When the owners of their parent company dissolved Universal\(^1\) they had a strategy, an expectation. They would declare the company bankrupt, and, if the union opposed it and occupied the place, they would just wait. They compared it to making canned food (\(kanzume\)). They would just close the gates and let them stay sealed up inside for a while. They thought that most workers would give up and leave, especially the older workers and the part-timers. If the union tried to resist, they would just call the police and have them clear the premises.

This statement was later recounted by a union official from the parent company, Custom Shoes, who participated in the initial meetings with Custom management when the decision was made to let the Universal Shoe Company go bankrupt. The effort to dissolve Universal Shoe Company failed. It did not fail quickly, but in the end it did fail.

Immediately after the announcement at work that Universal was to be liquidated as a company, and, as a consequence, jobs would be eliminated, workers were led by their union leaders into the office of the Universal company president. They refused to leave or to let him leave until he signed a “factory use agreement” giving them the temporary right to use equipment and premises to continue production. Rather than disbanding, fifty Universal workers plus supporters from affiliated unions and labor movement networks occupied the Universal factory and resisted efforts by the parent company to force the evacuation of the buildings, the liquidation of assets, and the dissolution of this small subsidiary

\(^1\) To insure anonymity for participants in this research, the names of companies used in this chapter are pseudonyms. I chose these pseudonyms to sound like English language names because the real names are taken from English and transliterated into Japanese to sound English.
company. During these early days of the struggle even neighborhood residents and businesses came out in support of the Universal workers and their refusal to vacate the factory premises and give up their work and workplace. The supportive relationship with their neighborhood continued throughout the decade of labor struggle that followed. These disruptive and defiant actions were wrapped in legal cases that defined their struggle as a labor dispute and permitted them to continue to exercise self-production until all court cases could be concluded.

The account of management strategy that begins this chapter is one that leaked out through a sympathetic figure from the parent company. It summarizes a conversation held at a local coffee shop between the owners of the parent company and the owners of Universal, a meeting at which Universal’s bankruptcy was planned. According to these owners and managers, that plan was an inevitable result of economic upheaval and could not be avoided. There was simply not enough work to maintain Universal. The workers through their union argued that this was untrue and that insufficient effort had been made to adapt to current economic conditions. Issues raised in this account illustrate the fundamental point that tied eight separate court cases to nearly ten years of collective action for the Universal Shoes labor union. The most radical form of social change that the Universal union pursued was greater employment security through the establishment of a worker-owned production company. The more modest form of social change they demanded was adequate efforts to guarantee employment security on the part of employers during times of economic upheaval. The court cases could not argue that workers had the right to run their own companies, but they could argue that under Japanese employment law they had the right to every possible effort on the part of management to protect their employment.

More specifically, the Universal Shoes union was fighting what, beginning in the 1970s, came to be known as kubikiri gorika, or the rationalization of employment dismissals. Their collective action rhetoric accused employers of discarding workers, treating them as invisible and as exchangeable commodities rather than as human beings in their business calculations. The legal arguments charged the parent company, Custom Shoes, with “fabricating” the bankruptcy of their subsidiary Universal Shoes, resulting in unfair dismissal of all Universal workers. Both labor lawyers handling the legal cases and the union leaders managing the near decade-long dispute spoke with passion about their drive to force employers to remember the rights of their employees when adjusting to economic changes. In the rhetoric of Universal’s collective action, workers must become “unforgettable” (wasurerarenai). In the language of their lawyers, Japanese employers must be required to take workers’ livelihood seriously, respect their legal rights, and use liquidation of a company or dismissal only as a last resort.

A dispute as legally complex and as organizationally challenging as this one required both agile leadership and deeply felt commitment to a cause on the part
of the rank and file. Strategies for leveraging Japanese labor law and strategies for maintaining the solidarity necessary to an ongoing labor dispute shifted in tandem. Nearly four years into a bankruptcy-related labor dispute that would eventually last almost ten, one of the lawyers prosecuting the court cases for the Universal Shoe Company union said, “I believe that the true struggle does not take place in the court but in the actions of union workers and their families, and if we can continue more collective action, we might realize a positive settlement.”

At the same time, leaders of the labor movement saw the court cases as essential both to the ongoing self-managed production that sustained them in the short term and to the eventual settlement they hoped would offer compensation, continued employment, and an opportunity to reopen the small company under management of their own choice.

The president of the Universal union liked to say, “They tried to throw us away—like waste paper—just toss us out. We had to fight to become unforgettable.” In demonstrations this simple idea took the form of demands for rights guaranteed both by Japanese constitutional provisions and by Japanese employment law. It also took the form of shouts aimed at financial institutions and their parent company to take responsibility for their employment and to treat them as human beings. Becoming “unforgettable” was, according to their legal team, critical to the court cases. They had been, according to these lawyers, “underestimated from the beginning,” expected to just give up, disperse, and disappear.

Here I will suggest ways in which court cases set limits on collective action and influence the forms of that action, and also ways in which this union strategically used court cases to achieve labor dispute goals related to employment security and entitlements, as well as more radical goals aimed to challenge the very structure of Japanese employer-employee power relations. In the context of the global reach of marketization that has progressively exposed Japanese workers to greater and greater employment insecurity, these early bankruptcy disputes and those that followed over the subsequent decades called attention to the precarious position of workers in times of economic instability and demanded responsible actions to safeguard the livelihood of those affected. These demands were embodied in collective action and articulated in legal arguments.

In previous publications I have written extensively about the Universal labor dispute, along with a very similar dispute carried out by the labor union of Unikon Camera (Turner 1995). Subsequently, detailed information concerning their legal cases became available and has made it possible to examine these cases and the critical links between legal and political arguments and strategies that provided a measure of shared meaning between the rank and file, union leaders, lawyers, and others in their extensive support networks. Here I will analyze the relationship between legal rights and political power, and the complex strategies required to get ordinary people involved in disruptive actions aimed at exercising either one.
The globalization of the Japanese economy has brought widespread economic, political, and social changes, which have affected Japanese workplaces. What in Japan were called “Nixon Shocks” and “Oil Shocks” in the 1970s were just the beginning of a series of economic crises that included the so-called bursting of the bubble economy and recession. These crises ultimately ushered in an era of reform and restructuring aimed at economic recovery that began the new millennium. Beginning in the 1970s, the Japanese economy faced a series of challenges to its postwar high growth economic policies, its customary practices of labor-management relations, and its workplace values and frames of thought. Unemployment rose to 3 percent in the 1980s, 5 percent in the 1990s, and to nearly 7 percent by the turn of the century. These rates have been dropping since 2003 in response to aggressive economic restructuring, changes in employment practices such as increases in nonstandard workers, and gradual attrition as people drop out of the labor market altogether. Some of these changes were themselves responses to rapidly growing labor activism like that addressed in this chapter.

Unionization rates have been dropping since the beginning of the 1980s, and in 2003 they fell below 20 percent for the first time in postwar history, hovering at about 18 percent through 2009. This reflects the increase in nonunionized service sector jobs and nonstandard employment in all sectors at the expense of the more stable and lucrative industrial, financial, and transport sector jobs. Rengo, the Japanese Trade Union Confederation, which represents more than 60 percent of all union members, is challenged to design ways of safeguarding employment and workplace practices in an economy where increasing proportions of the workforce are in part-time, temporary, postretirement, or contract worker status instead of regular full-time employment.

