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## Implications of Abenomics on Gender Equality in Japan and Its Conformity with CEDAW

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## INTRODUCTION

In the December 2012 Japanese general election, Shinzō Abe, President of the Liberal Democratic Party (LDP),<sup>1</sup> ran on a platform of a return to prewar nationalism and more importantly, much needed economic reform.<sup>2</sup> The LDP won 294 seats in the 480-seat lower house of the National Diet<sup>3</sup> and secured Abe's position as the next Prime Minister.<sup>4</sup> The win reflects a shift in national priorities in response to China's increasing influence in east Asia, as well as its increasing role in international politics.<sup>5</sup> The win also reflects Japan's ongoing need to address the economic stagnation<sup>6</sup> that has been crippling its economy since the early 1990s.<sup>7</sup>

This need to address its decades-long economic stagnation is, and has been, a priority in Japan since the early 1990s. Postwar Japan enjoyed an economic boom in the second half of the 1950s, which eventually tapered off in the mid to late 1980s.<sup>8</sup> During the mid to late

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<sup>1</sup> The LDP is a far-right political party in Japan. Aside from an eleven-month period between 1993 and 1994, and a three-year period from 2009 to 2012, the LDP has enjoyed virtually continuous postwar power since its inception in 1955. This dominant presence in the Japanese parliament is a reflection of the country's homogenous culture. LARRY JAY DIAMOND & RICHARD GUNTHER, *POLITICAL PARTIES AND DEMOCRACY* 143 (2001); RAY CHRISTENSEN, *ENDING THE LDP HEGEMONY: PARTY COOPERATION IN JAPAN* 11–19 (2000).

<sup>2</sup> *Japan's Election: Shinzō Abe's Sumo-Sized Win*, *THE ECONOMIST: BANYAN* (Dec. 16, 2012, 19:02), <http://www.economist.com/blogs/banyan/2012/12/japans-election> [hereinafter *Japan's Election*]; *Japan's Shinzō Abe Unveils Cabinet After Voted in as PM*, *BBC* (Dec. 26, 2012), <http://www.bbc.com/news/world-asia-20842840>.

<sup>3</sup> The National Diet is Japan's bicameral legislative body composed of the lower house, or House of Representatives, and the upper house, or House of Councillors. The lower house has the power to choose the prime minister. Shōichi Izumi, *Japanese Politics: Focusing on the National Diet*, 7 *INT'L J.L. LIBR.* 121, 122 (1979).

<sup>4</sup> Isabel Reynolds & Takashi Hirokawa, *Japan's LDP Reclaims Power in Landslide with Abe Stimulus*, *BLOOMBERG BUS.* (Dec. 17, 2012), <http://www.bloomberg.com/news/articles/2012-12-16/japan-voters-go-to-polls-with-ldp-forecast-to-topple-noda-s-dpj>; *Abe's LDP Dominates Election: Noda Resigns After DPJ Humiliation*, *THE ASAHI SHIMBUN* (Dec. 17, 2012), [http://ajw.asahi.com/article/behind\\_news/politics/AJ201212170006](http://ajw.asahi.com/article/behind_news/politics/AJ201212170006).

<sup>5</sup> *Abe's Master Plan*, *THE ECONOMIST* (May 18, 2013), <http://www.economist.com/news/leaders/21578044-shinzo-abe-has-vision-prosperous-and-patriotic-japan-economics-looks-better>.

<sup>6</sup> *Id.*

<sup>7</sup> Japan's current debt-to-gross domestic product (GDP) ratio is an astounding 227.9%. *Country Comparison: Public Debt*, *THE WORLD FACTBOOK*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2186rank.html> (last visited Mar. 19, 2017).

<sup>8</sup> Shigenori Shiratsuka, *The Asset Price Bubble in Japan in the 1980s: Lessons for Financial and Macroeconomic Stability* 43 (IMF-BIS Conference on Real Estate

1980s, Japan also experienced an asset price bubble that eventually burst in the late 1980s to early 1990s.<sup>9</sup> The causes of the economic bubble and its subsequent burst during this period are varied and complex,<sup>10</sup> but can generally be attributed to “intensified bullish expectations” of Japan’s financial markets at the time.<sup>11</sup> The bursting of the bubble ushered in an era of economic stagnation that has persisted for much of the past twenty years.<sup>12</sup> This period is often referred to as the lost decades.<sup>13</sup> Although Japan has seen some economic rebounds since 2010, these have been negligible and temporary.<sup>14</sup> Therefore, permanent structural reforms aimed toward long-term economic growth are needed for Japan to sustain itself as a major player in global markets.

### A. Abenomics

Abenomics refers to the economic reform policies advocated by Prime Minister Abe.<sup>15</sup> Abenomics involves three “arrows” designed to jump-start the Japanese economy: fiscal stimulus, monetary easing, and structural reform.<sup>16</sup>

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Indicators & Fin. Stability, Working Paper No. 21, 2003), <http://www.bis.org/publ/bppdf/bispap21e.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> A detailed analysis of the causes of the bubble economy and its subsequent burst goes beyond the scope of this Article. For more information on the Japanese bubble economy, see BAI GAO, *JAPAN’S ECONOMIC DILEMMA: THE INSTITUTIONAL ORIGINS OF PROSPERITY AND STAGNATION* (2001).

<sup>11</sup> Shiratsuka, *supra* note 8, at 44.

<sup>12</sup> See Leika Kihara, *Japan Eyes End to Decades Long Deflation*, REUTERS (Aug. 17, 2012, 4:29 AM), <http://www.reuters.com/article/japan-economy-estimate-idUSL4E8JH1TC20120817>.

<sup>13</sup> *Lost Decades: The Japanese Tragedy*, THE ECONOMIST: FREE EXCHANGE (Aug. 3, 2012, 4:32 PM), <http://www.economist.com/blogs/freeexchange/2012/08/lost-decades>; *Japan’s Revival Strategy* (Prime Minister of Japan & His Cabinet, Working Paper), [https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/en\\_saikou\\_jpn.pdf](https://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/en_saikou_jpn.pdf).

<sup>14</sup> Japan’s GDP fell by 0.5% in 2011, increased by 1.8% in 2012, increased again by 1.6% in 2013, and fell by 0.1% in 2014. *Data: GDP Growth (Annual %)*, THE WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG> (last visited Mar. 19, 2017).

<sup>15</sup> Shinzō Abe, Prime Minister of Japan, Speech at the Japan National Press Club: Growth Strategy (Apr. 19, 2013) (transcript available at [http://japan.kantei.go.jp/96\\_abe/statement/201304/19speech\\_e.html](http://japan.kantei.go.jp/96_abe/statement/201304/19speech_e.html)) [hereinafter Growth Strategy Speech].

<sup>16</sup> Surbhi Jain, *Shinzō Abe’s Third Arrow: Structural Reforms to Boost Japan’s Growth*, MKT. REALIST (July 14, 2015, 4:22 PM), <http://marketrealist.com/2015/07/shinzo-abes-third-arrow-structural-reforms-boost-japans-growth>.

