
The Concept of the Right to a Career: How to Protect the Careers of Workers

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A system that aims to secure and guarantee “employment” with a focus on internal labor markets of a certain size has led to Japanese-style employment practices and legal principles. Accordingly, although the system does not necessarily guarantee that a worker will be able to continue to be employed in the same occupation or job, it aims for career development within the same organization, that is to say, within a single internal labor market. If the organization is maintained and develops constantly, career formation and development will also progress smoothly. Thus, the legal measures that have been devised in Japan have been exclusively aimed towards securing and guaranteeing employment. However, if dramatic changes occur in the employment environment, career development in the same occupation or job, or within the same organization becomes difficult. People are shaken by instability. Young people worry about what sort of working life they should lead, while middle-aged and older people suffer distress as a result of the cessation of the career that they have spent a great deal of time and effort developing. Even in the case that the country is moving away from the traditional principle of versatility in internal labor markets and undergoing a transition to an employment system reliant on fluid external labor markets, if both career development directly linked to an occupation or job and career development directly linked to a specific type of employment become difficult, what sort of working life should people lead? What should people do in order to ensure that their career formation and development are guaranteed even if they undergo several changes of job? There will be a growing need to use not only employment practices, but also legal means to ensure the dynamic potential for career development that transcends jobs, occupations and specific types of employment. This is because, if no measure is provided, there will be increased anxiety and frustration among people for whom skill formation and career development is not progressing smoothly, leading to social instability and a fall in the efficiency of an economy that has failed to utilize human resources. The concept of “the right to a career,” which was introduced in provisions that had their origins in Japan’s Employment Countermeasures Act and Human Resources Development Promotion Act, is one of the proposals for fundamental concepts that seek to respond to this issue. The author will discuss this concept in this paper.

I. Introduction

If the formation, development and maintenance of a career does not progress smoothly, people become unable to expect adequate remuneration or job satisfaction, the economy suffers from the depletion of human resources and social instability increases. How can one secure the formation of skills that form the core of a career? How should careers be utilized? This paper seeks to investigate labor law issues relating to these problems from the perspective of “the

right to a career.”¹

1. Japanese-Style Employment Practices

It is not the case that long-term employment was the only form of employment in Japan hitherto, and it might be that the seniority-based employment system in its literal meaning was actually an exception rather than the rule. In the “three major employment practices” in Japanese-style employment, the formation of in-house unions was the most common form of entity, but the estimated unionization rate is only 18.5% (2009), and the formation of such unions is remarkably disproportionately slanted towards the public sector and regular employees of large and medium-sized enterprises. There are also labor union forms other than in-house unions, but they organize rather small numbers of workers.

Consequently, Japanese-style employment practices had the basic attribute that they were frequently developed in common forms of employment that were deemed to be good, rather than having spread universally throughout society. However, the model effect of good employment opportunities raised such employment practices to the level of a socioeconomic philosophy. Repeated tragicomic stories have been told about the competition for university places in order to have good employment opportunities, single-minded loyalty to the company and the pressure not to lose the employment opportunity that one has finally obtained, various forms of behavior predicated on long-term employment, and the major lifestyle changes that occur when people reach mandatory retirement age.

State employment policy has also been undertaken on the basis of the keywords “securing employment” through long-term employment. In order to build, maintain and develop internal labor markets, various support measures aimed at maintaining employment were put in place and a skills development system based on the premise of in-house training was promoted, but these were all measures targeted at companies. In other words, the objective was to provide development and guidance for the employers who were the organizers of the internal labor markets and to form better internal labor markets and labor relations between management and workers within the company, thereby leading to the creation, maintenance and development of employment, as well as achieving more stable labor relations between management and workers. Naturally, the principles of labor law exist and function consistently in relation to this, being based on the premise of Japanese-style employment practices.²

There is no need to reiterate the fact that such response measures involving workers, managers and the state have yielded reasonable results. At the same time, we cannot overlook the fact that they have also had negative aspects, such as the creation of a dual structure of reg-

¹ This paper is based on the following papers by Suwa (1999), Suwa (2004) and Suwa (2010) (all detailed notes in the original text have been omitted). In addition, the issue of “careers and the law,” including the perspective of “a career is property,” was discussed fully in Suwa (1996a), and the discussion subsequently continued in greater depth in Suwa (1996b) and Suwa (1998).