Bankruptcies of small and medium-sized firms climbed in the 1970s, leveled off in the middle 1980s, and climbed steadily again in the post-bubble decade of the 1990s. Revisions in bankruptcy law just after the turn of the century have helped bring these rates down after 2003 as economic recovery began to take hold. This recent economic recovery has been crafted out of responses to crises experienced in workplaces throughout the society. Recent challenges regarding excessive overwork and over the rights of stockholders in corporate governance, which emerged in the 1980s and 1990s, have similarly challenged Japanese social practices and cultural concepts regarding economic activities and appropriate measures of value. These signal challenges to cultural notions about work and about the social importance of stability of livelihood for workers.

Reforms in corporate structures, employment practices, labor union organizations, and employment and business law have emerged throughout this period. In this context activist workers and their unions organized labor disputes and filed
legal cases to protest against bankruptcy-related job loss. People have struggled to cope with changes visited upon them by taking some measure of control over their own work organizations and by appealing to the legal structures that help define legitimate labor-management relations in a period of economic and political change. Social change in these struggles is not always the result of efforts to bring about something new. It is sometimes about trying to hold on to something of value that is perceived to be in danger of undesirable reform or loss. Legal cases are used as a means to struggle against the market when the marketization of labor seems to challenge fundamental cultural values of stable employment.

The connections between daily life, a secure livelihood, and the changes in the world economy were reflected in daily conversations among workers at Universal as well as at other small and medium-sized companies in which I conducted fieldwork through the 1980s and 1990s. The rank and file worried that the success of conservatives like Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States would have a negative impact on their own labor movement and ultimately on labor conditions and the labor market in Japan. The emergence of global market forces and Japan’s vulnerability to them was of central importance in their evaluation of their prospects for the success of their own collective action. These connections were made regularly both in daily conversation and in organized union events where films about labor struggles in Europe or the United States were shown and discussed. Visitors from Eastern European labor unions came to the factory during the time I was there, and the Universal union itself made a documentary about its own struggle to distribute through national and international networks. The rank and file and their union leaders shared with workers elsewhere in Japan and around the world concerns about the economic disruptions related to transnational integration of markets that were troubling labor everywhere.

Similarly, Universal union leaders who were in charge of making production decisions as well as designing labor dispute strategies worried that “There isn’t much we can do when we have to compete with European shoe design. Especially Italian! We have to make better, cheaper, more locally appealing shoes, and we have to study the designs from abroad.” Sympathy for the challenges facing the entire shoe-making industry was great, but anger at the reckless way in which their parent company attempted to cope with their own business problems by dissolving Universal and dismissing its workers was even greater. The ties between their own lives and these larger changes were clear, and they were convinced that while the changes in national and international policy might be beyond their control, the strategies used by Japanese employers to cope with them should not be void of the “responsibility” to protect the livelihood of their employees.

This sentiment was widespread, and unions throughout Japan began to learn from one another how to cope with bankruptcy-related job loss. Universal was
one of the earliest to engage in an antibankruptcy labor dispute, and their case inspired other unions to be watchful. For example, Unikon Camera’s union began, even before their owners declared them bankrupt, to prepare the ground for such a dispute. As the market for cameras slowed and they began to worry about the outlook for their own company, they commissioned an independent analysis by university professors of the global market and the outlook for camera production and their place in it (Turner 1995). This study provided solid evidence about the nature of the industry and the possible ways in which the company could continue to succeed as a producer, an issue directly related to the argument made in the legal cases that bankruptcy and job loss were not unavoidable business strategies. Court cases filed by the unions fighting bankruptcy disputes often claimed that changes in the business environment should have been met with changes in management strategy, not with dissolution and unfair dismissals.

The Universal union is just one case in which a labor union successfully challenged the way in which a Japanese employer eliminated jobs by declaring bankruptcy. Theirs was one of the first of a series of antibankruptcy labor disputes beginning in the late 1970s that combined social movement tactics with legal battles. By 1982 there were ninety-four such struggles, and throughout the 1980s and 1990s small companies continued to organize such disputes as recession and economic restructuring threatened employment security (Gordon 1998, 190). Labor disputes involving working conditions and employment security issues have continued to rise, reaching over one million by 2005, and they and have inspired tripartite negotiations between government, business, and labor over ways to stem this trend through improved economic policy and labor law reform (McNamara 1996). The Universal case demonstrates the power of collective action coupled with court cases to place limits on employer rights to dissolve companies or make structural changes that lead to job loss.

FROM BANKRUPTCY TO COURT: LEGAL LEVERAGE AND COLLECTIVE ACTION STRATEGIES

The Universal Shoes Workers’ Cooperative Company operates as a small shoe-manufacturing company in Tokyo with about fifty employees. It was established under union ownership and management as a result of the 1986 year-end settlement of a nearly ten-year-long legal battle in tandem with an active labor dispute. Opened in 1946 immediately after World War II, Universal Shoes operated as a subcontractor for Custom Shoes, the third largest shoe manufacturer in Japan, until becoming its subsidiary in 1967. The liberalization of trade policies which opened the domestic Japanese market in shoes and leather goods to more imported products and the increasing sluggishness of the domestic economy associated with globalization led Custom to begin a process of “rationalization of produc-
tion” (gōrika) in their factories. In 1977, as part of that effort, they made the decision to shut down their subsidiary, Universal, altogether. Some claim that this was also designed to intimidate their own unionized employees into accepting further unpopular rationalization measures, including forced retirements and layoffs.

The response of the Universal union was swift and decisive and is itself illustrative of the way in which social movement action and legal action worked in concert in this struggle from the very beginning to make a powerful and ultimately successful labor movement strategy. As described at the outset of this chapter, union members immediately forced the Universal Company president to sign a factory use agreement. The factory use agreement gave the union the temporary right to use land, buildings, and equipment, pending resolution of union demands for appropriate bankruptcy-related liquidation and dismissal, a “temporary right” that was the basis for use for nearly a decade. This innovation on the part of the Universal union was emulated by other unions in subsequent bankruptcy-related disputes because it facilitated the maintenance of production and thus of both economic solvency and social solidarity during legal and political battles, battles that in Japan are normally long and drawn out. Furthermore, it effectively marked all subsequent actions on the part of the union as sōgi kōdō, or “dispute actions.” These sōgi kōdō are protected under trade union law as legitimate union actions so long as a dispute is ongoing and unsettled. Legal precedent in Japanese courts have allowed even otherwise illegal actions to go unpunished so long as they are construed as part of an ongoing dispute (Gould 1984).

The jishuseisan, or “worker-managed production” disputes, were strategically smart, largely successful, and culturally characteristic of Japanese labor-dispute tactics. They illustrate the significance of maintaining the relationship between employer and employee as a legitimate platform from which to enter and prosecute a dispute. Even the shell of the relationship, if preserved, is sufficient to continue to make claims, to engage in “dispute actions,” and to assure a legitimate negotiating position on the part of workers until resolution can be reached. The simple unilateral declaration on the part of the owners of an enterprise is not sufficient to break this relationship. Indeed, the continued production at the factory itself, although managed by the union, served to preserve not just the livelihood of the workers enabling their continued activism, but also the existence of the enterprise and its employer-employee relations, guaranteeing the continued relevance of employment law to their legal cases as well (see Gould 1984; Totsuka 1984; Gordon 1998).

