prompted by the fear that radical reforms would jeopardise the willingness of the Japanese to work constructively with the Americans. Or, as a member of the *Steering Committee* put it:

if we push hard for things like this, we could well encounter strong opposition.
In fact, I think there's a danger the Japanese government might reject our draft entirely.⁵³⁾

In view of this, it is understandable that Article 18 did not become the first target of the American senior officers. It was observed that the main concern of the members of the *Steering Committee* was regarding the social fundamental rights, probably because they evoked associations with communism.⁵⁴⁾

3.2 From draft to Constitution

On 13 February 1946, the draft prepared by the GS was handed to members of the Japanese government with the communication that the draft constitution prepared by the Matsumoto committee was not acceptable in its present form. The Japanese were eager to avoid the American proposal because they preferred a constitution that did not have too many references to fundamental rights and which did not explicitly mention the principle of popular sovereignty. They therefore decided to adapt the draft prepared

51) See for the text of the draft constitution of the GS: K. Inoue, *MacArthur's Japanese Constitution. A linguistic and cultural study of its making* (Chicago/London 1991), 303-314.

52) Pharr, 'The politics of women's rights', 246-247.

53) Sirota Gordon, *The only woman in the room*, 116.

54) See McNelly, *The origins of Japan's democratic constitution*, 76.

by the Matsumoto committee in the hope that the Americans would agree to the adapted version of this draft.⁵⁵⁾ For example, they seemingly incorporated Article 23 of the draft of the GS in the draft prepared by the Matsumoto committee; however, they reformulated it to the effect that its essence became the protection of matrimony.⁵⁶⁾ In the closing sentence of the Japanese version of this provision, it was stated that ‘the State shall endeavor to ensure that mothers shall not be obliged by economic necessity to engage in labor to the neglect of their duties in the home’.⁵⁷⁾ Eventually, the provision proposed by the Japanese read as following:

Marriage has to be based only on mutual consent of a man and a woman, and maintained through mutual cooperation of the spouses with the equal rights of husband and wife as a basis.⁵⁸⁾

The references to equality with regard to specific issues, such as inheritances, divorce, property rights, and domicile, were all expunged.

It was this proposal that the Japanese took to the marathon session with the Americans that took place from 4 March 1946 to 5 March 1946, where an attempt was made to bridge the differences. At the request of Colonel Charles L. Kades (1906–1996), head of the *Steering Committee*, Sirota was present at this meeting as an interpreter because of her knowledge of the Japanese language. At first, the delegation of the Japanese government kept its own draft as the basis for the negotiations. This was not acceptable for the Americans and consequently little progress was made. It was not until late in the evening that the Japanese budged from their position. They realised that their proposal based on the Meiji Constitution of 1890 was about to fail and decided to focus their efforts at influencing the draft prepared by the Americans. Finally, some progress was made.

In the middle of the night, the negotiators started to discuss the provision on the equality of men and women. In her autobiography, Sirota reported that the Japanese delegation tried to weaken this provision, arguing that it was ‘inappropriate’ in view of the Japanese traditions.⁵⁹⁾ According to her, it was a sensitive issue that gave rise to as many emotions, similar to the discussions on the future status of the emperor. Colonel Kades broke the stalemate by saying that the provision was written by Sirota.

55) Pharr, ‘The politics of women’s rights’, 231.

56) Pharr, ‘The politics of women’s rights’, 232.

57) See for the full text: Pharr, ‘The politics of women’s rights’, 232.

58) Inoue, *MacArthur’s Japanese Constitution*, 236.

59) Sirota Gordon, *The only woman in the room*, 123. See also Pharr, ‘The politics of women’s rights’, 231-232.

