

Gender and Law Scholarship in the Law in Japan Field

A Comprehensive Bibliographic Study

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- I. Introduction
- II. Taxonomy of Topics
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I. INTRODUCTION

This bibliography, inspired by a 1990 journal article by Professor Veronica Taylor titled *Teaching about Law and Society in Japan: Does Gender Matter?*¹ and Professor Vera Mackie's² commanding body of work in this field of study, aims to offer a tool for students and researchers interested in issues relating to gender and law in Japan. We started this bibliography by compiling and snowballing from sources in Levin's office collection and a variety of title word searches in legal journal databases. We shared our findings first to a select list of scholars who kindly shared feedback and advised us of missing items,³ and secondly, on SSRN at <https://ssrn.com/abstract=3104875> which also allowed us to obtain additional input.

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1 V. TAYLOR, *Teaching about Law and Society in Japan: Does Gender Matter?*, *Japanese Studies* 10 (1990) 47–57.

2 See e.g. V. MACKIE, *Equal Opportunity in an Unequal Labour Market: The Japanese Situation*, *Australian Feminist Studies* 4 (1989) 97–109; V. MACKIE, *Equal Opportunity and Gender Identity: Feminist Encounters with Modernity and Postmodernity in Japan*, in: Páll Árnason/Sugimoto (eds.), *Japanese Encounters with Postmodernity* (London 1995) 95–113; V. MACKIE, *Feminism in Modern Japan: Citizenship, Embodiment and Sexuality* (Cambridge 2003).

3 Particular thanks are due here to Professors Daniel Foote, Kyoko Ishida, Mire Koi-kari, Vera Mackie, Eri Osaka, Veronica Taylor, and Leon Wolff for their insights.

The bibliography contains more than 150 publications including monographs, book chapters, textbook materials, and journal articles from 1962 to 2019.⁴

Our preliminary criteria for listings were: (1) existing English-language publications, (2) relating to the gendered operations and impact of the law in Japan, and (3) published in an academic journal or in a book as a chapter rather than mass media sources. We eliminated a number of sources that discuss gender and the law in Japan but were primarily directed towards economic, anthropological, political science, sociological, or other social science perspectives on the issue. We then categorized sources with best efforts to make assignments appropriately, but we acknowledge a degree of inevitable arbitrariness in this process more fully explained in the accompanying paper by Levin noted below.

A companion working paper authored solely by Levin analyzing the materials, and with additional exploration of gender and law issues in Japan, has also been posted to SSRN. It can be found at <https://ssrn.com/abstract=3044898>.

We hope this compilation will inspire more scholars to look into and continue research into how gender has operated and continues to operate in the law in Japan.⁵

II. TAXONOMY OF TOPICS

1. *General*

1. Overview works – multiple topics broadly themed, constitutional history, feminism and law theory in Japan
2. Roles in instrumentalities of legal authority and power – legal education, legal professionals (lawyers, judges, prosecutors), quasi-legal professionals; governance roles in legislative politics and executive branch administration
3. Cultural norms with legal implications – imperial succession, *sumō*, *Shintō*-based exclusions from places, education, sports (analog to U.S. Title IX), Japan Self-Defense Forces

4 JILPT has published much research regarding women and labor. We have not listed all papers in this bibliography, because they are more focused on economics and policy, but recommend it as a good source for further research regarding these issues.

5 This bibliography is modeled after work by Adam Mackie and Mark Levin regarding social justice reform in Japan. Readers may find this resource valuable as well. M. LEVIN/A. MACKIE, *Truth or Consequences of the Justice System Reform Council: An English Language Bibliography from Japan's Millennial Legal Reforms* (2013), <https://papers.ssrn.com/abstract=2237663>.

4. CEDAW and other international human rights issues
5. Intersectionality: overlaps and fault lines over race, ethnicity, class and locality (e.g. Okinawa), nationhood, masculinities, SOGIESC, dis/ability

2. *Employment; economic subordination of women (note: economics of the family writings are placed with family law) and other economic aspects of the law*
 1. Workplace – gender and sex discrimination and harassment – explicit and implicit / disparate impacts (e.g. part-time labor)
 2. Prostitution, “JK” business, and sex trafficking; pornography and freedom of expression (commodified sexuality)
 3. Tort law inequities, tax law inequities, etc.