The propensity of labor-relation cases to be mediated until some conciliatory settlement can be reached commonly leads to very lengthy negotiations. This “legal informality” of the Japanese judicial process is credited by Frank Upham with shifting power to control and manage social change to the state through the court system, making the court a relatively conservative force in considering
social change in Japan (Upham 1987, 22). It permits resolution without reference to universal principles or clear statement of right and wrong, thus situating social change firmly in particular circumstances. Hiroshi Itoh makes a related point in his evaluation of judicial activism in Japan when he claims, “actual and concrete disputes must exist before the court can adjudicate. No declaratory or advisory opinions are allowed in Japan” (Itoh 1990, 173). He goes on to suggest that courts are conservative in the sense that they do not wish to be active policymakers, opting whenever possible to act within established case law.

While case law may be influenced by a collection of resolutions, few grand gestures toward universal standards are made in Japanese court cases. The process is long, drawn-out, complex, and heavily reliant on the particular circumstances of each case. Such procedures generally tend to favor those with more power and more status within organizational and institutional hierarchies. Labor union leaders claim that the sheer length of court proceedings can in many cases be a significant factor in losing the requisite rank-and-file support for going to court in the first place, and even more so in keeping people engaged in the dispute long enough to reach a satisfactory settlement. Companies can often benefit by simply stalling because workers cannot maintain either the social solidarity or economic resources to persist to resolution.

As a platform from which to launch the dispute and to persevere for nearly ten years until resolution, self-managed production is the most important and powerful site where social movement and legal cases intersected. Here the court case and the social movement are mutually formative of one another. The legal limbo of the self-managed production dispute had two important consequences. First, it permitted the union to guarantee for an indefinite period of time a living wage and daily work routines to participating workers. As a result, the union managed to keep nearly all their workers for the duration of the dispute. This made daily contact around both production and movement solidarity building activities possible and was crucial for maintaining movement solidarity. Second, it situated the legal cases within the context of an ongoing employer-employee relationship because continued production acted as a de facto stall in the process of bankruptcy, preventing liquidation and all associated procedures.

**RIGHTS AND POWER: CREATING FRAMEWORKS TO MOTIVATE ACTION**

While Japanese labor law has developed extensive legal and even constitutional provisions to protect workers, their rights to collective bargaining, and even their right to stable employment, it is not the case that the rank and file necessarily understand these provisions, act on assumptions about rights, or even conceptualize their own agency in such terms. Indeed, in the Universal struggle, as in other struggles of its kind that I have studied, union leadership has had to undertake
extensive educational activities as an integral part of mobilization strategies. Assumptions about lifetime employment norms in Japanese culture notwithstanding, Universal workers began their struggle with a stronger sense of resignation than entitlement. For some this was due to simple assumption that under bankruptcy law they had no legal basis for action. For others, it was rooted in a sense that even if a legal case could be made, their small fifty-member union would not have the resources and the power to make it.

Universal workers were accustomed to working under conditions of unequal power as relatively low-wage workers in a very small subsidiary company. Ideas about their own legal rights as workers were at the least counterbalanced by and sometimes outweighed by common sense understandings of their own positions of relative political, social, and economic weakness. Their education through participation in this movement involved learning about their rights as employees under Japanese law, regardless of income, size of company, gender, or age. The task for Universal’s leaders hoping to motivate the rank and file was to uncouple notions of economic marginalization from notions of political marginalization. Workers in small companies like this one already differentiate themselves from workers in large companies with respect to the privileges of secure employment, fringe benefits, and high salaries. During Universal’s struggle, workers frequently expressed their feeling that the judges in the courts, like the financial institutions that backed their parent company, would all just expect them to disappear from the scene.

While union leaders and lawyers urged the rank and file to stick together to make themselves known, to make it impossible for the financial institutions and the parent company to forget about them, the rank and file easily slipped back into a sense of vulnerability. They often explicitly talked about being “small” and being afraid that they had been “forgotten” when expressing their feelings of marginality.

As part of their efforts to change the culture and consciousness of the rank and file and make them powerful agents in the legal and political struggle, union leaders and the lawyers handling the Universal case convened large general meetings, held smaller seminar-style meetings, and engaged in study sessions before and after court dates. In addition to discussing specific legal strategies and the progress of ongoing cases, union leaders, lawyers, and/or national union federation organizers discussed Japanese employment law with the rank and file. This included Japanese constitutional provisions like those guaranteeing the right and obligation to work (Article 27) and the right to collective bargaining and collective action (Article 28). They also educated the members about the body of trade union and employment law within which their own cases fit, especially the legal limitations on employers concerning the dismissal of workers. Because so much of this is case law, union leaders and lawyers strove to educate workers about the
postwar history of Japanese legal cases, the statutory protections available, and the ways employment law could be applied after a declaration of bankruptcy. This history itself involved activism on the part of unions to bring cases into the courts, a history that has established a body of law relevant to labor disputes that, once in the hands of the judiciary, union activists see as favorable to workers in matters related to termination of employment and the failure of management to negotiate or consult with workers.

Beginning as early as 1950 Japanese courts have, in Daniel Foote’s words, “built a complex and sophisticated body of law providing workers strong rights against dismissal” (1996, 638) and establishing conditions that must be met before employers may exercise their rights to dismiss an employee or employees. While the Civil Code provides employers the right of dismissal without a requirement that cause be stated and the Labor Standards Act of 1947 adds that employees must have only thirty days notice, case law has ensured that specific conditions be demonstrated, even in the case of dismissal for economic reasons, and particularly in cases of collective dismissal. These include a necessity for reduction of the workforce, an employer good-faith effort to avoid discharge, the fair implementation and selection of workers to be discharged, and a consultation with the trade union or workers involved (Foote 1996; Yamakawa, 2001). If these conditions are not met, employers may be found to have engaged in “abusive dismissals.” There is, in Foote’s evocative description, “an iceberg of precedent underneath the small tip of Section 20 of the Labor Standards Act” that gives Japanese workers much greater rights under settled case law than might be apparent from a strict reading of the text of the law (1996, 707).

These rights and understanding of the history of judicial decisions in structuring Japanese employment relationships over the course of the postwar period gave union leaders within Universal and those in local, regional, and national federations a common ground for creating legal and social movement strategies and for being reasonably optimistic that if they could survive as a union long enough they would eventually win their case. Japanese law and legal precedent in matters of job security served, in other words, as a critical frame within which labor movement organizers made decisions about legal cases and created strategies to increase their political power relative to their parent company and adversary, Custom Shoes. The understanding of their potential for political power provided by this framework was crucial in mobilizing the rank and file for the lengthy and economically difficult personal struggles that constituted a labor dispute like this one.

The activist labor movement struggles of the 1970s and 1980s were compared to those of the fifties by union leaders and their legal teams. They saw the legacy of that period’s labor activism in proving that workers could manage their own production. However, the new struggles were viewed quite differently in that they were taking place in times of settled employee-employer relationships
rather than in times of enterprise disorder. They believed that this made their own struggles more complex because they required workers to struggle with established and powerful employers and management teams in order to take charge of production. They saw similarities, however, in the struggle of workers to have a stable workplace, to have a say in production decisions about adjustment to economic trouble, and to take over in order to save the company from failure. The history that leaders and lawyers emphasized in mobilizing workers favored the immediate and early postwar period.