‘She was brought up in Japan’, he stated to the Japanese, ‘knows the country well, and appreciates the point of view and feelings of Japanese women. There is no way in which the article can be faulted. She has her heart set on this issue. Why don’t we just pass it?’⁶⁰⁾ After a few moments of silence, the Japanese replied: ‘All right, we’ll do it your way’. Subsequently, the negotiations continued throughout the next day, until about 4 o’clock in the afternoon.⁶¹⁾ On 6 March 1946, the modified draft of the GS was published by the Japanese government. The government conveyed the impression that it was an amended version of the Meiji Constitution that was prepared by the Japanese.⁶²⁾

According to the historian John Dower, the compliance of the Japanese government with regard to the provision proposed by Sirota was partly prompted by the fact that she had supported the Japanese position on some other issues.⁶³⁾ Equally important was probably the fact that the Japanese still managed to shorten and water down the wording of the provision, as discerned from a comparison of the original proposal of the GS with the final text of the provision.⁶⁴⁾ For example, the reference to ‘male domination’ disappeared. In this context, it is also important to note that there were two versions of the constitution, an English version and a Japanese version, which created room for interpretation that was certainly used by the Japanese.⁶⁵⁾ Finally, the Japanese government possibly felt more generally pressured by American threats to publish the original draft of the GS.⁶⁶⁾ In that case, the ultraconservative government feared that it would lose popular support.

The last step towards a new constitution was taken on 21 June 1947, when the draft was officially presented to the *Kokkai*, the Japanese Parliament.⁶⁷⁾ While the general elections of 10 April 1946 resulted in the ultranationalistic politicians disappearing from the House of Representatives, the conservatives still held the majority there.⁶⁸⁾ The delegates included 39 women.⁶⁹⁾ The House of Councillors was less representative because its members were appointed. After the occupying forces carried

60) Sirota Gordon, *The only woman in the room*, 123.

61) Finn, *Winners in peace*, 101.

62) Dower, *Embracing defeat*, 383-385.

63) Dower, *Embracing defeat*, 380.

64) Inoue, *MacArthur’s Japanese Constitution*, 236. See also Moore/Robinson, *Partners for democracy*, 131.

65) Inoue, *MacArthur’s Japanese Constitution*, 266-270.

66) McNelly, *The origins of Japan’s democratic constitution*, 10.

67) Dower, *Embracing defeat*, 387.

68) Dower, *Embracing defeat*, 388.

69) Pharr, ‘The politics of women’s rights’, 233. Finn, *Winners in peace*, 108.

out a purge, this House consisted of a group of people who were relatively highly-educated and cosmopolitan.⁷⁰⁾

Despite these changes in the Parliament, there was considerable opposition to Article 22 of the draft, later Article 24 of the Constitution of Japan, both in the House of Representatives and in the House of Councillors.⁷¹⁾ The emphasis in the debates was on whether that provision would end the Japanese family system, based on the *Ie*. Many Japanese delegates were particularly afraid that the phrase ‘individual dignity’ would lead to a far-reaching individualisation within the family.⁷²⁾ These traditionalists argued that this individualisation of rights would be at the expense of ‘filial piety’, the mutual respect between members of a family. This, they feared, would also have implications for the Japanese political system, as filial piety also formed the moral basis for the government’s system. They sought a way out of these consequences of Article 22 of the draft and proposed that the demand for equality should be understood in such a way that the family system, and especially the rights of the head of the *Ie*, could be preserved. For example, the lawyer and politician Miura Toranosuke (1899–1973) argued that although men and women were equal, they had different responsibilities within an *Ie*.⁷³⁾ In the subcommittee of the House of Representatives on the revision of the constitution, which discussed the draft from the end of July 1946, some members went a step further;⁷⁴⁾ this subcommittee, which had no female members, argued, with an appeal to the philosopher Schopenhauer, that men and women were fundamentally different from each other and that men were superior.