² To have comprehensive information on recent labor law system and labor practices, see Araki (2009), Araki et al (2008), Ouchi (2009), Sugeno (2010), and Yamakawa (2008).

ular and irregular employment, the creation of employees conditioned by the company, loyalty that leads to a lack of vision, and a culture of long working hours.

2. The Transformation of Employment Practices

The employment practices that seemed to have been fully established by the time the bubble economy developed began to change amidst the prolonged economic slowdown. Initially, there was the idea of making minor alterations in the seniority-based employment system in order to respond to the aging of the employee structure and deviations from conventional working conditions. In order to respond to the lack of posts and the heavy wage burden, systems such as a merit system, performance-based system or results-based system were advocated, and the flattening of the organizational structure and development of specialist positions were recommended, with management by objective and the annual salary system spreading through companies. Following this, moves emerged that sought boldly to rework Japan's long-term employment system. Furthermore, as the recession became more prolonged, measures for shedding excess personnel also naturally spread. "Rationalization" was once the word used to describe reducing the workforce, but this subsequently changed to "restructuring." As a result of such developments as the declining birthrate and aging of the population, which are becoming structural problems, as well as the increasing prevalence of information technology, the shift in the economy towards the tertiary sector, and growing internationalization, further revisions of employment practices are imminent.

Thus, the theory of the increasing mobility of employment emerged. This theory points out that it is nonsensical to maintain employment in ailing companies in declining industries by pumping subsidies into them, and that allowing employment to flow from declining industries with excess manpower to developing companies in growth industries that are eager for personnel is actually the sensible strategy. It recommends seeking to revitalize the functions of external labor markets. Of course, powerful counter-arguments have been expressed in relation to the theory of the increasing mobility of employment, and there are those who advise careful verification of this theory.

The path that sought to revise external labor markets and increase their functions was an idea that was common to the revision of both the Employment Security Act and the Worker Dispatch Act. This did not focus on ignoring the internal labor market and using the external labor market as an alternative. If one takes into consideration such matters as increases in the youth unemployment rate, the tendency to change jobs and the trend towards increased professional specialism, as well as the fact that women's life cycles and labor patterns cannot always converge with long-term employment, the growth in the number of elderly people, for whom the idea of working only at one company for their entire lives is not realistic, and changes in industrial and occupational structures, it is certain that the number of areas that will rely on the functions of external labor markets will grow in the future. Accordingly, the legal policy that has been exclusively aimed at internal markets and which has rather neglected external markets, like the one in place hitherto, is inconsistent with the actual situation, and will cause a great

many disadvantages to people who fall outside the conventional pattern, which will be shrinking in any case; consequently, this is an idea that could turn a blind eye to the development and utilization of human resources across society as a whole.

3. New Points for Discussion

If we focus on external labor markets, a number of problems emerge that had hitherto tended to be disregarded, of which the most important are those relating to skills development and training.

The skills development that can be provided by school education is, generally speaking, that relating to basic skills and one cannot completely rely on schools for the cultivation of vocational skills that are required when working in a particular industry, company or profession. At best, schools only provide basic vocational knowledge and skills; actual professional skills can only be acquired while doing a specific job for a certain period of time. Then, in the same way that equality of opportunity appropriate to their skills and motivation in relation to school education is important for schoolchildren, who will be the workers of the future, equality of opportunity appropriate to the skills and motivation of workers is important in order for workers to acquire socioeconomically useful vocational knowledge and skills.

Furthermore, if the opportunities for skills development provided by internal markets are curtailed because they cannot be integrated into internal labor markets and external labor markets cannot fully supplement them either, the question of how to provide opportunities for skills development for workers will become a major problem. The older a worker is, the more that professional skills influence remuneration; at the same time, the burden of skills development also increases, so if those who have repeatedly found work in external labor markets and have reached middle age end up having a tendency to be inferior in terms of skills development, this will have unfortunate results not only for the individual concerned, but also for society. Moreover, as much as possible must be done to avoid a situation in which the professional skills that the individual has taken the trouble to acquire do not meet a company's requirements or are not valued and he/she has difficulty in changing jobs or being re-employed.