Nimura Kazuo argues that the spread of struggles for the control of production in the immediate postwar period hinged on the appeal of the strategy to save the company from dissolution and on worry over the economic livelihoods of employees. Production control was a form of struggle “that had no adverse affects on company results. They thus easily gained the support of all employees, including that of managers who were concerned for the company’s future, as well as the understanding of society at large” (Nimura 1994a, 65). In the case of the struggle by Universal workers, this was certainly an important factor especially in the early days when they had to refuse the order to evacuate the premises and had to make the case for their right to stay put and begin to manage their own production. The primary motivation for production control in a time of economic upheaval is to continue production and to secure employment, something that was as appealing at the end of the century as it was in the immediate postwar period. That legacy of the early Japanese labor movement was an inspiration for most of the Universal workers and a personal memory for many. Nimura argues that postwar workers “for their part . . . had entrusted their livelihoods to the company, [and] were afraid for the company’s future, and their lack of faith due to their employers’ feebleness only increased” (1994a, 64). He argues that the first struggle for production control, that at Yomiuri Shinbun, showed workers a way forward.

The Yomiuri dispute showed such workers a way to address the problems that faced them. The dispute, which began with criticisms of employers’ irresponsibility and developed into a takeover of production at the enterprise by the employees’ union, taught many people that the way forward was to form a union and reconstruct companies themselves. Anger at a management that showed neither “sincerity” nor any understanding of employees’ demands turned the dispute into a fierce struggle that proved to be highly significant. (p. 64)

These early postwar struggles were infused with the chaos of a time where management had often left a vacuum into which union activists stepped. Kumazawa Makoto (1996) discusses these struggles in his history of postwar labor movements, pointing out that they were powerful and exemplified labor’s ability and core concern with production. He writes that although such struggles faded away in the high-growth period of the sixties, between 1952 and 1957, “when
management was in a general state of shock and bewilderment immediately after the war, unions exercised strong authority over production and personnel matters” (Kumazawa 1996, 66). The immediate postwar period was a time of economic crises, political change, and extensive realignment of Japan’s relationships with the world, especially with the United States. The social movements of this time were powerful, and their gains contributed to the workplace practices of employment security and collective bargaining to which the Universal case referred (see Gordon 1998; Kumazawa 1996; Niimura 1994a, 1994b).

The majority of workers at Universal had personal memories of that time. Over one-third had vivid memories because they were old enough during the war to participate in social life as adults and to experience the transition from war through economic devastation and political turmoil. At Unikon, the camera company where I did research first, the Universal union was respected as the architect of the model that the Unikon union had used for their own labor dispute, and even more as a model for what their young leaders liked to call “real Japanese workers.” It was at the urging of the Unikon people that I came to Universal in the first place. They said that I couldn’t really understand activism and workers’ consciousness without working with them. What I came to believe myself was that I had not fully encountered the lived history of the postwar worker until I met the Universal workers.

Personal adult memories of the immediate postwar period do not explain the organizing strategies, the successful legal battles, or even the ultimate success of their dispute, but they do allow us to understand some of the cultural models for thinking about employer-employee relationships, the importance of stability, the rights of workers not to be forgotten even in times of crises, and the sense of the possibility of social change itself. These cultural models helped people imagine activism and the power of collective action. It was commonplace to have conversations in which people laughed about the past where everything was “for the sake of the emperor, for the sake of the company” (tennoheika no tame, kaisha no tame), followed by comments that would begin with “thanks to losing the war” (senso ni maketa okage de) and would go on to remark about improvements in Japanese social and political life that they themselves had witnessed.

The frank lament that “democracy” had come to Japan but that Japanese people didn’t know how to use it yet was a frequent refrain (Turner 1989, 299–323). References to that postwar economic chaos through which people had lived were used to contextualize their current struggles. One worker told me that it was impossible to know if you would live or die and that coming through experiences like that made you “used to struggling” (narete kuru). The older workers who were in positions of responsibility in the factory were even frustrated that there were no younger workers who knew how to do everything. One man in his sixties told me, “By our age we should be able to let the young ones run the place, but...
somehow it is always we, the older ones (toshiyori), who have to get involved.”

The legacy of the postwar activism of labor and the production control struggles of the immediate postwar period were on the minds of lawyers and union leaders. For the rank and file, the hardships, the experience of struggling to get by, and the importance of what they considered the “importation” of democracy from America dominated their memories. These memories of both hardships and positive political change and the ways in which personal lives could be changed by political action and legal institutions grounded the commitment of many of the Universal workers. One of the younger workers told me that she felt “lucky” to work with “these men who just do what they have to do and go on working for something.” She said that maybe she wouldn’t have “stuck it out” for all those years “if it weren’t for them.”

**THE LEGAL CASES:**

**GOOD FAITH EFFORTS, EMPLOYMENT SECURITY, AND CONSULTATION**

There were eight legal cases associated with the Universal dispute. Six were filed in Tokyo District Court, one with the Tokyo Labor Relations Board, and one in Yokohama District Court. None of these was settled prior to the final settlement nine years and nine months later. Each of them has a very specific claim based on some specific provision under Japanese labor law, and each of them had a specific set of arguments and evidence to support that claim, developed by labor lawyers handling the case, union leaders, and the Joint Struggle Committee (Kyōtōkaigi).

The first two cases were filed simultaneously, three months after the company announced bankruptcy proceedings. The union filed a formal case with the Tokyo Labor Relations Board against Custom for unfair labor conduct and a separate case in Tokyo District Court (Civil Suit Section 19) against Custom and Universal management for unpaid wages. The content of this appeal was based on two main arguments. First, because of massive wealth and multiple factories, Universal claimed that Custom had not demonstrated the economic necessity to close this small plant and eliminate the jobs of these few workers. The union claimed that Custom Shoes had at least two hundred million yen and factories in nine other locations throughout Japan. Thus, they claimed Custom was involved in “abusive dismissal” because they did not make “good faith efforts” to avoid bankruptcy or to relocate employees to other jobs (see Gould 1984; Foote 1996). Consequently, the union demanded, Custom must begin negotiation over reopening of the factory and over unpaid wages.

Second, the union argued that Custom was an employer. This was a critical claim, one that had to be accepted before labor law regulating employer-employee relationships could be invoked to settle all other disputes. Here they argued that because Custom owned two-thirds of Universal’s stocks and five-sixths of all
assets and property, they were, as a matter of practice, in an employer-employee relationship even though the formal business status of Universal Shoes was that of a subsidiary. This charge is, of course, an important challenge to one of the ways in which many Japanese companies try to guarantee long-term secure employment for a core of their own regular workers by creating a more flexible source of labor in small and medium-sized subcontractors and subsidiaries.

There were also, included in this case, charges of unfair labor conduct alleging that Custom forced the bankruptcy of Universal through intentional mismanagement as part of a policy of rationalization of production with a reckless disregard for the loss of jobs and an unwillingness to consult with the union representing their workers about solutions to existing economic problems. There was, it is worth noting, no claim that rationalization or other organizational changes were themselves outside the rights of the employer, but rather that reckless disregard of the employment security of the workers combined with unwillingness to negotiate or consult violated workers’ rights under Japanese employment law.