The structural reform arrow further involves five goals: (1) to “break government monopolies,” (2) to “reform hiring and firing policies for companies in order to enhance labor productivity,” (3) to “reform Japan’s overly restrictive healthcare sector,” (4) to “increase female workforce participation,” and (5) to “deregulate markets in order to boost competitiveness.”<sup>17</sup>

The focus of this Comment is on the fourth goal of the third arrow. Specifically, this Comment will examine the goal of increasing female workforce participation and its implications for gender equality in Japan, as well as its conformity with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Japan is a signatory country.<sup>18</sup>

### *B. Female Workforce Participation*

Japan has “one of the best educated [yet] most underused female populations in the developed world.”<sup>19</sup> As of 2015, the labor force<sup>20</sup> participation rate of Japanese women ages fifteen to sixty-four was 66.7%, lower than other developed nations (Figure 1).<sup>21</sup>

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<sup>17</sup> Surbhi Jain, *Which Parts of Japan’s Economy Most Need Reform Right Now?*, MKT. REALIST (July 14, 2015, 4:23 PM), <http://marketrealist.com/2015/07/japan-need-reform/> (emphasis added). The term “third arrow” in the singular is a bit of a misnomer: it is “more of a shotgun blast than an arrow.” Austin, *Abenomics 3 Arrows Explained: Finally You Can Understand What’s Going on Inside Abe’s Head*, TOFUGU (Sept. 19, 2014), <http://www.tofugu.com/2014/09/19/the-3-arrows-of-abenomics-explained>. *Reform in Japan: The Third Arrow*, THE ECONOMIST (June 28, 2014), <http://www.economist.com/news/leaders/21605905-shinzo-abe-has-best-chance-decades-changing-japan-better-he-seems-poised> (“Part of its strength is its breadth: it is less a single arrow than a 1,000-strong bundle of acupuncture needles.”).

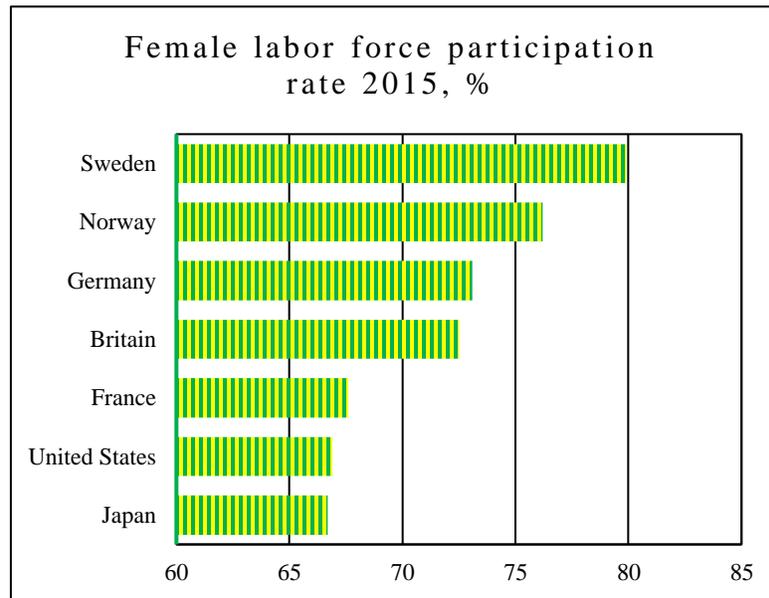
<sup>18</sup> Harold Hongju Koh, *Why America Should Ratify the Women’s Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT’L L. 263, 270 (2002).

<sup>19</sup> Leo Lewis, *Japan: Women in the Workforce*, FIN. TIMES (July 6, 2015), <https://www.ft.com/content/60729d68-20bb-11e5-aa5a-398b2169cf79>.

<sup>20</sup> Comm. on the Elimination of Discrimination Against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Fifth Periodic Report of States Parties (Japan), U.N. Doc. CEDAW/C/JPN/5, at 11 (Sept. 13, 2002) [hereinafter Japan’s Country Report] (defining “labor force” as “the sum of the employed and the unemployed over the age of 15”).

<sup>21</sup> Labor Force Statistics by Sex and Age - Indicators, ORG. FOR ECON. CO-OPERATION & DEV., [https://stats.oecd.org/Index.aspx?DataSetCode=LFS\\_SEXAGE\\_I\\_R](https://stats.oecd.org/Index.aspx?DataSetCode=LFS_SEXAGE_I_R) (last visited Mar. 25, 2017).

Figure 1.



Ideally, bringing this number as close to one hundred percent as possible would add millions of people to a shrinking workforce and could significantly increase the GDP. This rate tends to drop in most countries after women marry and have children.<sup>22</sup> The drop creates a M-shaped curve in which the female labor force participation rate increases until marriage and child-bearing age.<sup>23</sup> Japanese culture encourages women not to work during a child's early formative years.<sup>24</sup> Thus, the female labor participation rate drops significantly between ages twenty-five and thirty-four, a range in which women are most likely to have newborns, forming the distinctive middle point of the M-shape.<sup>25</sup> The labor force participation rate drops again at retirement, which forms the eventual decline of the M-shape. The M-shaped curve is common in most countries around the world, but

<sup>22</sup> *Japanese Women and Work: Holding Back Half the Nation*, THE ECONOMIST (Mar. 29, 2014), <http://www.economist.com/news/briefing/21599763-womens-lowly-status-japanese-workplace-has-barely-improved-decades-and-country> [hereinafter *Japanese Women and Work*].

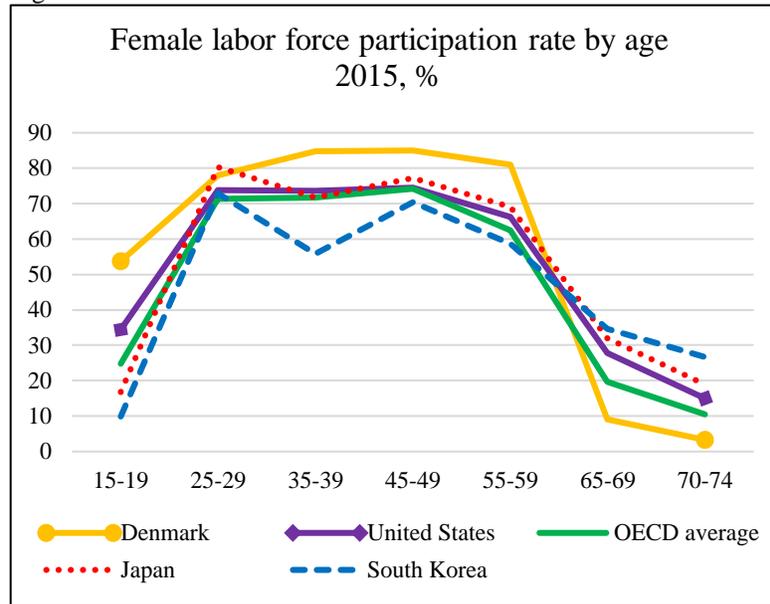
<sup>23</sup> *Id.*

<sup>24</sup> See Akiko Nosaka, *The M-Shaped Dilemma: Life Strategies and Fertility Trends Among Working Women in Contemporary Japan*, 48 ETHNOLOGY 21, 23 (2009).

<sup>25</sup> *Id.*

distinctly more pronounced in east Asian countries like Korea and Japan (Figure 2),<sup>26</sup> where traditional gender roles are culturally more emphasized.<sup>27</sup>

Figure 2.