3. *Nation and Family / Sexual autonomy (non-commodified sexuality) / Reproduction*
 1. Nationality and citizenship laws, especially re. marriage and family
 2. Marriage, civil code, family registration laws – ie system, post-war equality provisions, surnames, legitimacy in birth, same-sex relationship recognition (domestic violence issues have been set into crime)
 3. Divorce and separation, child custody (including Hague Convention); gender-inequal divorce time frames
 4. Inequities in property and inheritance laws
 5. Public subsidies for caretaking and other systems for child-rearing, welfare reform, work leave policies, issues relating to household labor and care giving
 6. Sexual autonomy (non-commodified) and reproduction – privacy, contraception, abortion, eugenics, surrogacy and artificial reproductive technologies

4. *Crime and Criminality*
 1. Crime victimization – rape, sexual consent, domestic violence, stalking
 2. Crimes by women – women in the criminal justice system as accused and convicted persons; patricide cases as gender-centered law

III. MATERIALS FOUND

1.1. Overview works – multiple topics broadly themed, constitutional history, feminism and law theory in Japan

- Ai KUME/Beate GORDON/COLUMBIA UNIVERSITY, *The Reminiscences of Ai Kume: Japanese Occupation* (New York 1962), <https://catalog.hathitrust.org/Record/100922187>.
- Kazuko KINNO, *Women and Private Life in Japan: In Practice, Guild Practitioner* 37 (1980) 27.
- Masako KAMIYA, *Women in Japan*, *University of British Columbia Law Review* 20 (1986) 447–469.
- Vera MACKIE/Sandra BUCKLEY, *Women in the New Japanese State*, in: Gavan McCormack/Yoshio Sugimoto (eds.), *Democracy in Contemporary Japan* (Sydney 1986) 173–185.
- Veronica TAYLOR, *Teaching about Law and Society in Japan: Does Gender Matter?*, *Japanese Studies* 10 (1990) 47–57.
- Vivien NG, *Sexuality, Gender and Social Scripting in Japan and China*, *Yale Journal of Law and Feminism* 4 (1991) 65–71.
- Veronica L. TAYLOR, *Law and Society in Japan: Does Gender Matter?*, in: Vera Mackie (ed.), *Gendering Japanese Studies: A Practical Guide to Teaching Resources* (Melbourne 1992) 98–111.
- Noriyo HAYAKAWA, *Sexuality and the State: The Early Meiji Debate on Concubinage and Prostitution*, in: Vera Mackie (ed.), *Feminism and the State in Modern Japan* (Melbourne 1995) 31–40.
- Vera MACKIE, *Encounters with Modernity and Postmodernity*, in: Jóhann Páll Árnason/Yoshio Sugimoto (eds.), *Japanese Encounters with Postmodernity* (London 1995) 95–113.
- Vera MACKIE, *Equal Opportunity and Gender Identity: Feminist Encounters with Modernity and Postmodernity in Japan*, in: Jóhann Páll Árnason/Yoshio Sugimoto (eds.), *Japanese Encounters with Postmodernity* (London 1995) 95–113.
- Vera MACKIE, *Feminism and the State in Modern Japan*, in: Vera Mackie (ed.), *Feminism and the State in Modern Japan* (Melbourne 1995) 1–15.
- Martha Jean BAKER, *The Different Voice: Japanese Norms of Consensus and Cultural Feminism*, *UCLA Pacific Basin Law Journal* 16 (1997) 133–153.
- Beate GORDON, *The Only Woman in the Room: a Memoir* (Tōkyō 1997).
- Miyoko TSUJIMURA, *Women's Rights in Law and Praxis: The Significance of Three Statistics from Politics, the Household, and Labor*, in: Yōichi Higuchi (ed.), *Five Decades of Constitutionalism in Japanese Society* (Tōkyō 2001) 155–170.