Japanese labor law does not guarantee workers freedom from market strain or other economic upheaval, but it does set limits beyond which employers may be charged with violating their responsibility as employers for their employees. The legal notion of “abusive dismissal” is about setting constraints on treatment of employees especially during times of economic crisis and collective dismissal. The responsibility of employers to act responsibly toward their employees has been established over the past six decades and has become the subject of record numbers of court cases, extensive legislative debate, and some legal reform over the past few years as postwar labor law and practice has been challenged by unprecedented economic crisis. The idea that employers must make “good faith efforts” to find alternative employment raised in the Universal dispute is an issue still debated today in the context of employment policies related to economic restructuring. Interestingly enough, in spite of reforms in labor law, commercial laws, and civil codes, the core features that allow workers to go to court to fight against unreasonable dismissals have remained largely unchanged (Yamakawa 2001). Foote quotes the legal scholar Nakayama Ichiro who claimed, in 1959, that “there is no other country in the world where dismissal is as strictly regulated as in Japan,” and Foote goes on to argue himself that “the limitations on dismissal in Japan have become even more strict over the intervening years” (1996, 638).

The Universal union also filed charges against Custom for refusal to negotiate in a document that went before the Tokyo Labor Relations Board (TLRB). They outlined their own efforts at collective negotiation and claimed that they could do nothing without the cooperation of Custom and that their requests on six separate occasions to their “real employer,” Custom, to enter into collective negotiation were met with refusal. On the one occasion when they did meet informally, the discussion became contentious and Custom ended up calling the police.
and accusing the union members of violent behavior. The attempt on the part of the parent company to charge violent behavior on the part of the union members was to no avail. Many have noted that it is common in Japanese labor disputes to forgive otherwise disruptive actions—even marginal or illegal ones—so long as they can be shown to be part of a set of dispute actions (sōgikōdō) (Gould 1984, 40). Ultimately, the TLRB called on Custom to come and engage in negotiations aimed at settlement of the case. Custom refused to negotiate, however, claiming that they were not an employer and that they were in fact a separate legal entity from Universal. In response to this refusal, the Universal union formally requested assistance from the TLRB in settling the dispute.

The second case brought by the Universal union was a suit in Tokyo District Court (Civil Section 19) against Universal owners and Custom for unpaid wages. Once again, the central and critical claim was that Custom is the “real employer” and was thus a reasonable entity against which to bring suit. Universal owners responded by acknowledging their debt but claiming that they had no ability to pay. Custom rejected the obligation to pay based on their legal status as a separate entity. In this case, the evidence and arguments made over the following months and years were specifically aimed at proving the “parent/child company” (oyako gaisha) relationship and arguing the status of Custom as an employer. The court met approximately once every two months to hear this case. Over time, other claims were added to include unpaid wages for subsequent months.

The second and third legal cases were linked. and both were in Tokyo District Court. Universal’s union petitioned the court (Civil Section 9) for permission to seize and auction unsold products to pay workers their unpaid back wages. The court granted this petition within a month, but Custom brought a third-party objection suit in Tokyo District Court (Civil Section 4) and halted the process. Once again the union argued that because Custom was an employer it had the obligation to pay back wages; Custom argued that as an independent entity and a major stockholder in the bankrupt Universal company, it was entitled to property as part of settlement for its own financial investment claims. This case was heard about once every two months over the course of several years.

The fifth, sixth, and seventh cases were all brought by Custom against the Universal union demanding settlement of debts through access to assets and properties of Universal, including cash savings in a bank account (Civil Section 12 and 23), buildings and land (Civil Section 15), and equipment (Civil Section 24). The final suit was brought by Custom against the Universal president in Yokohama District Court claiming that he had repaid debts incurred by Universal to a creditor bank using Universal assets and demanding that he reimburse them from his personal funds.

However favorable Japanese employment law may be for employees in any one of these cases, the process of litigation and negotiation presented a challenge
requiring human, organizational, and financial resources possible only through the social movement practices of the Universal union and the extensive activist network within which they were situated. While fighting the legal battles in court, the Universal union and its network of supporters created and maintained resistance to asset liquidation, the economic context to maintain workers’ livelihood, and the cultural context to understand the legal strategy and motivate people to become agents of social change over nearly a decade of struggle.

**Union-Managed Production, Commitment, and Endurance as Evidence**

Labor movement leaders and the lawyers representing Universal frequently talked about the “three pillars” of union-managed production struggles: “living, working, and struggling.” For union leaders these three pillars helped organize their efforts to maintain a strong collective sense of purpose and motivation, whereas lawyers saw them as good for their court battles. They claimed that maintaining the livelihood of the rank and file gave them time to gather evidence and construct stronger and stronger arguments as they engaged in the slow-moving process of court proceedings. They saw the length of time it took to settle as a mixed blessing. The continued production under worker management was in and of itself evidence for the feasibility of continued operation of the company as a business, and although they wanted to bring the cases to a successful close as soon as possible, the longer the production and sales continued the harder it was for the other side to argue the necessity of bankruptcy in the first place. Finally, the struggle both in its collective action forms and its production form gave them a client that was visible, tenacious, and “unforgettable.”

One of the lawyers for Universal claimed that after four years of struggle their cases were actually stronger because the worker-managed production had enabled the legal team to gather more evidence and to make stronger arguments about the careless way in which the parent company had treated the Universal workers. “What we need for our court cases is evidence,” and “nearly four years of self-management of production had made it possible to produce more and more evidence together.” Of course no one wanted this case to last nearly a decade, least of all the union members who lived with uncertainty and personal economic struggles to sustain their families or the union leaders who had to maintain the solidarity necessary to outlast the legal negotiations and reach a favorable settlement. However, from the lawyers’ point of view, time passing was not necessarily an indication of the likelihood of defeat. This, of course, is why they saw such significance in the activities of the union that stabilized the livelihoods, work, and social lives of the workers themselves and the Universal factory as a union managed plant.

The “living” and “working” aspects of this labor dispute created remark-
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The combination of stable daily routines of production, sales, company management, and maintenance of the plant resembled the pre-bankruptcy routines to which all were accustomed. Given the goal of the eventual reopening of the company as a worker-owned production cooperative, these two "pillars" of normalcy were particularly important. One of the most striking things about the atmosphere of Universal during its struggle was its feeling of normalcy. In my own field notes, I remarked on this the first time I visited them. Aside from the small red flags adorning the fence that ran around the factory property, one would not know that anything unusual was going on inside. People and machines were active, and normal routines of work, breaks, exercise, and even factory gardening were repeated daily. Following a very brief period of less than three months after the declaration of bankruptcy, workers had returned to routines with which they were already familiar. They shared these routines with people who they had already established ties of workplace collegiality and friendship. If I were to try to describe these daily routines it would make for tedious reading, but ironically it was largely that tedious stability of daily work life that grounded the Universal struggle and gave the union traction in pursuing a settlement of their dispute.