It is difficult for securing and guaranteeing employment in a specific company to be the guiding principle if the emphasis is placed on external labor markets. This is a principle for a situation in which internal labor markets are the target of policy. If it is not even possible to avoid the bankruptcy of major companies in an era of change, other viewpoints will increasingly become necessary. The objective of this paper is to investigate the fundamental principles guiding employment policy, above all professional skills development and training, and to position this in legal terms. With regard to the following sections, section II raises the question of the concept of "the right to a career," while section III explores the scope for its specific application and relevant problems. Section IV provides an overview of the status of its incorporation into positive law, and section V sets forth considerations in relation to the conclusion and the issues that remain.

II. The Right to a Career as a Principle

Why is the concept of the right to a career necessary? Moreover, what is the meaning of incorporating it into labor law? This section seeks a renewed understanding of the meaning of a career, and then endeavors to establish the legal concept of the right to a career.

1. A Career is Property

The Industrial Revolution shook up agrarian societies and marked the beginning of the modern age. In order to resolve the issues emerging in this era of major change, it was necessary for each country to develop a succession of new policies over the course of the 19th century. The school education system, the beginnings of labor law, such as factory acts, and the precursor to the social security system were all developed during this era.

In relation to employment, the wave of technological innovation gradually redrew the map of occupations. In opposition to this, the Luddite movement arose, focusing on destroying machinery, and movements that sought to protect the traditional occupations also flourished. In the labor movement, the slogan “a job is property” was frequently intoned. However, amidst the trends of the times, it was difficult to ensure the survival of all traditional occupations, and jobs that were not compatible with the industrial system based on technological innovation were fated to disappear without a trace, sooner or later.

This situation cannot necessarily have been pleasant for many people. This is because although they had worked hard at their apprenticeships since their childhood and had striven to hone their skills as craftsmen, the situation changed dramatically just when they were on the point of becoming master craftsmen. Naturally, this was not their fault. Consequently, people must have lamented the situation, wondering “What was I making the effort for?” and cursing technological innovation. When the skills that we have acquired over many years become obsolete, we find it difficult to earn our bread and butter, we feel anxious about the future, and we mourn the past, wondering what the point of our lives was. This is because, as a result of our job disappearing, the career that we had built up until that point is broken off and we cannot continue on the same path.

It was during this era that the concept of “the right to work” was born. This principle states that the state has responsibility to provide people with opportunities to work, and if people cannot do so, the state should guarantee their livelihoods at a certain level. While traditional occupations disappeared and it became difficult to develop careers further, it was a proposal for measures to deal with a situation in which the communal social security system had collapsed. This was difficult to achieve, but the principle was handed on to the next era.

The bitter experiences of the 19th century changed the strategic goal of the labor movement. This was a shift towards the approach that “employment is property.” Even if it were not possible to guarantee existing individual jobs as they were into the future, perhaps it would be possible to guarantee the employment that currently existed and seek the continuation of a career therein. This was the strategy. The dismissal regulations of the countries of Europe and the

seniority rule (the continuous service criterion) of the USA were manifestations of this. Guaranteeing employment was an important theme throughout the 20th century.

In this respect, Japan, which has developed internal labor markets within companies and guaranteed long-term employment, as well as promoting the formation and development of careers, has experienced the epitome of success based on the “late-developer effect,” in which the party that started later learns from the experiences of their predecessors and actually then takes the lead. Long-term employment, which has been dubbed “a job for life” and the system for the development of career and benefits called the seniority-based system, attracted attention from across the globe during the 1970s and 1980s, as a result of the extraordinarily high growth and excellent economic performance of Japan also after the oil crises.

However, just like the strategy of “a job is property” during the 19th century, as the end of the 20th century approached, the strategy of “employment is property,” which sought to guarantee current employment at one’s company, ran headlong into the incisive question of whether, in an age of change, it was possible to continue to maintain this employment and whether it was appropriate to do so. This is the theory of the increasing mobility of employment.