At first, the answer of the government to this opposition was evasive and it remained particularly vague about the exact legal consequences of Article 22 of the draft. It was argued that the Japanese family system was unique and viable and should therefore not suffer from the provision.⁷⁵⁾ In this situation, the precise wording as proposed by Sirota proved its significance. Kato Shizue (1897–2001), a member of the socialist parliamentary group and a well-known champion of women’s rights, noted that she had difficulty with the suggestion that there was no need to amend the other legislation. She took Article 22 of the draft constitution as the starting point for her argument. She described this provision as a ‘welcome basis for dramatically democra-

70) Dower, *Embracing defeat*, 388.

71) Inoue, *MacArthur’s Japanese Constitution*, 238–265. See also Röhl, *History of law*, 296–297.

Steiner, ‘The revision’, 173. Steiner, ‘The occupation of Japan’, 193–195.

72) Inoue, *MacArthur’s Japanese Constitution*, 260–265.

73) Inoue, *MacArthur’s Japanese Constitution*, 241–242.

74) Pharr, ‘The politics of women’s rights’, 232.

75) Inoue, *MacArthur’s Japanese Constitution*, 239–240. Steiner, ‘The revision’, 174–175.

tizing our family life'.⁷⁶⁾ Subsequently, she found that on the basis of the family law provisions in the current Japanese civil code, the woman was still in a subordinate position. In her view, Article 22 of the draft served as a legal standard to adapt this feudal family system.

In response to Shizue's speech, the government tried to save the day by distinguishing between the legal situation and moral situation.⁷⁷⁾ Legally, the government now admitted, the regulations concerning the family as included in the civil code had to be adjusted to the new constitution. For example, the government noted that the regulation in the civil code, which stipulated that the head of the family could determine the domicile of all members, was not permitted under the new constitution.⁷⁸⁾ However, according to the government, this should be accomplished as much as possible without prejudice for the preservation of the ethical essence of family values.⁷⁹⁾

It is clear that the conservative majority in the *Kokkai* strongly objected to Article 22 of the draft and that the government was also unhappy with this provision. However, as the government was unable to make fundamental changes to the largely American-imposed constitution, it resorted to a rhetorical exercise, namely a distinction between the legal situation and moral situation.⁸⁰⁾ It is uncertain whether the conservative members of the *Kokkai* were convinced by this exercise, or whether they also realised that only by accepting this constitution could the monarchy be preserved and the Allied occupation could be brought to an end. Regardless of this situation, the constitution was passed by an overwhelming majority in both the House of Representatives and in the House of Councillors, including Article 22 of the draft, which became Article 24 in the final version of the Constitution of Japan.⁸¹⁾ It was promulgated on 3 November 1946 and 6 months later, it entered into force. Finally, the equality of men and women in Japan was constitutionally entrenched.

4. The effect of Article 24 of the Constitution of Japan

4.1 The revision of the civil code: 1946–1947

It is clear that Sirota's role had been particularly important in drawing up the provision concerning the equality of men and women. Inoue pointed out that at that stage, a number of proposals were made from the Japanese public that showed some interest

76) Inoue, *MacArthur's Japanese Constitution*, 242.

77) Inoue, *MacArthur's Japanese Constitution*, 241, 252–255 and 260.

78) Inoue, *MacArthur's Japanese Constitution*, 243–244.

79) Inoue, *MacArthur's Japanese Constitution*, 247.

80) Inoue, *MacArthur's Japanese Constitution*, 248–249.

81) Dower, *Embracing defeat*, 399–400.

in the position of women. The draft of a constitution prepared by the Socialist Party, for example, included the following provision: ‘The family life of the people will be protected. The basis of marriage will be that the men and the women have/will have equal rights’.⁸²⁾ On 26 November 1945, the *Constitution Investigation Society* published a plan for a constitution with a similar, albeit somewhat shorter provision regarding equal rights for men and women.⁸³⁾