Periodically the festivals, parties, and factory bazaars opened the premises to neighbors, networks of social movement supporters, academics, representatives of political parties and of course their legal team. One of the members of the union's Joint Struggle Committee joked at a general meeting that "rumors are running around the neighborhood about Universal workers—you are supposed to have gone bankrupt and to be engaged in a harsh struggle, but in fact you are working and partying as usual. What's going on?" He talked about numerous social events of the past year that had contributed to strengthening their reputation as a healthy small company. They had convened a New Year mochi-making party, a summer obon festival, a bazaar where they sold their shoes at a discount, and a factory festival. Not only had these activities demonstrated the continued existence of the company itself, they had become a direct and powerful defiance of the order to go bankrupt and disband. As such they had become "an embarrassment to the parent company," according to one of the members of the Joint Struggle Committee.

The collective actions that support the "struggle" element in the dispute were dramatic, disruptive, and infrequent. Each effort to bring the rank and file into disruptive actions required renewed persuasion, framing, encouragement, and mobilization on the part of union leaders and their Joint Struggle Committee. These collective actions were largely unfamiliar and uncomfortable for people at first. Over the years they became adept at carrying them out, although for most there was at best an uncomfortable fit between their lives as workers and their actions.
as demonstrators and activists (see Turner 1995).

In the beginning of their disputes workers were convinced to stay, to join in the court case, to continue production under their union’s management, and to commit to a plan of action aimed at financial settlement, job security, and publicly correcting unfair treatment on the part of their parent company, Custom. In daily conversations and interviews over the course of many months, all the Universal workers reported that they experienced a gradual change in their motives for joining the struggle, staying with it for the first few years, and then persevering through to the end. One woman told me, “At first we had no work. We had no right to even be at work. But we were worried about our jobs and about the possibility of finding other jobs. Even the parent company had dismissed workers from its own factories. How could we expect to find work?”

The strength of union-managed production as a strategy for pursuing court cases about unfair dismissal lies in its creation of a short-term solution to the immediate problem worrying many of the workers involved. In order to keep the rank and file motivated over the long term, however, the leadership of the union had to offer more than a temporary solution to the problem of employment. Many workers expressed their anger at their parent company for treating them as “less than human” (ningen to shite atsukarete inai) and their worry about finding other jobs in a sector of the Japanese economy deeply affected by changes in international economic policy. However, as one worker put it to me, “What works in the beginning won’t work after a few years or even months.” Over time workers needed to find reasons to stay with this struggle, not knowing for sure that it would settle to their advantage. There were several things that sustained people. The most common was a deeply felt connection to other workers who had not quit. When I asked people why they stayed even after so many years, the most common response was, “I couldn’t quit after all that time when others were sticking it out.” These others were sometimes labeled as “even the young guys with families” or “even the older workers who should be retiring,” but they were always a reference to a sense of shared purpose based on ties of common experience. Ironically, it seemed that time was on the side of staying even longer. There was a certain logic to staying put once a significant investment of time and effort had already been made.

In addition to the grounding of the struggle in bonds of shared experience, daily life routines of work, special occasions, and life, there were many for whom seeing this struggle through to the end held meaning beyond their own local dispute. The notion that they were doing something of value by standing up for Japanese workers and their rights to fair treatment even in times of economic hardship was tangible and provided for many a sense of purpose (ikigai) in their own lives. This was primarily developed in the process of finding, through the experience of participation in the dispute itself, that they were part of the very
extensive network of the Japanese labor movement, a movement that had a history to which they might contribute. This was an explicitly argued message heard from lawyers, union leaders, and other labor movement activists. As a motivation for participation it was more salient for some rank and file than for others, but for everyone it was part of the cultural environment of their struggle. The legal cases themselves explicitly tied these workers and their collective purpose to the larger world of Japanese society and the historical evolution of important values and norms about workers’ rights.

Clifford Geertz called law a way for society to “imagine the real” (Geertz 1983, 173). In the Universal case and in others like it that I have studied, I think that going to court has also been a way for ordinary citizens to realize the imagined or at the very least to exercise their agency to that end. In considering social change, in other words, it is not just the activist intention to transform that is in question, but also the process through which ordinary Japanese workers come, through specific political actions, to realize their legal and social positions within national institutions and Japanese society as a whole. It is in this union of legal action to achieve organizational goals and cultural action to create common sense categories for social agency that the role of the labor dispute as a social movement becomes critical for success legally, politically, and culturally.

POWER, NETWORKS OF SUPPORT, AND POLITICAL STRATEGIES FOR PROTEST

Universal built an extensive local, national, and even international network of unions and labor federations that supported their collective action and their court cases, including the then powerful and progressive Sohyo, or General Council of Trade Unions. The first thing the Universal union president did when he was notified of the bankruptcy declaration was to call the Custom Shoes union, the Federation of Shoe Manufacturers Union, to which they both belonged, and the national federation Sohyo. He claimed years later that while people always talk about the great efforts and accomplishments of the Universal workers in pursuing their labor dispute, there should be much more attention paid to the very extensive network of labor movement organizations that “propped us up” and made it possible to go to court, to pursue union-managed production, and to organize effective collective actions. In these early days, help was immediate and took many forms, all of them concrete in terms of resource sharing, advice, and mobilization of networks. Young workers from affiliated unions came to work at Universal,

2. Sohyo, the General Council of Japanese Trade Unions, took an active role in supporting labor disputes even in small and medium-sized industries. It was dissolved in 1989 when it joined the newly organized Rengo, or Japanese Trade Union Confederation. This newer organization now represents nearly 70 percent of Japanese unions.
federation personnel came to help organize the Joint Struggle Committee, network lawyers were brought in to handle legal cases, and organizational resources were made available.

As is common in disputes of this nature, the “Joint Struggle Committee,” made up of representatives from the most important affiliated unions, political groups, and legal advisors, worked with the Universal leadership to plan their dispute actions and help lawyers plan their legal strategies. In addition, there were many other support committees (shienkai), organized by many different groups that joined in the network of protest for Universal. These included representatives from national level labor federations, the union organizations for shoe and leather manufacturers, Tokyo area labor union networks, Socialist Party organizations, neighborhood activists, and a wide range of progressive lawyers, academics, and social activists. They also joined the Tokyo Sōgidan, an organization made up of all companies undergoing labor disputes, which organized large-scale demonstrations and actions by joining forces and scheduling multiple site demonstrations over a single day. This extensive network of support integrated this small company’s workers and their legal and political struggle into networks of labor that reached far beyond their own workplace.

Throughout the years of the Universal struggle, the organizations in this network continued to be involved in planning and execution of collective action as well as in production and sales. There were always people working on the shop floor who had been sent by one of the network organizations. Some of these people were there to help when additional human resources were needed, but more often they were workers engaged in either individual or very small disputes who needed employment while waiting for their own court cases to settle. Raw materials for Universal’s production and all of their sales of the finished products were handled through union networks that stretched across Japan. I was interviewing a union president in a large electronics company, and when I mentioned I had worked previously with the Universal union, he cheerfully pointed at his Universal made shoes, telling me how much he liked them and how well made they were. He had purchased them from one of the lunchtime sales that his company authorized. Universal sold all their products by delivering or sending them to unions nationwide for sale to their members.

In addition, these networks conveyed in every interaction with Universal workers the increased potential for their struggle to be successful as well as the broader significance of their cause. The strategies Universal could pursue were of course constrained by their small size, but with the help of their supporters they kept up an ongoing series of actions ranging from large demonstrations in downtown Tokyo at the financial institutions backing Custom, weekly picketing of the Custom’s Tokyo factory, and weekly pamphleteering in Custom’s neighborhood.