So where should we look for the basic strategy to guide the 21st century?

If we consider this question in light of the experiences of the 19th and 20th centuries, the pursuit of “permanence” in an age of change is fairly difficult. Rather, it seems that we ought to accept and respond to change, integrating with it while aiming for an approach that will not cause people unhappiness. So, what is this approach?

The slogans “a job is property” and “employment is property” incorporated three meanings. One is the “guaranteeing of a livelihood” that this brings about. This asserted that jobs and employment should be protected as “property” that provides a foothold for maintaining one’s livelihood. Another is the guaranteeing of a “professional career.” Both jobs and employment relate closely to the formation and development of a career. Jobs and employment were forums for guaranteeing a career. Thirdly, there is “personal fulfillment.” People grow through work, and can become fulfilled. At the same time, a person’s career is the biography of that personal fulfillment.

If we revise our understanding of the purport of the slogans of the past in this way, we will doubtless notice that, no matter how much the times and approaches to employment might change, one should not deny that the crux of the matter is “granting opportunities to guarantee one’s livelihood, ensure a career and achieve personal fulfillment.” One also thinks of a structure that guarantees one’s livelihood and opportunities for personal fulfillment, through the guaranteeing of a career.

Thus, the new strategic goal of “a career is property” is discovered. The era has arrived when people place themselves in the world of work for almost half a century, from their 20s until the age of 65 or over. In spite of this, given a situation in which the life-span of an excellent company is around 30 years, it is difficult to imagine that it will be possible to guarantee a job or employment that relies on a single company. Rather, we should adapt to the fact that,

over the course of a long working life, we will have to experience changes of occupation, job or company, and perhaps examine what we should do in order to ensure that people's careers develop, rather than being curtailed because of this situation. The basic principles of employment policy and, consequently, labor policy will also likely need to be based on this.

In a society in which the relative importance of external labor markets is increasing, what should be emphasized in their development is preparing as many opportunities as possible for forming and developing careers, in order to minimize the occurrence of cases in which individual people's careers are cut off because their careers cannot be formed smoothly or because they have changed jobs or been unemployed. Otherwise, individual workers, employers and, ultimately, the whole of society will suffer from declining vocational skills and the depletion of human resources. If this occurs, the country would be unable to bear the burden of an aging society, let alone maintain the level of economic activity.

The fact is that the focus of employment policy and labor law will change from securing employment to securing careers, and from the guaranteeing of employment to the guaranteeing of careers. At the very least, rather than a single guiding principle of securing and guaranteeing employment, it will be necessary to give greater consideration to securing and guaranteeing careers.

2. The Right to a Career and the Constitution

Even if there is an awareness of the importance of guaranteeing careers, how can this be incorporated into the legal world? What methods can be devised to structure careers as a legal right (the right to a career) in some sense?

In relation to guaranteeing the right to a career, if we go back to the basics of employment policy and labor law, the most fundamental cornerstones are the independence of the individual and the right to pursue happiness (Article 13 of the Constitution of Japan); in addition, from the perspective of securing a social role in the workplace and ensuring personal fulfillment, this guarantee can be read as having its foundations in the freedom to choose one's occupation, as prescribed in Article 22 of the Constitution, and the right to work, as prescribed in Article 27, paragraph (1) of the Constitution. Moreover, if we consider preparation for and the formation of a career, this also relates to Article 26 of the Constitution (the right to receive an education and the obligation to ensure that an education is received). In this sense, the nature of the right to a career is that it is a right that integrates the freedom to choose an occupation and the right to an education, centered on the right to work. Thus, the right to a career emerges as a key concept that can become an important core of employment policy and labor law.

Accordingly, if we firstly examine discussions that have taken place hitherto, what formed the basis for discussions on securing and guaranteeing employment was both Article 25 (the right to life) and Article 27, paragraph (1) (the right and obligation to work) of the Constitution. As well as discussions since the 19th century, the content of this was influenced by the Employment Policy Convention (No.122) and related Recommendations (No.122) of the International Labour Organization (ILO), which was adopted in 1964 and has been ratified by

Japan. This convention requires “an active policy designed to promote full, productive and freely chosen employment” (Article 1.1) and states that “The said policy shall aim at ensuring that there is...the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited...” (Article 1.2 [c]).