Furthermore, among those women in the workforce, few actually hold professional, managerial, or leadership positions due to corporate culture imposing a “bamboo ceiling” [that is] . . . thick, hard and not even transparent.”<sup>28</sup> Employers often prefer men for management-track positions while placing women in clerical roles with little promotional opportunities.<sup>29</sup> These hiring preferences stem from societal expectations that women will eventually have to quit after they marry and have children.<sup>30</sup>

<sup>26</sup> Labor Force Statistics by Sex and Age - Indicators, *supra* note 21.

<sup>27</sup> *Japanese Women and Work*, *supra* note 22. After their first child, seventy percent of Japanese women stop working for a decade or more, a sharp contrast from thirty percent of American women. *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Abe acknowledged this cultural inadequacy in an April 2013 speech: “The reality is that a large number of women are still faced with choosing between raising a child or having a job.” Growth Strategy Speech, *supra* note 15. “One of the questions they asked at interview was ‘are you planning to have a baby?’ That would be illegal in a lot of countries.” Lewis, *supra* note 19.

### *C. History of Japanese Gender Equality Laws*

The history of Japan's antidiscrimination laws began with its postwar Constitution. Enacted on May 3, 1947, the Japanese Constitution contains an equal rights provision, Article Fourteen, which states: "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."<sup>31</sup> Judicial interpretation, however, renders Article Fourteen's practical applications weak and, furthermore, it is limited to only public sector discrimination.<sup>32</sup> During the American occupation in 1947, the Labor Standards Law (LSL) was passed.<sup>33</sup> Its shortfall, however, was in the fact that it regulated discrimination only as to wages, leaving "employers free to discriminate in other areas such as hiring, training, promotion, firing, and job assignment."<sup>34</sup> In response to this shortfall, the courts created the "public order doctrine," derived from Article Nine of the Civil Code, which declares null and void juristic acts "contrary to public policy or good morals."<sup>35</sup> While this worked to improve gender equality in some instances, it was largely ineffective as a whole since civil law jurisdictions rely on statutory authority rather than judicial decisions.<sup>36</sup>

In 1985, Japan ratified CEDAW, the "central and most comprehensive document" highlighting the efforts of the United Nations Commission on the Status of Women,<sup>37</sup> in response to pressure from the international community.<sup>38</sup> In the same year Japan passed the Equal Employment Opportunity Law (EEOL) in order to comply with CEDAW despite resistance from the business community.<sup>39</sup> Thus, the 1985 EEOL was a compromise between

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<sup>31</sup> Nihonkoku Kenpō [KENPŌ] [CONSTITUTION], art. 14, para. 2 (Japan).

<sup>32</sup> Kristina T. Geraghty, *Taming the Paper Tiger: A Comparative Approach to Reforming Japanese Gender Equality Laws*, 41 CORNELL INT'L L. J. 503, 506 (2008).

<sup>33</sup> Megan L. Starich, *The 2006 Revisions to Japan's Equal Opportunity Employment Law: A Narrow Approach to a Pervasive Problem*, 16 No. 2 PAC. RIM L. & POL'Y J. 551, 554 (2007).

<sup>34</sup> Geraghty, *supra* note 32, at 506–07.

<sup>35</sup> *Id.* at 507.

<sup>36</sup> *Id.* at 507–08.

<sup>37</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (last visited Mar. 25, 2017).

<sup>38</sup> Geraghty, *supra* note 32, at 508–09.

<sup>39</sup> *Id.* at 509–10.

CEDAW and the local business community.<sup>40</sup> This is the beginning of a theme prevalent throughout this Comment, starting with the ratification of CEDAW and persisting to the present: treaties ratified and laws enacted for the wrong reasons are likely to be ineffective. The EEOL extended protections to more areas compared with that of the LSL, which only covered wages.<sup>41</sup> While the EEOL prohibited discrimination in some respects, in others, it merely laid out exhortations.<sup>42</sup> In the 1990s, the pitfalls of the EEOL became clear and, in 1997, the Diet strengthened it to be more forceful and commanding than merely suggestive.<sup>43</sup> Finally, in 2006, the Diet once again amended the EEOL to expand its applicability and scope.<sup>44</sup>

This history, from the postwar Constitution, to the LSL, to the ratification of CEDAW, to the 2006 EEOL, and finally to Abenomics' promotion of gender equality, represents leaps and bounds for antidiscrimination laws in Japan. But it still has a long way to go. This Comment makes three arguments: First, the purpose of Abenomics' third arrow casts doubt on its ability to accomplish the goal of increasing women's presence in the workforce. Abenomics is primarily an economic reform policy and as such, its focus on improving gender equality takes a backseat. Thus, it is uncertain whether Abenomics in its present state can do much to improve gender equality in Japan. Second, the gender equality aspect of the third arrow does not conform to the strict mandates imposed upon member countries to CEDAW. As a policy tailored around economic reform, Abenomics never took into consideration CEDAW requirements. Thus, Abenomics falls short of what Japan agreed to when it ratified CEDAW in 1985. Third, Abenomics' conformity with CEDAW and the overall goal of boosting the economy are not mutually exclusive. Conforming with CEDAW and improving the economy do not conflict; that is to say, it is possible for the two to harmoniously coincide. Finally, this Comment will briefly present a counterpoint, or theory, as to why Prime Minister Abe has not taken stronger and more forceful measures to improve gender equality in his reform policy.

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<sup>40</sup> *Id.* at 510.

<sup>41</sup> *Id.* at 506.

<sup>42</sup> *Id.* at 510–12.

<sup>43</sup> Kelly Barrett, *Women in the Workplace: Sexual Discrimination in Japan*, 11 HUM. RTS. BRIEF 5, 6 (2004); Starich, *supra* note 33, at 558–60; Geraghty, *supra* note 32, at 515–18.

<sup>44</sup> Starich, *supra* note 33, at 561–65.

## I

THE PURPOSE OF THE THIRD ARROW CASTS DOUBT ON ITS ABILITY  
TO ACCOMPLISH ITS GOALS

The overall goal of Abenomics is to “permanently get[] the Japanese economy out of deflation.”<sup>45</sup> Specifically, the permanent structural reforms aspect of the third arrow is intended to address a problem that has emerged in the decades following the collapse of the bubble economy. The problem is of the declining population<sup>46</sup> and thus a declining national workforce.

## A. Addressing Financial Insecurity

The lost decades resulted in a shift away from Japan’s traditional lifetime employment model toward contract work, or non-formal employment, as a result of the collapse of the bubble economy.<sup>47</sup> Many young people in Japan have been stuck in a situation where they cannot secure long-term employment due to the economic decline.<sup>48</sup> This financial insecurity among the working population means that young people are reluctant to settle down and have children, which further exacerbates the declining birthrate problem.<sup>49</sup>

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<sup>45</sup> Chie Aoyagi et al., *How Inclusive Is Abenomics?* 4 (Int’l Monetary Fund, Working Paper No. WP/15/54, 2015), <https://www.imf.org/external/pubs/ft/wp/2015/wp1554.pdf>. The declining population, coupled with longer life expectancies, results in an inverted pyramid population structure. As time goes on, pensions of the elderly majority—the base of the pyramid located at the top—will increasingly rely on diminishing wages of the younger minority—the tip of the pyramid located at the bottom. Japan’s Country Report, *supra* note 20, at 10; Andrew Joyce, *Upside Down: The Population Pyramid Problem*, WALL STREET J.: JAPAN REAL TIME (Oct. 1, 2010, 7:23 PM), <http://blogs.wsj.com/japan realtime/2010/10/01/upside-down-the-population-pyramid-problem>.