However, these proposals were not very radical, and they probably did not intend to abolish the *Ie* system. Additionally, these proposals by Japanese civil society organisations do not show any influence on Sirota’s work. From a memorandum of 11 January 1946, it becomes clear that the head of the GS, General Courtney Whitney (1897–1969), took note of the draft of the *Constitution Investigation Society*.⁸⁴⁾ However, his response does not show a specific interest in women’s rights and there is no indication that he subsequently took action in that area.⁸⁵⁾ Pharr therefore concludes that only a few individuals, particularly Sirota, were concerned with the drafting of the gender equality clause.⁸⁶⁾

At the time of the discussion of the draft constitution in the *Kokkai*, the situation regarding gender equality had changed significantly. Japanese women began to be organised to secure their rights. The female members of the *Kokkai*, for example, formed a tight-knit club that supported the proposed constitution. Consequently, Shizue was not alone in her fight in the *Kokkai* for the preservation of women’s rights included in the draft. Various women’s organisations had also formed outside the *Kokkai*, standing up for the provisions on the emancipation of women. The organisation of women’s groups in Japan had been greatly promoted by the SCAP staff, especially by members of the middle management.⁸⁷⁾

Although Sirota did become involved in these activities in 1946, Ethel Berenice Weed (1906–1975) was the central figure in this informal network of women in the service of the occupying forces. Weed was a Lieutenant in the *Women’s Army Corps*,

82) Inoue, *MacArthur’s Japanese Constitution*, 237.

83) Inoue, *MacArthur’s Japanese Constitution*, 237: ‘Men and women have, officially and privately, equal rights’.

84) Steiner, ‘The occupation of Japan’, 191–192.

85) Whitney only remarked that the draft included an excellent provision on the prohibition of discrimination based on ‘birth, status, sex, race and nationality’. Steiner, ‘The occupation of Japan’, 191, suggests that the plan of the *Constitution Investigation Society* has given an early impetus for the drafting of Article 24. However, in the light of the above, this suggestion is not very plausible.

86) Pharr, ‘The politics of women’s rights’, 233 and 238.

87) Pharr, ‘The politics of women’s rights’, 238–241.

and from October 1945, she worked as a *Women's Information Officer* in the *Education Section* of the SCAP in Japan. She interpreted her task broadly and thus contributed enormously to the creation of a 'women's policy alliance' in Japan. Due to the closed nature of the meetings of the GS, Weed was never involved in the drafting of Article 24 of the Constitution of Japan, but contributed substantially to its acceptance in the *Kokkai*.⁸⁸⁾ With regard to the amendments to the civil code, which was significantly important to the position of women, there was a similar division of labour between Sirota and Weed. Sirota had ensured that Article 24 was formulated in such a way that it provided a necessary impetus to amend this code. However, it was Weed, with her American-Japanese network, who was deeply involved in implementing these changes.⁸⁹⁾

As has been shown above, the government remained as vague as possible in the debates in the *Kokkai* about the consequences of Article 24 for the system of the *Ie* as enshrined in the civil code at that time.⁹⁰⁾ Ultimately, the government's intention was to save as much of this Japanese family system as possible. However, in the Japanese Ministry of Justice, more specifically, in its *Civil Affairs Bureau*, lawyers immediately began to consider changes to the civil code that would likely be necessary as a result of the future Article 24 after the publication of the draft constitution on 6 March 1946. Specifically, there were fears that the Japanese Supreme Court would declare many provisions of the civil code of the Meiji era based on the *Ie* system as ineffective because of their conflict with the new constitution.⁹¹⁾

Undoubtedly, the forthcoming Article 24 was the trigger for these preparations, but among lawyers of the aforementioned *Civil Affairs Bureau* itself, there were also criticisms about the *Ie* system, which no longer corresponded with the realities of family life.⁹²⁾ Weed immediately exerted influence at this stage, for example, by pointing out to the head of the bureau, Kenichi Okuno, the possible conflict of the Japanese *Ie* system with Article 24.⁹³⁾ Finally, it should be mentioned that a memorandum was produced by five female Japanese lawyers, emphasising the difficult position of women as a result of the *Ie* system, which was unofficially discussed with members of

88) Pharr, 'The politics of women's rights', 239-245.