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- Yoshie KOBAYASHI, *A Path Toward Gender Equality: State Feminism in Japan* (New York 2004).
- Darlene BUDD, Japan's Silent Revolution: Saying No to Marriage and the System, *Journal of the Institute of Justice and International Studies* 5 (2005) 43–54.
- Vera MACKIE, The Transformation of the Gendered Discourse of Rights in Postwar Japan, in: Harry N. Scheiber/Laurent Mayali (eds.), *Emerging Concepts of Rights in Japanese Law* (Berkeley 2007) 230.
- Marnie S. ANDERSON, *A Place in Public: Women's Rights in Meiji Japan* (Cambridge 2010).
- Takao TANASE, *Community and the Law: A Critical Reassessment of American Liberalism and Japanese Modernity* (transl. and ed. by Leon Wolff/Luke Nottage) (Cheltenham 2010).
- Andrea GERMER/Vera C. MACKIE/Ulrike WÖHR, Introduction: Gender, Nation and State in Modern Japan, in: Andrea Germer/Vera C. Mackie/Ulrike Wöhr (eds.), *Gender, Nation and State in Modern Japan* (2014) 1–24.
- Douglas HOWLAND, The Maria Luz Incident: Personal Rights and International Justice for Chinese Coolies and Japanese Prostitutes, in: Susan L. Burns/Barbara J. Brooks (eds.), *Gender and Law in the Japanese Imperium* (Honolulu 2014) 21–47.
- Emma DALTON, *Women and Politics in Contemporary Japan* (Hoboken 2015).
- Carl F. GOODMAN, *The Rule of Law in Japan: a Comparative Analysis* (4th revised ed., Alphen aan den Rijn 2017).
- Linda E. WHITE, *Gender and the Koseki In Contemporary Japan: Surname, Power, and Privilege* (London 2018).

1.2 Roles in instrumentalities of legal authority and power – legal education, legal professionals (lawyers, judges, prosecutors), quasi-legal professionals; governance roles in legislative politics and executive branch administration

- Ai KUME/Beate GORDON/COLUMBIA UNIVERSITY, *The Reminiscences of Ai Kume: Japanese Occupation* (New York 1962), <https://catalog.hathitrust.org/Record/100922187>.

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- Eri OSAKA, Women and the New Legal Training System in Japan, *International Journal of the Sociology of Law* 34 (2006) 239–255, <https://papers.ssrn.com/abstract=2595935>.
- J. Mark RAMSEYER, Sex Bias in the Japanese Courts?, (2007), <https://papers.ssrn.com/abstract=1028080> (last visited Aug 6, 2018).
- Leon WOLFF, Gender, Justice and the Japanese Judiciary, *The Tohoku Annual Review on Gender Law and Policy* 5 (2007) 205–218, https://works.bepress.com/leon_wolff/12/ (last visited 6 August 2018).
- Emma DALTON, *Women and Politics in Contemporary Japan* (Hoboken 2015).
- Kyoko ISHIDA, Why Female Lawyers Get Less – Multiple Glass Ceiling for Japanese Female Lawyers Symposium Commentary, *Hastings International and Comparative Law Review* 39 (2016) 411–440.

1.3. Cultural norms with legal implications – imperial succession, sumō, Shintō place exclusion, education, sports (analog to U.S. Title IX), JSDF

- Vera MACKIE/Sandra BUCKLEY, Women in the New Japanese State, in: Gavan McCormack/Yoshio Sugimoto (eds.), *Democracy in Contemporary Japan* (Sydney 1986) 173–185.
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- Hiromi SASAMOTO-COLLINS, The Emperor's Sovereign Status and the Legal Construction of Gender in Early Meiji Japan, *The Journal of Japanese Studies* 43 (2017) 257–288.

1.4 CEDAW and other int'l human rights issues

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- Jennifer CHAN-TIBERGHIE, Policy, Institutional, and Legal Changes Concerning Women's and Children's Human Rights in Japan, in: Jennifer Chan-Tiberghien (ed.), *Gender and Human Rights Politics in Japan: Global Norms and Domestic Networks* (Stanford 2004) 39–67.

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- Petrice R. FLOWERS, Refugees, Women, and Weapons: International Norm Adoption and Compliance in Japan (Stanford 2009).
- Ricky TUCKER, Implications of Abenomics on Gender Equality in Japan and Its Conformity with CEDAW Comments, *Oregon Law Review* 95 (2016) 543–568.