<sup>46</sup> See *Japan Population Shrinks by One Million Census Confirms*, BBC (Feb. 26, 2016), <http://www.bbc.com/news/world-asia-35666274>. During the five-month period between September 1, 2015, and February 1, 2016, the total population declined by 66,000. *Population Estimates: Monthly Report for Feb. 2016*, STATISTICS BUREAU, MINISTRY OF INTERNAL AFFAIRS & COMM’N, <http://www.e-stat.go.jp/SG1/estat/OtherListE.do?bid=000001007603&cycode=1> (last visited Mar. 19, 2017); Diana Magnay, *Can ‘Womenomics’ Save Japan?*, CNN (May 22, 2013), <http://www.cnn.com/2013/05/21/business/japan-women-economy-womenomics> (“The IMF forecasts Japan’s population will shrink by around 30% by 2055.”).

<sup>47</sup> Junya Hamaaki et. al., *Changes in the Japanese Employment System in the Two Lost Decades* 1, 9–10 (Econ. & Soc. Res. Inst., Working Paper No. 18, 2011), [http://www.esri.go.jp/jp/archive/new\\_wp/new\\_wp020/new\\_wp018.pdf](http://www.esri.go.jp/jp/archive/new_wp/new_wp020/new_wp018.pdf).

<sup>48</sup> See *id.*

<sup>49</sup> See Joel Stewart, Portland State University, *An Investigation into Japan’s Population: The Current State of Decline*, GEOGRAPHY MASTERS RES. PAPERS 11–13 (2007).

The problem is a circular one because improving financial security requires increasing the population, yet increasing the population requires improving financial security. Japan recognizes the need for drastic structural reform in order to exit this circular loop of financial meltdown. The difficulty arises in identifying inherent differences between the first two arrows and the third arrow of Abenomics. The first two arrows, fiscal stimulus<sup>50</sup> and monetary easing<sup>51</sup>—meant to “prop up the Japanese economy in the short run”<sup>52</sup>—are relatively easy to implement because internal monetary policy modifications involves money and numbers, which are simpler and more predictable than human behavior.

Conversely, the third arrow—structural reforms “meant to secure Japan’s long term growth and economic health needs time to take effect”<sup>53</sup>—is more difficult to implement because it involves changing complex and unpredictable human behavior. Indeed, the implementation of the first two arrows thus far has been lauded as an overwhelming success.<sup>54</sup> On the other hand, the third arrow endeavors to change, among other things, deeply ingrained, long-held cultural beliefs about traditional gender roles in a historically conservative and homogenous society. Although the participation of women in the workforce is only one aspect of Abenomics, it is the most important part of the reform policy<sup>55</sup> and the most difficult to implement.

### *B. Addressing Gender Equality*

The structural reforms aspect of the third arrow has less to do with gender equality than it does with economic development, which casts

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<sup>50</sup> See Robert E. Hall, *Fiscal Stimulus*, 139 DAEDALUS 83, 83 (2010) (defining fiscal stimulus as a fiscal policy of increased public expenditures or decreased taxation in order to encourage and support economic growth).

<sup>51</sup> A monetary policy in which a central bank purchases securities from the market to lower interest rates and increase the money supply. See *What is Quantitative Easing?*, THE ECONOMIST: THE ECONOMIST EXPLAINS (Mar. 9, 2015), <http://www.economist.com/blogs/economist-explains/2015/03/economist-explains-5>.

<sup>52</sup> Austin, *supra* note 17.

<sup>53</sup> *Id.*

<sup>54</sup> Jain, *supra* note 17 (“Since Abe took over in 2012, the Japanese stock market has surged, outperforming all major developed markets . . . Japanese stocks are up by almost 70% (in local currency) since late 2012.”); see also Surbhi Jain, *Japan Outperforms Markets So Far This Year*, MKT. REALIST (May 8, 2015, 9:58 AM), <http://marketrealist.com/2015/05/japan-outperforms-markets-far-year>.

<sup>55</sup> Growth Strategy Speech, *supra* note 15 (“[A]ctive participation by women . . . forms the core of my Growth Strategy.”).

doubt on the third arrow's ability to accomplish true, long-term, and permanent economic growth. In times of positive economic change, things could simply revert to the way things were. One should keep a keen eye of skepticism on a staunch conservative and traditionalist who pushes for gender equality. In fact, in the past, Prime Minister Abe had pushed for women to accept more traditional roles, reasoning that this would promote child-rearing:

In 2005, when a previous government was taking steps towards greater [gender] equality, Mr Abe and his fellow conservatives warned of the damage to family values and to Japanese culture that could result if men and women were treated equally. They worried that rituals such as the *hina matsuri*, or Festival of Dolls, an annual celebration of young girls and the state of matrimony, could be endangered. Their concern was not just based on tradition; keeping women out of the workforce, conservatives thought, made economic sense too. If the country's "baby-making machines," as a former LDP health minister put it, stayed at home then they would produce more babies, and thus more workers.<sup>56</sup>

Furthermore, if the goal is to increase workforce participation and thus productivity, there are two non-mutually exclusive alternatives: increase female workforce participation or loosen strict immigration policies. An isolationist past weaves xenophobia into the very fabric of Japanese society, thus, the Japanese government has always been reluctant to permit more immigrants to fill the shoes of a declining workforce.<sup>57</sup> So Prime Minister Abe's plan, to increase female workforce participation at the exclusion of loosening immigration policies only out of necessity, is misguided and destined to fail unless more robustly-rooted measures are taken. As for increasing the overall workforce, loosening immigration policy is the single easiest, quickest, and most effective solution to implement.<sup>58</sup> Yet, Prime Minister Abe's opting for the more difficult route—keeping borders tight to maintain traditional notions of Japanese identity—is surprising in light of the availability of a simpler alternative.

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<sup>56</sup> *Japanese Women and Work*, *supra* note 22.

<sup>57</sup> Lewis, *supra* note 19 ("The minister is keen to navigate the politics of the debate to prevent them becoming too divisive. Particularly fraught is where the womenomics debate overlaps with one on increased immigration—a sensitive issue for the Abe government. Asked whether Japan's women might be helped back into work by an influx of migrants to work as nannies or nurses, Ms. Arimura, [Prime Minister Abe's minister for women's empowerment], declares that the idea is 'not a panacea.'").

<sup>58</sup> Stewart, *supra* note 49, at 15–16.