89) Tsuchiya, 'Democratizing the Japanese family', 142-153. Steiner, 'The occupation of Japan', 196 and 200. Pharr, 'The politics of women's rights', 239.

90) See also Steiner, 'The occupation of Japan', 195, who discussed the discrepancies in the statements of the government about the future of the *Ie* system.

91) Röhl, *History of law*, 296. See also Steiner, 'The occupation of Japan', 202.

92) Steiner, 'The occupation of Japan', 196.

93) Steiner, 'The occupation of Japan', 196.

the GS.⁹⁴⁾ On behalf of the GS, the aforementioned Roest and Alfred Christian Oppler (1893–1982), a jurist of German-Jewish descent who had emigrated to the United States in 1939, attended this meeting; however, Sirota was absent from this meeting.

In March 1946, the Japanese government formed the *Provisional Legislative Investigating Committee* (PLIC) at the cabinet level, headed by the prime minister.⁹⁵⁾ Another committee was established at the level of the Japanese Ministry of Justice, the *Legislation Deliberation Committee* (LDC). On behalf of the GS, the aforementioned Oppler and Thomas L. Blakemore (1915–1994), an American expert in the field of Japanese law, were charged with liaising with these two committees, especially with regard to the amendments to the civil code.⁹⁶⁾ They had the right of veto, but restricted themselves to the role of observers and critics. Work did not start until July 1946, first in the LDC of the Ministry of Justice. From the outset, some members of the various subcommittees of the LDC, for example, Sakae Wagatsuma (1897–1973) and Zenno-suke Nakagawa (1897–1975), both law professors, aimed to completely abolish the *Ie* system.

Despite criticism from the conservative side, a proposal to this end was submitted to the full LDC, where it was the subject of intensive discussions from 14 August 1946 to 16 August 1946. The opponents in this committee wondered whether there was a specific order from the SCAP to completely remove the Japanese *Ie* system from the civil code.⁹⁷⁾ If not, they argued that the system could continue to exist. In his response, Wagatsuma pointed out that the subcommittee's proposal stemmed from the long-held desire of Japanese family law experts, and not from a mandate from the SCAP.⁹⁸⁾ Additionally, Wagatsuma emphasised that it was not about the complete abolition of the *Ie* system, but only about the removal of the relevant provisions from the civil code. Initially, the government continued to resist, but eventually changed its stance when some prominent members of the committee, including Wagatsuma and Nakagawa, threatened to resign.⁹⁹⁾ During the months of September 1946 and October 1946, the proposal was discussed again in both the LDC and PLIC, with conservatives taking the opportunity to push their narrative; however, ultimately, they were unsuccessful.¹⁰⁰⁾

The next step was to actually amend the existing legislation in the light of the

94) Steiner, 'The occupation of Japan', 196-197.

95) Steiner, 'The occupation of Japan', 197.

96) Steiner, 'The occupation of Japan', 197. Kawashima, 'Americanization', 57.

97) Steiner, 'The occupation of Japan', 199.

98) Steiner, 'The occupation of Japan', 199. See also Röhl, *History of law*, 297 and 323.

99) Steiner, 'The occupation of Japan', 200. Röhl, *History of law*, 298.

100) Steiner, 'The occupation of Japan', 200-201.

decision made in the PLIC to abolish the family system. A temporary law was prepared first, in which the most important changes were laid down, such as ending the legal incapacity of women and the removal of various provisions of succession law aimed at preserving the *Ie* system. It was intended that this ‘Law concerning temporary adjustments to the civil code pursuant to the enforcement of the Constitution of Japan’, which contained only 10 provisions, would be quickly guided through the legislative process and subsequently entered into force at the same time as the constitution on 3 May 1947. A full revision of the civil code would follow later.