Workers who felt “small” and largely invisible came away from demonstra-
tions excited about what to them were “unbelievable” numbers of workers who came to demonstrate with them. Just before their first experience at one of the largest demonstrations (a day of coordinated demonstrations with thousands of workers) in which they participated, many rank and file worried about how insignificant their small company would be when they showed up in front of the banks and companies in downtown Tokyo. By the time they came back from that collective action, however, conversation was animated and excited about the extensive network of Japanese workers within which they had a place. One worker who had been dreading the event conveyed how surprised she was by the absolute numbers. “It was the first time for me, so putting on that thing [she motioned toward where the chest sign where their union demands were written] was something I was dreading. But you’re not alone doing that, and even if something is unpleasant when you do it alone, when you do it with everyone else it is all right. There were so many people there yesterday. I didn’t realize. It was amazing.”

Even if the legal cases technically could have been carried out without these political actions and networks of extensive ties, it is unlikely that they would have been successful. Workers themselves claim that their dispute could not even have begun without this extensive network of protest supporters, much less could it have reached a satisfactory conclusion. These groups provided financial resources, expertise, experience, and credibility that pushed the parent company Custom and the financial institutions backing them to take seriously the cases against them and eventually to negotiate and work toward settlement. In addition to the tangible resources shared within these labor movement networks, there is an intangible experience of connection in the physical sharing of activities with one another. These networks conveyed a sense of being part of something larger than their own struggle, an experience of collective purpose that embodied the arguments made by union leaders and the legal team, arguments claiming that the Universal struggle was a more general struggle for Japanese workers’ rights as well. The decade-long history of the Universal dispute is one not only of collective action and union victory but of a transformation in the rank and file’s understanding of concepts of legal rights and political power made possible only through their shared experience of both the social movement and its related legal cases.

The Settlement and Its Significance

The irony of the Universal workers’ struggle is that the legal case was about rights as employees and responsibilities of employers for the livelihood of their workers, while the political battle was ultimately to lead the Universal union to reopen as a workers’ cooperative company, to become its own employer, and to take responsibility for its own future economic viability and thus the livelihood of its workers. Furthermore, it is unlikely that the legal cases could have been
settled in as advantageous a way as they were had the labor movement actions not continued to demonstrate the power of this union and the network of social movement activism into which it had embedded itself. The assets won in the final settlement went to establish a cooperative company in which all the employees owned shares.

The final settlement of the Universal dispute was reached in negotiations at the Tokyo Labor Relations Board. Its wording carefully avoided any attribution of blame, any fault, or any conclusions about right and wrong. It included the agreement for both sides to withdraw all cases in Tokyo District Court and Yokohama District Court, and it specified that they would do so without further comment. It transferred substantial capital assets, land, and machinery to the Universal union—enough to pay all back wages and to reopen a factory able to employ all involved workers. The Universal Workers Cooperative Company operating today is the result. Its legal history lies in the liberal legal framework and precedents of Japanese case law favoring the right of workers to fair treatment and good faith efforts by their employers to do all they can—even in times of economic hardship—to preserve their employment and to engage in consultations and achieve some measure of agreement before restructuring the enterprise or moving to dissolve it. Their political and cultural history lies in what the union proudly and ideationally called “tiny socialism,” a local practice of worker control with roots in the ideologically idealistic and strategically effective Japanese labor movement of the immediate postwar period. This history continues to frame progressive models aimed at moving Japan and Japanese labor relations toward a future founded on more “human-centered” values.

Assessing the significance of this small struggle and its contributions to significant social change is a complex task that generates equivocal conclusions. I think the actions of this small group of workers were important both as social movements and as court cases, and their achievements suggest the power that lies in this combination. As a labor movement action, Universal was one of the first struggles to oppose liquidation and loss of employment due to economic “rationalization,” or gōrika. It became one of several model struggles in the 1980s and 1990s (see Totsuka 1978). Most of these had some measure of success in recovering assets, and several succeeded in reopening factories and reemploying workers. Many are still in business. For the workers involved in these struggles, the short-term impact was great, and it is easy to call them successful and to see ways in which they influenced grass-roots social change in Japanese labor relations practices. They clearly established models of protest with successful track records in the courts that became available for emulation by workers in the increasingly large number of small and medium-sized companies that fell into bankruptcy during the 1980s and 1990s as the Japanese economy fell into recession. Through the networks of labor and social movement actors that supported them, they also
provided inspiration for agency for many other activists trying to grapple with the social changes that accompany economic change. In settings as diverse as medical activism, established labor unions at large stable corporations, and small citizens’ movements, I have been surprised to hear people refer directly to these antibankruptcy struggles in general and to the Universal struggle in particular. It is possible that these cases may provide models for combining legal cases with social movements to create particular local solutions to particular social problems.

As a court case, Universal’s success in enforcing labor laws through the courts demonstrates the power of law to frame and to legitimize labor movement action. The Universal court cases and those that followed contributed to the body of case law that defends employees against unfair dismissals by dealing directly with the problem of job loss through bankruptcy dissolution. There was an explicit intention on the part of Universal workers to force Japanese capitalists to act “responsibly” toward their workers when rationalizing or reorganizing their production in response to economic crises. These goals were clearly met in the final successful settlements and in the broader evaluation of their struggle within the labor movement, and beyond that in the world of social activism and civil society.

Yet there were unintended consequences of their struggle that stemmed from the accumulated pressures on employers as these and other labor disputes involving employment security proliferated during this period. Union leaders and workers alike comment now, with appreciation for the irony, that their struggles taught capitalists “how to go bankrupt” while avoiding worker initiated legal action and disruptive dispute actions. This too has contributed to efforts by employers to find more flexible ways of dealing with their work force and their networks of subcontractors and subsidiaries. In other words, the legal settlements of cases like Universal’s helped to define the limits to employment elimination, dismissals, liquidation, plant closings, and bankruptcy for employers, subsidiaries, and subcontractors. Corporations learned the legal limits to their actions. Certainly, say the labor movement people, employers learned what they had to do to cut back their workforce without facing massive labor movement action and lengthy court battles. Foote generalizes about what he labels the “ongoing dialectic” process in the history of employer-employee legal struggles over dismissal practices: “businesses have devised new strategies designed to maintain flexibility, to which the courts have responded by developing the doctrine further” (Foote 1996, 638).

One obvious consequence of restrictions on the dismissal of workers has been the pressure for proliferation of new categories of employment beginning in the 1980s. Since the case law has tended to place more restrictions on regular full-time workers than on other categories of employment, businesses have responded by trying to create more flexibility in managing their work forces through reductions in the relative number of regular employees and increases in the number of workers in so-called “nonstandard” categories like temporary,
contract, and part-time. Businesses can take precautions and show good faith efforts to protect jobs for the more protected regular work force and increase the nonstandard workers for whom employment security is less regulated. In recent interviews, in fact, Rengo officials readily admitted their frustrations about the increasing weakness of organized labor in the face of work-force restructuring. It is no longer, they say, a climate that favors radical action. In fact, their new efforts are focused largely on coping with the proliferation of new categories of employment created by employers trying to replace a large portion of the regular, full-time work force with more flexible categories of workers who are structurally kept in relationships without full protection of employer-employee relationships as customarily and legally defined.