## II

THE THIRD ARROW DOES NOT CONFORM TO THE STRICT MANDATES  
IMPOSED UPON MEMBER COUNTRIES TO CEDAW

The issue is whether Prime Minister Abe's proposed measures to increase women's presence in the workforce accord with the mandates of CEDAW. CEDAW is an international treaty and was an attempt to combat discrimination against women more comprehensively and effectively<sup>59</sup> than the Charter of the United Nations, which simply reaffirms the "faith . . . in the equal rights of men and women."<sup>60</sup> It represents "a climax [in the] United Nations [sic] efforts to codify comprehensively international legal standards for women."<sup>61</sup> CEDAW was adopted by the UN General Assembly in 1979, and currently 189 countries have ratified it.<sup>62</sup> Japan ratified the treaty on June 25, 1985.<sup>63</sup>

The key to understanding CEDAW's purpose is in its title: The Convention on the Elimination of *All Forms* of Discrimination Against Women. The inclusion of the words, "all forms" is intentional because CEDAW seeks not only to eliminate those direct or overt forms of discrimination, but also other indirect or incidental forms which have the effect or purpose of discrimination against women.<sup>64</sup> Prime Minister Abe has laid out measures<sup>65</sup> that he intends to

<sup>59</sup> *A Fact Sheet on CEDAW: Treaty for the Rights of Women*, AMNESTY INT'L, [https://www.amnestyusa.org/sites/default/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/sites/default/files/pdfs/cedaw_fact_sheet.pdf) (last visited Mar. 19, 2017). (stating that CEDAW "is the only international instrument that comprehensively addresses women's rights within political, civil, cultural, economic, and social life").

<sup>60</sup> Convention on the Elimination of All Forms of Discrimination Against Women Preamble, 1249 U.N.T.S. 13, 15–16 [hereinafter CEDAW].

<sup>61</sup> Fourth World Conference on Women, Report by the Committee on the Elimination of Discrimination Against Women, ¶ 13, U.N. Doc. A/CONF.177/7 (June 21, 1995).

<sup>62</sup> Convention on the Elimination of All Forms of Discrimination Against Women, U.N. Treaty Collection, Multilateral Treaties Deposited with the Secretary-General (MTDSG), Chapter IV.8 (Dec. 18, 1979), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf> (showing a record of the signatories and parties of the Convention on the Elimination of All Forms of Discrimination Against Women).

<sup>63</sup> *Id.*

<sup>64</sup> CEDAW, *supra* note 60, at 15–16 (emphasis added) ("Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination Against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination *in all its forms and manifestations*."). "[T]he term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the *effect or purpose* of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." *Id.* at 16 (emphasis added).

<sup>65</sup> Growth Strategy Speech, *supra* note 15.

implement in order to satisfy the structural reforms aspect of the third arrow of Abenomics. These measures involve changes in leadership, childcare waiting lists, support for a return to work, and assistance for reentering the workforce.<sup>66</sup>

#### *A. Leadership*

In a 2013 speech, Prime Minister Abe called for a minimum of thirty percent of leadership positions in all areas of society to be filled by women by 2020.<sup>67</sup> Furthermore, he called for all listed companies to proactively appoint women to executive and managerial positions and to appoint one female as an executive officer.<sup>68</sup> In a “practice what you preach” exemplification, the LDP tapped two women in 2012 to serve in two of its four executive posts.<sup>69</sup> While the goal of achieving a minimum of thirty percent of women in leadership positions in all areas of society by 2020 is commendable, Prime Minister Abe’s methods seem lacking or nonexistent for two reasons.

First, mere exhortations for companies to be proactive is akin to doing nothing at all. Recall the failures of the 1985 EEOL, discussed in this Comment’s introduction, in which the same sort of good faith request to comply was ineffective. Companies, like people, are self-interested and will generally do only what is necessary to promote their interests. Traditionally, maximizing the bottom line is generally the end goal of companies in a capitalistic system.<sup>70</sup> So some companies may adopt Prime Minister Abe’s request assuming that doing so would have, in some way, a positive effect on their bottom line. More than likely, most companies would simply maintain the status quo. Otherwise, companies would have promoted gender equality on their own even without the insistence of Prime Minister Abe. Instead, the Prime Minister should create subsidies—similar to energy subsidies that the United States has used in the past to

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Reiji Yoshida, *Abe Taps Two Women for Key Posts in LDP: Move Seen as Attempt to Gain Support from Female Voters*, JAPAN TIMES (Dec. 26, 2012), <http://www.japantimes.co.jp/news/2012/12/26/national/abe-taps-two-women-for-key-posts-in-ldp/#.Vt8qh5MrJP2>; Growth Strategy Speech, *supra* note 15.

<sup>70</sup> Steve Denning, *Is the Goal of a Corporation to Make Money?*, FORBES (Sept. 26, 2011, 12:25 PM), <https://www.forbes.com/sites/stevedenning/2011/09/26/is-the-goal-of-a-corporation-to-make-money/#319f3f8e54ed>.

encourage car-buyers to opt for cleaner energy vehicles<sup>71</sup>—to incentivize the promotion of women to top managerial positions.

Second, the LDP’s “practice what you preach” approach is not inspirational. It amounts to factitiously putting a female face on the same outdated values that the LDP covets. For example, one of the women appointed by the LDP government, Sanae Takaichi, a long-time Abe supporter and conservative, has “emphasized traditional family values and opposed revising the law to allow women to keep their family name after marriage.”<sup>72</sup>

### 1. CEDAW Article II

Contrary to Prime Minister Abe’s preferred method of implementation, in fact, CEDAW requires more than mere suggestions for companies to be proactive. Article II requires that parties to CEDAW “embody the principle of the equality of men and women in . . . appropriate legislation . . . and to ensure, through law and other appropriate means, the practical realization of this principle.”<sup>73</sup> Although Japan does have legislation promoting principles of equality between men and women,<sup>74</sup> lagging societal norms have not yet caught up with the law.<sup>75</sup> Thus, Prime Minister Abe’s proposals regarding women in leadership fall short of minimal acceptable standards that CEDAW requires because they do not “ensure, *through law* . . . , the practical realization of . . . principle[s] [of equality].”<sup>76</sup> Subsidies or similar incentives would be a prudent first step toward adherence to the law and ensuring conformity with CEDAW.

Article II further goes on to state that parties must “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.”<sup>77</sup> Here, Prime Minister Abe’s exhortations, due to their voluntary nature, fall short of legislative measures to ensure the realization of his stated

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<sup>71</sup> *E.g.*, Energy Improvement and Extension Act of 2008, 26 U.S.C.A. § 30D (2015).

<sup>72</sup> Yoshida, *supra* note 69.

<sup>73</sup> CEDAW, *supra* note 60, at 16.

<sup>74</sup> *See, e.g.*, Koyō no bunya ni okeru danjyo no kintō na kikai oyobi taigū no kakuhotō ni kansuru hōritsu [Danjyo koyō kikaikintō hō] [Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment], Law No. 113 of 1972, amended by Law No. 45 of 1985, Law No. 92 of 1997, and Law No. 82 of 2006 (Japan); *see also* Barrett, *supra* note 43, at 1–2.

<sup>75</sup> *See* Barrett, *supra* note 43, at 3–4.

<sup>76</sup> CEDAW, *supra* note 60, at 16 (emphasis added).

<sup>77</sup> *Id.* at 16.

goals. Article II also requires parties “[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the *effective* protection of women against any act of discrimination.”<sup>78</sup> Japan does have competent national tribunals which can, and do, hear gender discrimination cases under the EEOL; however, three bureaucratic problems limit enforcement of the EEOL.<sup>79</sup> First, as a civil law jurisdiction which emphasizes statutory rule of law, Japanese judicial decisions are often inconsistent.<sup>80</sup> Second, litigation is long and expensive in Japan; on average, cases take about five years to move through the first-level of appellate review.<sup>81</sup> Finally, cultural aversion to, or public shaming of, engaging in litigation is a widely held sentiment.<sup>82</sup> For these reasons, despite a competent court system, not all of the EEOL-based claims were being litigated<sup>83</sup> resulting in ineffective protection.