While the conservatives reiterated their concerns about the impact of the law on the family system when discussing the ‘Law concerning temporary adjustments’, it was passed in March 1947 without undue difficulty. While the government argued that the removal of the family system from the civil code was necessary because of Article 24, it also expressed hope that traditions and customs associated with the family system would not be lost. Wagatsuma contributed to the adoption of the ‘Law concerning temporary adjustments’ by again emphasising that the abolition of the *Ie* system should not be seen as a consequence of the military defeat, since similar proposals had already been made during the Taisho period.¹⁰¹⁾

In the work on revising the civil code itself, the conservatives made another attempt to keep the family system alive in a single provision.¹⁰²⁾ They encountered organised resistance from the *League for Realizing the Democratisation of Family Law*, which included various female lawyers.¹⁰³⁾ The conservatives achieved only a single victory, in the form of Article 897, which exempted the genealogical papers and objects concerning the ancestral cult from the normal rules of succession. The new civil code came into effect on 1 January 1948.

4.2 Article 24 in Japanese hands: 1947–present

The introduction of Article 24 and the amendments to the family law provisions of the civil code based on this provision met by opposition in various Japanese circles. Similar to the period before the war in the Taisho era, conservative advocates of the *Ie* system faced more progressive advocates of reform based on the equal rights of individuals.¹⁰⁴⁾ The success of the reformers after the war was due in large part to the support of the US occupying forces, which can probably also explain the radical nature

101) Steiner, ‘The occupation of Japan’, 202.

102) Steiner, ‘The occupation of Japan’, 202-204.

103) Steiner, ‘The occupation of Japan’, 204-205.

104) See R.J. Smith, ‘The sources and proponents of “Tradition” and “modernity” in Japanese Law’ in: *Journal of Legal Pluralism* 33 (1993), 231-239 (232).

of the reforms.¹⁰⁵⁾ From 1948 onwards, the benevolent attitude of the Americans towards radical reforms came under some pressure because of the increasing communist threat, particularly in Korea. They became more interested in stability and questioned the wisdom of overly radical reforms.¹⁰⁶⁾ Yet many Americans, including Weed, continued to work for the emancipation of Japanese women.¹⁰⁷⁾

Despite the success of the reformers, the contradictions within Japanese politics had not disappeared.¹⁰⁸⁾ Even before the departure of the US occupying forces in 1952, there were voices calling for the abolition of the Japanese family system to be reversed.¹⁰⁹⁾ In 1954, conservative Japanese politicians made a serious attempt to turn back the clock.¹¹⁰⁾ Nobusuke Kishi (1896–1987), who became Prime Minister sometime later, proposed that Article 24 be amended that year. In his view, this provision was based too much on an individualistic approach to marriage, with disastrous consequences for the *Ie* system. Kishi remarked the following:

I believe that the existence of the *Ie*, which so well befits Japan's traditions, its customs, and its national conditions, is essential. It is based on the spirit of the *Ie* that the state is constituted, while at the same time it forms the foundation for the state's advance internationally.¹¹¹⁾

Subsequently, proposals to amend the civil code were also made; however, partly due to fierce resistance from women's organisations, these proposals came to nothing. In 1962, Hayato Ikeda (1899–1965), who had succeeded Kishi as Prime Minister in 1960, rejected the restoration of the pre-war family system.¹¹²⁾ However, at regular intervals, the conservatives made themselves heard again, targeting Article 24. Even in the current millennium, Hidetsugi Yagi, a professor at the Economic University of Takasaki City, argued that Article 24 constitutes a threat to the family because it places too much emphasis on individualism.¹¹³⁾ Yagi is a prominent constitutional lawyer

105) Tsuchiya, ‘Democratizing the Japanese family’, 156.

106) McNelly, *The origins of Japan's democratic constitution*, 69.

107) Tsuchiya, ‘Democratizing the Japanese family’, 157.