The prevailing view does not perceive the right and obligation to work as a specific right and obligation for workers in relation to the state. Still less is it seen as a right that can be used to request employment from a specific employer as a private individual, or as a right that will, in the future, impose the obligation to work. This is because there is a significant discrepancy with the basic principles of the market economy system, and this also could correspond to the prohibition of forced labor (Article 18 of the Constitution). Moreover, this is also because it has limited feasibility and even if it is realized, there are many problems in relation to cost and performance as a policy, as there are in the case of unemployment relief measures. Forcing people to work is reminiscent of Japan’s experience during the war, when there were disparities in the quality of compulsorily recruited employees and problems in regard to how little will to work they had.

Consequently, the right and obligation to work is basically understood as a provision for programs guiding state labor policy, binding the state to develop legal systems relating to labor markets and occupational training, as well as establishing legal systems such as unemployment insurance, while also obliging it not to adopt laws and policies that ignore the right to work. Moreover, in designing systems such as unemployment benefit and vocational training, the state is permitted to make an allowance for workers’ will to work. Furthermore, it has been pointed out that provisions and objectives relating to the right to work will become the guiding principle, even in the event that legislation restricting the freedom of employment and dismissal are introduced, or any legal interpretation is attempted.

With regard to this, the concept of the right to a career is positioned as follows in relation to the right to work and the freedom to choose one’s occupation.

Firstly, the right to a career is an important constituent element that forms the core of the right to work. In fact, given that the means of existence (one’s livelihood) is secured through guaranteeing the formation and development of a career, and given that a concept of labor without the formation and development of a career is poor and unattractive, it is appropriate to understand the substantive content of the right to work as containing the right to a career. With regard to what the right to work should guarantee, it must guarantee not only the opportunity to work, which should be secured in quantitative terms, but also the opportunity to work that includes qualitative factors that take into consideration the skills, aptitude and will to work of the worker.

Secondly, even if we understand part of the specific content of the right to work as incorporating the right to a career, it is not the case that the legal nature of the right to work will change significantly. There is no change in the basic nature of social rights as a program provision. However, as will be stated later in this paper, just as the right to work has come to provide a certain conceptual basis for the introduction of the legal principle of misuse of the right to

dismiss workers and legislation concerning equality of opportunities for employment, different responses from those employed hitherto are required in terms of the right to work, including the right to a career, in some aspects concerning labor relations.

Thirdly, with regard to the relationship to the freedom to choose one's occupation (Article 22, paragraph [1] of the Constitution), the right to a career clearly demonstrates attributes of respecting the independence and freedom of the individual. It recognizes the possibility that an individual can, at their own initiative, choose the occupation that best embodies their abilities, aptitudes and ambitions. This is because, if otherwise, preparations for and the formation and development of a career will not progress smoothly. When considering a long working life, whatever good intentions one may have, and even if one were an expert in occupational relations, there are many risks inherent in someone other than the individual concerned allocating them to an occupation, while disregarding their own wishes. This is because nobody can bear complete responsibility for an uncertain future. One cannot maximize the satisfaction of the interested party other than by taking responsibility oneself for one's own future. Even if one were to argue that the right and obligation to work is enshrined in the Constitution of Japan, a legal system that would secure the opportunity to work by means of enforced recruitment and allocation would not be permitted other than in extremely exceptional cases.

Fourthly, what about the relationship to the right to education (Article 26, paragraph [1] of the Constitution)? If one acknowledges the right to request that the state give economic consideration in order to achieve equality of opportunity in regard to education, and the right of children to learn—that is to say, the right to learning that will guarantee the right to growth and development—then if we do not restrict this to “children” and substitute the word “people,” so that adults can also be included, then it is evident that the content as it is refers totally to the right to a career. In the age of lifelong learning, there is no need to restrict the focus of education to children or young people; indeed, it is inappropriate to do so.