Article II also states that parties must “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and *practices* which constitute discrimination against women.”<sup>84</sup> The difficulty, of course, is that customs and practices are deeply entrenched<sup>85</sup> and thus require something more than mere surface-level legislation for any lasting impact to take effect. This is an issue perhaps better addressed by the Japanese Ministry of Education. In order to conform with Article II(f) of CEDAW, the Ministry of Education should articulate and implement strategic plans for revamping compulsory education to include more lessons on equality and human rights. Only then might progress come to fruition in the coming decades regarding customs and practices of how the country thinks about equality. Such a plan would be a long

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<sup>78</sup> *Id.* (emphasis added).

<sup>79</sup> Barrett, *supra* note 43.

<sup>80</sup> *Id.* at 2–3.

<sup>81</sup> *Id.* at 3.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 6.

<sup>84</sup> CEDAW, *supra* note 60, at 16 (emphasis added).

<sup>85</sup> Traditional Japanese society has stressed the Confucian ideal of *ryōsai kenbo* or “good wife, wise mother.” Barrett, *supra* note 43, at 1; Geraghty, *supra* note 32, at 505. The government used the phrase during the Meiji restoration period—a late-1800s era characterized by Japan finally drawing to a close its near two hundred years long isolationist foreign policy—as a slogan to promote the ideology that women’s role in society was as a mother and educator whose priorities are to the home and family. Barrett, *supra* note 43, at 1.

and slow, yet sustainable route; long-term growth cannot be accomplished with quick fixes and short-sighted solutions.

## 2. CEDAW Article XI

A significant problem with Prime Minister Abe's proposals is that they only focus on measures that increase the aggregate quantity of women in the workforce, yet are silent as to issues of equal treatment of women who are already working. Perhaps some of the starkest differences between men and women in the Japanese workforce have to do with selection criteria and pay.<sup>86</sup> However, these are issues that Abenomics does not address, indicating that it is more about traditional economic production than gender equality. Furthermore, Prime Minister Abe's proposals, at least regarding leadership, only focus on a small slice of society—"elite women who are top managers"—while ignoring the everyday woes of the majority of Japanese working women.<sup>87</sup>

Article XI of CEDAW addresses equal employment opportunities, stating that

[p]arties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular . . . [t]he right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.<sup>88</sup>

Here, Prime Minister Abe's goal of achieving a minimum of thirty percent of leadership positions to be filled by women by 2020 promotes CEDAW's "right to the same employment opportunities" provision. The Prime Minister's request to the private sector, however, is just that: a request without the force of law. So, despite his lofty goals, Prime Minister Abe's method of implementation—a request to proactively appoint women to executive and managerial positions and to appoint one female as an executive officer—falls short. Furthermore, Prime Minister Abe's plan is silent on other issues of unequal selection criteria between job-seeking men and women in Japan, or the dual-track system. The dual-track system refers to a

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<sup>86</sup> Lewis, *supra* note 19. See generally H.J. Jones, *Japanese Women and the Dual-Track Employment System*, 49 PACIFIC AFFAIRS 4 (1976).

<sup>87</sup> Ayai Tomisawa & Ritsuko Ando, *In Abenomics' Shadow, Japanese Women Fight 'Maternity Harassment'*, REUTERS (Sept. 24, 2014, 5:10 PM), <http://www.reuters.com/article/us-japan-women-idUSKCN0HJ2BA20140924>.

<sup>88</sup> CEDAW, *supra* note 60, at 18.

common practice in Japan in which men and women are placed into two different career tracks whose promotional potential differs.<sup>89</sup>

Next, Prime Minister Abe's proposals appear adequate in their efforts to alleviate the acuteness of the M-shaped curve with respect to equal employment opportunities after pregnancy. The proposals, however, are silent as to other collateral consequences of child-rearing that Japanese women face—namely harassment. Harassment of Japanese women in the workforce who become pregnant is so widespread that the term “maternity harassment” has become commonplace.<sup>90</sup> Japanese culture values the women as the primary child-rearers.<sup>91</sup> Thus, women are expected to become stay-at-home mothers and devote their time to the children. Often, when a Japanese woman becomes pregnant, employers will demote the woman or encourage her to resign without actually firing her.<sup>92</sup> These types of actions are typical of the indirect and non-confrontational subtleness of Japanese society. Traditional cultural norms encourage the proliferation and continued practice of harassment and discrimination in clear violation of the law.

Article XI states, “[p]arties shall take all appropriate measures to eliminate discrimination . . . to ensure . . . the same rights, in particular . . . [t]he right to equal remuneration, including benefits, and to *equal treatment* in respect of work of equal value, as well as *equality of treatment* in the evaluation of the quality of work.”<sup>93</sup> Prime Minister Abe's proposals, with the economy as its focus, do not address equal treatment and thus, do not conform to CEDAW's requirements.

### *B. Childcare Waiting Lists*

Abenomics' proposal to reduce waiting lists for childcare facilities addresses a problem that keeps Japanese women of child-rearing age out of the workforce: unavailability of childcare facilities. Prime Minister Abe plans to use the Yokohama method<sup>94</sup> to accelerate the

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<sup>89</sup> Jones, *supra* note 86.

<sup>90</sup> Tomisawa & Ando, *supra* note 87.

<sup>91</sup> See Barrett, *supra* note 43, at 5.

<sup>92</sup> See *id.*

<sup>93</sup> CEDAW, *supra* note 60, at 18 (emphasis added).

<sup>94</sup> The Yokohama method refers to a rapid, three-year expansion of daycare facilities accomplished by the city of Yokohama in 2010 to accommodate a waiting list of more than 1500 children. Jun Hongo, *How Yokohama Led the Way in Day Care*, WALL ST. J.:

elimination of childcare waiting lists. The idea is to increase funding for state-subsidized childcare facilities to ease the burden of child-rearing and make it easier for women to return to work post-pregnancy.<sup>95</sup> The plan includes five aspects: (1) to provide vigorous support to non-registered childcare facilities in hopes that these facilities seek to be registered in the future;<sup>96</sup> (2) to make small-scale childcare facilities having less than twenty children under care and extended-hour childcare facilities at kindergartens eligible to receive support;<sup>97</sup> (3) to prepare childcare options to have a rapid impact by promoting new entries by a variety of entities, such as rented facilities, and also, “by relaxing the requirements for providing childcare arrangements within places of employment;”<sup>98</sup> (4) to “secure a sufficient number of childcare providers;”<sup>99</sup> and (5) to create a “[n]ew [s]ystem for [c]hildren and [c]hild-rearing.”<sup>100</sup> This last aspect involves two goals: to “prepare childcare arrangements for 200,000 children” and to “aim at the elimination of childcare waiting lists by securing childcare arrangements for 400,000 children by 2017.”<sup>101</sup>

This portion of Prime Minister Abe’s plan spurs a debate about the best methods for accomplishing Abenomics’ goals, and it highlights how Japanese policymaking so often fails. First, an alternative method for accomplishing Abenomics’ goals of eliminating childcare waiting lists would be to open up immigration policies. This way, immigrant workers could fill the demand gaps for childcare facilities. But the Abe administration is not yet willing to address the situation by these means. It seems Prime Minister Abe sees immigration as a last resort, perhaps because Japan is an island nation whose isolationist past reverberates into present cultural ideologies. Thus far, the economic situation has not yet sunk low enough to the extent that policymakers would be willing to undertake such measures of last resort.