108) Kawashima, ‘Americanization’, 58.

109) Röhl, *History of law*, 303 and 328. The allied occupation of Japan ended legally with the Treaty of San Francisco that came into effect in April 1952.

110) Röhl, *History of law*, 303-304.

111) Cited in Steiner, ‘The occupation of Japan’, 205.

112) Steiner, ‘The occupation of Japan’, 205.

113) H. Kaihara ‘Contemporary conservative thoughts in Japan: conservative views on morality, history, and social issues’ in: *International Relations of the Asia-Pacific* 9 (2009), 339-364 (357). K. Vollmer, ‘Images of Japanese society in the “new civics textbook”: neo-nationalist ↗

who is involved in advising the Imperial Japanese Court on the succession to the throne. According to the Japanese Constitution, only male descendants can ascend the throne, while the future imperial couple, Crown Prince Naruhito and Princess Masako, have one daughter. Yagi rejected a possible amendment of the constitution as a solution to this problem. He stated the following:

The first Emperor was male and his Y chromosome has been inherited only by the male line ... I wonder if it is right to allow modern notions such as sexism to deny the blood principle.¹¹⁴⁾

However, conservative opposition has so far not been very successful. Revisionist politicians have not yet succeeded in making changes to Article 24 and the family law chapter of the civil code is still stripped of the provisions regarding the *Ie*.¹¹⁵⁾ Nor does it seem that this will change in the foreseeable future. The spectacular economic development has resulted in mass migration to the cities.¹¹⁶⁾ Consequently, nuclear families became the standard pattern of life, causing the break down of the *Ie* system. In line with this development, further steps were taken to better the status of married women, especially in the 1960s.¹¹⁷⁾

Undoubtedly, as Inoue has argued, the interpretation of the principle of equality will not be the same in Japan as in the US. The same is true for the words ‘individual dignity’, which, as mentioned above, caused some anxiety among some Members of Parliament. During the debates in the House of Councillors, it already became clear that these words were interpreted not so much as referring to the rights of an individual, as intended by the Americans, but to an individual’s duties, as befits the Japanese Confucian value system.¹¹⁸⁾ The latter explanation has subsequently also become the accepted interpretation of this phrase in Japan. According to Inoue, it is also unlikely that Article 24 will often be invoked in support of a concrete legal claim.¹¹⁹⁾ However, this does not alter the fact that the legacy of the US occupying forces’ commitment to

→ antidotes for demographic challenges and social change’ in: *Japanstudien. Jahrbuch des Deutschen Instituts für Japanstudien* 19 (2007), 221-241. See also <http://womensenews.org/story/the-world/050501/in-japan-womens-constitutional-rights-in-peril> (retrieved on 22 January 2021).

114) See <http://www.abc.net.au/am/content/2004/s1273630.htm> (retrieved on 22 January 2021).

115) Röhl, *History of law*, 304.

116) Kawashima, ‘Americanization’, 59.

117) Kawashima, ‘Americanization’, 62-64.

118) Inoue, *MacArthur’s Japanese Constitution*, 260-265.

119) Inoue, *MacArthur’s Japanese Constitution*, 237 and 264-265.

women's rights is significant.¹²⁰⁾ The constitutional equality of men and women has become firmly rooted in Japanese society and the modern family is well anchored in the consciousness of the majority of the Japanese.¹²¹⁾ Sirota has contributed substantially to this phenomenon.

5. Conclusion

There is no doubt that Beate Sirota was instrumental to the creation of Article 24 of the Constitution of Japan, which establishes the equality of men and women. Owing to her, the first draft for this provision was formulated in such detail that it was difficult to misinterpret it or avoid its implementation. Two things played an important role in Sirota's contribution. Due to her previous stay in Japan, Sirota was well aware of the subordinate position of the Japanese woman, and wanted to improve it at any cost. Her knowledge of German also contributed to the precise formulation of the provision proposed by her, as that knowledge enabled her to model her provision by using the explicit article on the equality between men and women included in the Constitution of the Weimar Republic as an example.