1.5 Intersectionality: overlaps and fault lines over race, ethnicity, class and locality (e.g. Okinawa), nationhood, masculinities, SOGIESC, dis/ability

- Taimie L. BRYANT, Sons and Lovers: Adoption in Japan, *American Journal of Comparative Law* 38 (1990) 299–336.
- Vivien NG, Sexuality, Gender and Social Scripting in Japan and China, *Yale Journal of Law and Feminism* 4 (1991) 65–71.
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- Vera MACKIE, Birth Registration and the Right to Have Rights: the Changing Family and the Unchanging Koseki, in: David Chapman/Karl Jakob Krogness (eds.), *Japan's Household Registration System and Citizenship: Koseki, Identification and Documentation* (Abingdon 2014) 203–220.
- Claire MAREE, Sexual Citizenship at the Intersection of Patriarchy and Heteronormativity: Same-Sex Partnerships and the Koseki, in: David Chapman/Karl Jakob Krogness (eds.), *Japan's Household Registration System and Citizenship: Koseki, Identification and Documentation* (Abingdon 2014) 187–202.
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- Tamako NAKANISHI, Equality or Protection – Protective Legislation for Women in Japan, *International Labour Review* 122 (1983) 609–621.
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- Hiroko GOTO, Will Prime Minister Abe's Womenomics Break Glass Ceilings in Japan Symposium Commentary, *Hastings International and Comparative Law Review* 39 (2016) 441–458.
- Vera MACKIE/Kaori OKANO/Kirsti RAWSTRON, Japan: Progress towards Diversity and Equality in Employment, in: Alain Klarsfeld et al. (eds.), *International Handbook on Diversity Management at Work: Country Perspectives on Diversity and Equal Treatment (Cheltenham 2016)* 137–161.
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Ricky TUCKER, Implications of Abenomics on Gender Equality in Japan and Its Conformity with CEDAW Comments, *Oregon Law Review* 95 (2016) 543–568.

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Jeremy M. TSUCHITANI-WATSON, Karōshi, Karō Jisatsu, and Gender Discrimination: Japan's Human Rights Violations, *Asian-Pacific Law & Policy Journal* 19 (2018) 141–193.

2.2. Prostitution, JK, and sex trafficking; pornography and freedom of expression (commodified sexuality)

Chizuko KAJI, The Post-War Wife – No Longer Incompetent: Civil Code Revisions and Equality for Women, *Japan Quarterly* 31 (1984) 11–18.

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Noriyo HAYAKAWA, Sexuality and the State: The Early Meiji Debate on Concubinage and Prostitution, in: Vera Mackie (ed.), *Feminism and the State in Modern Japan* (Melbourne 1995) 31–40.

Sally A. HASTINGS, Disputing Rights: The Debate over Anti-Prostitution Legislation in 1950s Japan, in: Susan L. Burns/Barbara J. Brooks (eds.), *Gender and Law in the Japanese Imperium* (Honolulu 2014) 48–78.

Kenneth L. PORT/Gerald Paul MCALINN/Salil MEHRA, *Comparative Law: Law and the Process of Law in Japan*, Ch. 5-V: Women's Rights (3rd ed., Durham 2015) 308–311.

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2.3 Tort law inequities, tax law inequities, etc.

Darlene BUDD, Japan's Silent Revolution: Saying No to Marriage and the System, *Journal of the Institute of Justice and International Studies* 5 (2005) 43–54.

3.1 Nationality and citizenship laws, esp. re. marriage and family

Vera MACKIE, Women, Citizenship and the State in Modern Japan, *14 Japanese Studies* 14 (1994) 34–38.

Vera MACKIE, The Dimensions of Citizenship in Modern Japan: Gender, Class, Ethnicity and Sexuality, in: Andrew Vandenberg (ed.), *Citizenship and Democracy in a Global Era* (Basingstoke 2000) 245–257.

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- Colin P. A. JONES/Frank S. RAVITCH, *The Japanese Legal System*, Ch. 9: The Civil Code, Family, Identity and the Civil Law Infrastructure (St. Paul 2018) 285–310.
- 3.2 Marriage, civil code, family registration laws – ie system, post-war equality provisions, surnames, legitimacy in birth, same-sex relationship recognition (domestic violence issues have been set into crime)*
- Yozo WATANABE, The Family and the Law: the Individualistic Premise and Modern Japanese Family Law, in: Arthur Taylor von Mehren (ed.), *Law in Japan: the Legal Order in a Changing Society* (Cambridge 1963) 365–398.
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SUMMARY

The bibliographic study presents approximately 150 publications including monographs, book chapters, textbook materials, and journal articles from 1962 to 2019 which deal with gender and law in Japan.

(The Editors)

ZUSAMMENFASSUNG

Die Bibliographie präsentiert rund 150 Veröffentlichungen – darunter Monographien, Buchkapitel, Zeitschriftenbeiträge – aus den Jahren 1962 bis 2019 zu dem Thema Gender und Recht in Japan.

(Die Redaktion)