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JAPAN REAL TIME (May 23, 2014, 6:07 PM), <http://blogs.wsj.com/japanrealtime/2014/05/23/how-yokohama-led-the-way-in-day-care>.

<sup>95</sup> Growth Strategy Speech, *supra* note 15.

<sup>96</sup> *Id.* Until now, such unregistered facilities were not eligible for national support. *Id.*

<sup>97</sup> *Id.* Until now, such small-scale and extended-hour facilities were not eligible to receive assistance. *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* Only 380,000 of the 1.13 million licensed childcare providers are actually working. *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

Second, the conundrum highlights how Japanese policymaking so often fails. In this instance, governmental attempts at tight control over how to fix the problem in fact hinders progress toward fixing the problem. Government subsidies make daycare centers affordable yet represent a huge drain on public spending.<sup>102</sup> This insufficient availability of funding creates a market deficiency, and there remains a high demand for daycare facilities.<sup>103</sup> Normally, this is where private-sector businesses come in to fill the gap however, “regulations restrict the ability of private-sector daycare operators to build new centers.”<sup>104</sup> The industry was partially deregulated in 2000, but persistent restrictions continue to hinder the private-sector daycare industry in Japan.<sup>105</sup>

### *C. Support for a Return to Work*

The Abe administration seeks to achieve longer childcare leave for new mothers intending to return to work. Presently, “the length of childcare leave allowed under the Child Care and Family Care Leave Act is . . . one year.”<sup>106</sup> According to surveys, as many as sixty percent of participants indicated that they would like to take longer than a year.<sup>107</sup> Further, as many as thirty percent of survey participants specifically indicated that they would like to focus on raising their child until the child reaches about three years old.<sup>108</sup> There are three aspects to this plan.

First, to involve men more in child-rearing in order to promote an environment where both spouses equally participate.<sup>109</sup> This would help ease the burden placed on women so that they may focus more on work. After the child reaches the age of three, both spouses should be able to return to their workplaces with surety.<sup>110</sup> Second, although participation would be voluntary, the Abe Administration seeks to

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<sup>102</sup> See Minami Funakoshi, *Japan Cries Out for Daycare: Tokyo Makes the Childcare Shortage Worse by Trying Too Hard to Fix It*, WALL ST. J. (Aug. 7, 2013), <http://www.wsj.com/articles/SB10001424127887324653004578651310946954352>.

<sup>103</sup> *Id.* (“Subsidies for state-sponsored daycares skew demand while leaving the government unable to afford expansion.”).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Growth Strategy Speech, *supra* note 15.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *See id.*

<sup>110</sup> *Id.*

establish a new subsidy or incentive program.<sup>111</sup> The program would support companies “that actively embrace ‘three-year childcare leave’ and work to expand . . . the active participation of families with small children.”<sup>112</sup> Finally, the Abe Administration plans to address the problem of whether people who take time off will be able to keep pace after lengthy blank spots in their career.<sup>113</sup> To do this, Prime Minister Abe plans to provide comprehensive support for people’s “return to work after three years of being close to the children.”<sup>114</sup> This would involve introducing new programs that would enable people to relearn skills at universities or technical colleges before they return to their jobs in full swing.<sup>115</sup>

Involving men more in the child-rearing process conforms with CEDAW, whose preamble states:

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole[.]<sup>116</sup>

CEDAW’s preamble further states that CEDAW is “[a]ware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.”<sup>117</sup>

Finally, Article V states:

States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> CEDAW, *supra* note 60, at 15.

<sup>117</sup> *Id.*

interest of the children is the primordial consideration in all cases.<sup>118</sup>

Clearly, equal participation between the sexes in the child-rearing process is an underlying principle that CEDAW embraces. Thus, Prime Minister Abe's plan to involve more men in the child-rearing process is in accord with CEDAW. The problem, however, is that he does not expound on how one would implement such a plan and leaves it open-ended. It will be interesting to observe in the coming years how Japan's leadership will address this aspect of Abenomics. Next, using subsidies to encourage companies to adopt a three-year childcare leave policy is a step in the right direction; however, why not change the law? Extending the Child Care and Family Care Leave Act from one year to three years is a more effective and longer-lasting solution. Finally, introducing new programs that would enable people to relearn skills is a good idea in theory. Practical implementation, however, will require a more nuanced analysis taking into account budgetary constraints or cheaper alternatives.

#### *D. Assistance for Reentering the Workforce*

The final aspect of the Third Arrow of Abenomics is to facilitate reentry into the workforce.<sup>119</sup> This involves support in three areas. First, assistance that enables a return to the workforce at any time by people who, rather than take childcare leave, resigned from their company to focus on childrearing over a number of years.<sup>120</sup> Second, support for reemployment of people who focused on raising their children over many years, making use of new internship endeavors and the trial employment system.<sup>121</sup> Finally, provisions of financial assistance necessary for those people who wish to make use of their experiences raising children and take the opportunity to start their own company.<sup>122</sup>

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<sup>118</sup> *Id.* at 17.

<sup>119</sup> Growth Strategy Speech, *supra* note 15.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

## III

## ABENOMICS' CONFORMITY WITH CEDAW AND THE OVERALL GOAL OF BOOSTING THE ECONOMY ARE NOT MUTUALLY EXCLUSIVE

Japan's ratification of CEDAW was an impetus for progressive social changes in Japanese law in the 1980s and 1990s.<sup>123</sup> However, the disconnect between legal implications and entrenched social norms continue to hamper Japanese society because discrimination persists.<sup>124</sup> Japan now has an opportunity to advocate for Abenomics' conformity with CEDAW and thus pressure the Diet and Prime Minister Abe to do something more than provide mere recommendations and subsidy incentives. Namely, the Japanese public should pressure Prime Minister Abe to push for legislation that would mandate a quota of women in leadership positions and permit three-year childcare leave. Additionally, the Japanese people should speak out against social, economic, and structural barriers to the court system—major factors severely limiting effective enforcement of the progressive 1997 EEOL.<sup>125</sup>

Abenomics' goal of boosting the economy is not at odds with CEDAW. In fact, they run parallel.<sup>126</sup> However, this is a complicated issue that permeates almost every aspect of Japanese society, so things will not change quickly or without a fight. Change will take time and needs to start at a basic level of education and changing public perceptions regarding traditional gender roles.

The first step in achieving Abenomics' gender equality goal of the third arrow is not simply to request that the private sector change its policies—something more is needed. The primary implementation tool to increase women's presence in the workforce should be the alignment of the goals of Abenomics with CEDAW's requirements. In so doing, the focus will be on gender equality and economic development as compatible goals. Half-hearted attempts at shallow or superficial changes will not last, and the situation will invariably relapse at the first sign of economic improvement. Only if Japan takes this approach will it be able to achieve the kinds of long-term, permanent improvements to the economy that it seeks.

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<sup>123</sup> Geraghty, *supra* note 32, at 508–10; Barrett, *supra* note 43, at 6; Starich, *supra* note 33, at 556.

<sup>124</sup> Barrett, *supra* note 43, at 7–8.

<sup>125</sup> *Id.*

<sup>126</sup> Aoyagi et al., *supra* note 45, at 4 (“Excessive inequality is corrosive to growth.”).