Ironically, the success of cases like these in the 1980s and 1990s undoubtedly influenced the economic and political reform efforts aimed at reducing the record-breaking number of employment disputes, which ushered in the new millennium and set the stage for Japan’s economic restructuring. The social activists involved in Universal’s labor movement and their allies in related social movements lament that social recovery has not yet followed economic recovery. They see social ills and loss of meaning and value to be a continuing threat to Japanese workers and an important set of issues to be addressed by movement activities as marketization and its associated economic upheavals challenge the ability of people to find stable work, secure a reasonable livelihood, and understand their position in a rapidly changing social world.

**Economic Uncertainty, Employment Stability, and Social Change**

In one sense these social movement activities were not so much about going to court to change things as they were about leveraging the law to keep things from changing. Of course, in the area of employment, because of its constitutive role in daily life itself, stability is a primary goal for workers. In times of economic crises the use of collective action and court cases to further the cause of employment stability resonates with the histories of both legal and social activism in Japan. Judicial activism around employment security began in the early postwar period to establish the case law that is still used to address “economically motivated dismissals” during the most recent “new wave” of economic upheaval (Foote 1996). Bankruptcy struggles used this body of law to their advantage. Safeguarding the livelihood of Japanese workers during economic restructuring is a complex problem. The Universal dispute and others that followed it in the 1980s and 1990s aimed to set limits on employer actions during times of economic crisis. The Universal workers, their union leadership, and federation allies did not set out to change Japanese labor law, but to benefit from and expand the application of those already in existence. They meant to force capitalists to be responsible for
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workers even in times of gōrika—or rationalization of production. They meant to enforce limits on dismissals, liquidations of production facilities, and elimination of jobs associated with the economic crises that were lining up off Japan’s shores as globalization ushered in unprecedented demands for marketization in this “new wave” of economic upheaval.

Throughout the struggle, the language of the social movement emphasized both the particular issues reflected in the court cases and larger issues of what the union called “social responsibility.” This echoes, in friendlier language, the legal concept of “social rights,” but it shifts the balance to the more powerful side of a relationship with a nod toward paternalistic assumptions about moral action within institutional hierarchies. They accused Custom of being irresponsible and claimed that the company was responsible for the livelihood of the Universal workers and their families. The particular justice they demanded was summed up in the slogans like “Custom! Take responsibility for Universal’s bankruptcy!” “Custom! Take responsibility for the livelihood of Universal workers!” Greater labor movement justice was imagined in “Big capital! Stop destroying small and medium-sized companies!” In a time when enterprises were trying to find ways to increase flexibility in their work forces, this was an important challenge, resonating with the resistance within larger companies of their regular, full-time workers asking for limits to be placed on offshore production and increases in nonstandard employment.

Much of Universal’s legal battle was directed at establishing workers’ rights as employees, at recovering lost wages and benefits, and at opening negotiations about a reestablishment of employment. Whereas the arguments regarding Japanese labor law were particular and exclusively context bound, avoiding, even in settlement, generalizing about right and wrong, or good and bad, the local disruptions of the social movement were infused with the discourse of broad national and international social change to improve the welfare of workers in Japan and around the world. The issues addressed in framing the local labor movement actions resonated with the tone of national legislative, business, government, and labor federation debates, as well as broader social discourse concerned with reforming Japanese social institutions in the context of marketization and economic restructuring. Both aimed to enforce existing protections and to advance additional protections for workers in Japanese society.

The most idealistic arguments that supported these actions were universal ones about rights as workers, employees, and citizens of Japan. The global economic change that compelled Custom to take measures to disband Universal was met with national legal actions and was supported by local social movement activity. Universal’s disruptive actions were, of course, aimed in part at demonstrating their determination to fight until settlement could be reached in the court cases themselves, but they also aimed at a series of loftier goals. These included regaining employment for all Universal workers, reopening a Universal company under
worker control of production, and demonstrating to Custom, to other Japanese capitalists and employers, and to workers around Japan that workers—even in small numbers and in economically vulnerable positions—can exercise power and can be at least a modest force for desirable social, economic, and political change ensuring safeguards for the livelihood of ordinary workers. None of these goals was addressed directly in any legal case and yet, without the legal cases asserting the very specific rights of these particular workers as employees, none of these goals could have been pursued. The pursuit of these general issues through the specific cases acted to legitimize the disruptive actions, especially in light of eventual victory in the court cases, and to signal a powerful message of support for employee rights to stable employment and a secure livelihood even in circumstances of economic crisis.

This discourse of social responsibility rests on an uneasy intersection of paternalistic notions of being taken care of by a powerful employer and liberal, even radical, notions of employee protection from rash disregard in the course of employer economic action. Daniel Foote (1996) says of the “abusive dismissal” case law that it lies on an assumption of a stronger employer and weaker employee and the corresponding necessity of assuring some measure of responsibility on the part of the employer and rights to protection for the employee. Fundamentally, he argues, in Japanese law employment is seen as a “stable relationship” that carries with it both rights and responsibilities. Frank Upham (1987) and William Gould (1984) have both written about the importance in Japanese court cases of social contracts within long-term relationships. Both argue persuasively that these are not traditional, conservative, reactive positions but in fact constitutive of the process of defining and protecting Japanese concepts and practices of social relationships and social rights.

Domestic and international economic pressures have led to recent reforms in Japanese employment law pushing toward more business flexibility and the opening of labor to more market forces. The reforms themselves, however, continue to use the language of employer responsibility, employee consultation, and preservation of the stability of the relationship between employers and employees even under conditions of economic stress, enterprise crisis, or organizational restructuring. Yamakawa (2001) argues that while revisions in commercial codes since 2000 have made it easier for corporations to restructure, revisions in labor law “have not touched upon the limitation on the employer’s right to discharge established by case law, which is one of the most fundamental elements of the Japanese labor law.” Foote concurs and suggests that although in the current economic climate erosion of employment security is likely, it will be market pressures rather than any change in judicial application of legal standards that will be responsible (1996, 706).

In this context of increasing transnational integration of labor and capital
markets, there are many forms of social change in Japan not unlike those in the rest of the advanced industrialized world. What is particularly interesting about the Japanese response is the way in which economic, legal, and cultural institutions are being engaged in debate about the reconfiguration of both specific economic practices and cultural understandings of the role of work and stable employment relationships in constituting social life and identity for Japanese citizens. This debate goes on throughout society. A leader in the government organization charged with revitalizing Japanese companies recently wrote, “Japan, a nation of few natural resources, continues to rely on people as its primary source of wealth generation into the twenty-first century. Yet, the system for tapping that potential, a twentieth century *harmonie preetablie* [preestablished harmony] . . . is getting old. . . . If we accept this, what kind of system should we create for the twenty-first century?”

The response of activist unions to bankruptcy related loss of employment, supported by national federations and networks of social movement actors, constituted an important voice in the process of social adjustment by making demands for reasonable treatment of workers during restructuring or dissolution of companies. Because these demands were made both legally through court cases and politically in social movement actions, they became powerful enough to contribute to the critical social discourse regarding the consequences of subjecting employment to an unregulated labor market, and they have asserted the need for appropriate social, cultural, and legal limitations on economic action.

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