Although she played a key role in drafting Article 24 of the Constitution of Japan, she should not be regarded as the prototype of a feminist heroine. The circumstances that enabled her to contribute substantially to the improvement of the position of women were too coincidental. She had no expertise in constitutional law and only joined the US occupying forces in Japan to be closer to her parents, not to promote the empowerment of women. Moreover, it was not at all the intention of the American administration in Japan to draw up a new constitution. MacArthur was only forced to do so when it became apparent that the Japanese were unable to come up with an acceptable proposal. The draft constitution of the Americans subsequently had to be completed in a very short time, as MacArthur was in danger of losing the initiative to the American State Department and the other Allies, especially the Soviet Union. As the GS was given only 1 week to draft the constitution, it had to be done by those employed by that organisation at the time. It was mere chance that led Sirota to be part of such a group of people. After her departure from Japan in 1947, she was no longer involved in the implementation of Article 24.

There was considerable opposition to Article 24 as proposed by Sirota, not only from the Japanese government, but also—albeit to a lesser extent—from the leadership

120) Gleich-Anthon, *Democratizing women*, 365-371. R.E. Ward, 'Conclusion' in: R.E. Ward/Y. Sakamoto (eds.), *Democratizing Japan. The allied occupation* (Honolulu 1987), 392-433 (430-432).

121) Steiner, 'The occupation of Japan', 213.

of the US occupying forces. Nevertheless, her draft was accepted by both the Americans and the Japanese, although with some alterations. For the Americans, the emancipation of women was important because it was part of the broader pursuit of democratisation of Japanese society. They believed that this democratisation was inextricably linked to the reform of the Japanese family system. A second factor was that little was at stake for the largely male leadership of the US occupying forces. After all, they would leave Japan within a few years and the emancipation of Japanese women would therefore not be at the expense of their position. On the Japanese side, the government's limited freedom of movement against the US occupying forces proved to be crucial in this regard. Additionally, the constitution proposed by the Americans retained the emperor as the head of state, fulfilling a deeply cherished desire of the Japanese government. Too much opposition to the other provisions of the draft could have jeopardise this achievement.

Even after the acceptance of Article 24 by the Japanese government, the battle over the legal equality of men and women was not over. The conservative MPs made themselves heard when the provision was discussed in the *Kokkai*, and also committed themselves to preserving the Japanese family system in the committees charged with the amendment of the civil code. While the existence and elaborate wording of Article 24 was instrumental in thwarting this conservative resistance, Sirota's contribution ended in this regard after the initial draft. In this phase, it was essential that progressive forces, including women's groups, acted in an organised manner. The fact that these organisations were able to become effective in such a short time is partly due to another woman from the ranks of the US occupying force, namely, Ethel B. Weed. She quickly managed to build a network consisting of female members of the SCAP and politically active Japanese women. It is important to note that she was able to build on the progressive movement of the Taisho period in the early 1920s when attempts were also made to improve the position of women within the Japanese family system.

After the implementation of the new constitution and the amended civil code on 3 May 1947 and 1 January 1948, respectively, conservative voices could be heard with a certain regularity, directed against the abolition of the family system and the attendant equal treatment of men and women. This was also the case over the past decade. This conservative movement has exerted some influence. Thus, it is plausible that the interpretation of the principle of equality did not take place in Japan in the typically American way, that is, with an emphasis on individual rights, but rather in the Japanese Confucian tradition of duties. However, this does not alter the fact that the various attempts to reverse the reforms enshrined in Article 24 and the family law provisions of the civil code have so far been unsuccessful. It seems that the principle of equality

of rights of men and women has become part of the Japanese legal tradition. Sirota's pride in her efforts is thus well-deserved as they have led to this result.