Japan should see this as a two-fold opportunity not only to achieve the economic ambitions that Abenomics seeks, but also to finally push the country toward concrete gender equality in conformity with CEDAW. At the end of the day, without an enforcement arm, CEDAW really is nothing more than a comprehensive and practical blueprint for change,<sup>127</sup> and once ratified, it is up to the people and their respective governments to pass legislation or implement other changes. CEDAW is only as strong as the people's will, and if people do not fight for change, CEDAW can remain ineffective and stagnant.

As it stands, Prime Minister Abe's proposals do not go far enough. He is balancing his need to jump-start the economy with his reluctance to accept outside help. This strategy is invariably destined to fall short unless more effort is put forth.

#### IV

##### A COUNTERPOINT: LESSONS FROM THE LIBERAL LEGALISTS

Prime Minister Abe has reservations in enacting legislation to improve gender equality associated with Abenomics. These reservations may be the result of learned lessons from the rather short-lived field of law and development during the 1960s.

Broadly defined, law and development is an area of study that examines "the relationship between the legal systems and the 'development' . . . [of] Third World countries"<sup>128</sup> and attempts to answer the question of how to use law as an instrument to promote development.<sup>129</sup> In this context, development means "social, economic and political changes;"<sup>130</sup> thus, law and development attempts to answer the question of how to use law as an instrument to promote social, economic, and political changes. Scholars in the law and development field—or the liberal legalists—however, quickly discovered that law in itself may not actually be the best or most effective means to achieve widespread changes in a society.<sup>131</sup> This discovery was the result of a breakdown of the assumptions of their

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<sup>127</sup> CITIES FOR CEDAW FACT SHEET, [http://citiesforcedaw.org/wp-content/uploads/2017/01/CEDAW-USFact-Sheet-\\_10-22-15.pdf](http://citiesforcedaw.org/wp-content/uploads/2017/01/CEDAW-USFact-Sheet-_10-22-15.pdf) (last visited Mar. 25, 2017).

<sup>128</sup> David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1062 (1974).

<sup>129</sup> *See id.*

<sup>130</sup> *Id.*

<sup>131</sup> *See id.* at 1079.

liberal legalist model.<sup>132</sup> One such assumption was that rules, created by the state, guide the behavior of individuals in a society, rather than social or cultural factors.<sup>133</sup> For example, their model assumed that “state institutions are the . . . [center] of social control,” but the reality in many Third World countries was that the local community or tribal leadership carried more influence than the state.<sup>134</sup> Their model also assumed that “courts are central . . . [to] social control and . . . [independent] from political, tribal, religious, or class [influence];” however, “in many nations courts are neither very independent nor very important.”<sup>135</sup> In failing to consider that their assumptions may be erroneous, the liberal legalists misjudged the effectiveness of law as a means to change.<sup>136</sup>

Perhaps Prime Minister Abe is heeding the lessons of his academic predecessors. The liberal legalists attempted to impose law as a potent means to achieve a goal premised on erroneous assumptions.<sup>137</sup> Conversely, the Prime Minister is reluctant to implement reformist policies and forceful legislation to reduce gender inequality in Japan. This reluctance may well reflect an understanding that such legislation may not actually hold the force or potent power of change that one might initially believe it to hold.

Furthermore, it is important to note the difference in context between what the liberal legalists were facing and what Prime Minister Abe is facing. The liberal legalists were essentially trying to export an idealized version of the United States to Third World countries<sup>138</sup> they did not understand well. On the other hand, with Abenomics, Prime Minister Abe is attempting to implement changes within his own country, a place with which he is more culturally familiar than law and development scholars were with Third World countries. Indeed, one of the initial challenges to the liberal legalism model came about from improved empirical knowledge about the legal reality in the Third World.<sup>139</sup> Liberal legalism was based on “little . . . [to no] knowledge of [the] legal . . . [environments of] Asia,

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<sup>132</sup> *See id.* at 1080.

<sup>133</sup> *Id.* at 1072.

<sup>134</sup> *Id.* at 1080.

<sup>135</sup> *Id.* at 1081.

<sup>136</sup> *See id.*

<sup>137</sup> *See id.*

<sup>138</sup> *See id.* at 1073.

<sup>139</sup> *Id.* at 1089–90.

Africa, and Latin America.”<sup>140</sup> As the law and development movement grew, those who had done more empirical international research and who were less connected with liberal legalism came into the mix.<sup>141</sup> Furthermore, foreign scholars came into the mix as well, including some from the Third World.<sup>142</sup> This growth provided alternative views and challenged the liberal legalists to be more critical.<sup>143</sup>

Despite this counterpoint and in light of the contextual differences between those faced by the liberal legalists and those faced by Prime Minister Abe, the Prime Minister should still implement some forceful legislation to improve gender equality. Another source of challenge to the liberal legalist model was the realization that perhaps policy makers may not actually be committed to the basic values which liberal legalists believed they were fostering.<sup>144</sup> Is humanitarian rhetoric simply a means to mask ulterior motives like “military security or preservation of economic interests”?<sup>145</sup> How much did development assistance contribute to U.S. foreign policy goals?<sup>146</sup> Is there a conflict of interest where much of development assistance is government funded?<sup>147</sup> As to Third World policy makers, despite a professed commitment to democracy, often such commitment is a front to conceal true intentions of protecting a ruling position.<sup>148</sup> Therefore, this doubt about whether law can be an effective means for social change, which eventually led to the abandonment of law and development studies,<sup>149</sup> emerged in part as a result of doubting true intentions of policy makers. But here, Prime Minister Abe *is* the policy maker. So he has the power to effect change through legislation. He should, however, realign his interests: humanitarian rhetoric of gender equality should not simply be a means to mask ulterior motives of preservation of economic interests.

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<sup>140</sup> *Id.* at 1090.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 1092–93.

<sup>145</sup> *Id.* at 1092.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 1093.

<sup>149</sup> *Id.* (“And so [liberal legalists] have come to question their past, and in so doing, simultaneously have been forced to undermine their future as law and development scholars.”).

## CONCLUSION

Abenomics contains many goals overshadowed by the realities of difficult implementation. There is too much hopeful wishing and not enough necessary legislation. This absence of sweeping reform leaves Abenomics precariously unstable or temporary and subject to changing leadership in the future. In the end, do the reasons for promoting gender equality even matter so long as we strive for a desirable outcome? In some respects, no. For example, on a general and aggregate level, increasing gender equality is generally considered a good thing (in modern Western philosophy) and should be something that countries seek to work toward. Most people would probably conclude that how or why a country reaches the end result is irrelevant, so long as the outcome is more equality between people. In other respects, however, the reasons for promoting gender equality do matter. For example, at a micro level, some of the more nuanced details will be overlooked and ignored. Abenomics strives for gender equality with respect to the quantity of working women however, it does nothing to close the gap on the disparate quality of life between working men and women.

The purpose of the third arrow casts doubt on its ability to accomplish its goals. Further, the third arrow does not conform to the strict mandates imposed upon member countries to CEDAW. Finally, Abenomics' conformity with CEDAW and the overall goal of boosting the economy are not mutually exclusive. For these reasons, Abenomics is a progressive step in a good direction, but to really accomplish its purpose of increasing women's presence in the workforce, it needs to be about equality, not economics. Otherwise, such misguided and shortsighted efforts will fail.