Fifthly, if the system comes to be composed in this way, we should be able to understand properly that the right to a career truly is the right of human beings to personal fulfillment in relation to their jobs. It does not make sense, if this right to a career is acknowledged only in employment in a narrow sense (Article 623 of the Civil Code) or in cases where people are working in similar forms of work to this. Even if the proportion of employed workers in the total number of persons holding jobs is in excess of 85%, restricting the scope of labor policies and labor law to employment will make them too narrow. Working methods such as SOHO (running a business from a small office or home office) and teleworking (working from home) are becoming more widespread, and in cases such as network-style project work, there is increasingly a mixture of employment, subcontracting and outsourcing. Furthermore, in labor markets, the operators of small and ultra-small enterprises, contract and outsource workers, and employed workers are all mixed together. Careers built up in a single occupation will, not infrequently, be cut off, irrespective of the form of employment. In the future, it is conceivable that an approach to labor law that may cover all these will be required.

III. The Right to a Career as a Standard

What should be done in order to ensure that the right to a career is meaningful not only in employment policy but also in workforce management in individual cases? This section firstly considers the main actors involved in designing the formation and development of careers, then considers a number of individual points for discussion, and finally sets forth the challenges for realizing this right.

1. The Right to a Career and the Main Actors Involved in Designing a Career

The attached table (p. 24) lists the main trends that result, according to whether the main strategic actors in determining careers are management or workers. The left-hand column shows the trends in cases where the “decision is made by the organization,” while the right-hand column shows the trends in cases where the “decision is made by the individual.” Conventional Japanese employment practices belong to the former category, while the US pattern of career determination is close to the latter. Naturally, this is one form of ideal type, and the reality is a mixture of the two in the majority of cases.

Firstly, if we look at the left-hand side, which is more-or-less the conventional pattern in Japan, we can see that it is usual for employers, as represented by personnel and labor service divisions, to make decisions about career strategy on a systematic, centralized basis. The hiring of new graduates forms the core of employment, with a focus on long-term employment. Guaranteeing employment plays an important role in implementing proper personnel development and ensuring that both management and workers enjoy its results. It is difficult to specify a job when employing someone in the long term, so the employment of generalists is most common. With regard to education and training, the cultivation of basic skills through school education is conducted outside companies, but subsequent vocational training focuses on abilities specific to each company, and even training in general skills is provided by the employers in most cases. The standard is for decisions about job type through placement and changes of position to be determined by the employers according to the organization’s goals and personnel strategy. With regard to decisions concerning promotions, salary increases and benefits, continuous service, which represents the degree of formation of professional skills in internal labor markets, is an important indicator. In addition, decisions are mainly uniform, standard ones based on work rules or employment regulations. Long-term employment is the basic premise, so in many cases, companies do not demonstrate a profound interest in such matters as non-competition requirements and the protection of secrets after leaving the company. As employment is guaranteed, there is also little interest in the necessity of the right to request employment, in which workers request the right actually to work (opportunities for career formation, development and maintenance). With regard to the handling of complaints, there is a tendency towards collective handling and it is easy for relationships between management and workers within the company to be established, on the basis of the internal labor market. Concerning support measures implemented on the basis of employment policy, there is a reliance on the company for the mainten-

ance of employment and skills development. As far as responses to changes in the environment are concerned, career strategy also relies on the organizational strategy of the specific company, and even though it is easy to make adjustments in internal labor markets, such adjustments are difficult to implement in external labor markets.

In relation to this, in the right-hand series, which the US is said to closely resemble, the main actors in career strategy are the individual workers. Companies employ “work-ready” employees, who have vocational skills formed through school education and occupational training outside the company, or experience at other companies. If individuals formulate the strategy that they believe to be the best for their careers and act on the basis of this, they will not necessarily want a long employment period and to form their skills and demonstrate their abilities at their own pace, and they do not care even if there are no employment guarantees in the short term, as long as the experience will be a part of their career path. They thus require a guarantee of a career (formation and development) rather than a guarantee of employment. Individuals aspire to specialist positions (specific occupations and jobs) in order to build up their own careers, and generalists are unpopular, with a common saying being “a Jack of all trades is good for nothing” (management posts are also operated as specialist positions). With regard to skills development, both school education and general vocational training depend on the initiative of the individual worker, but specific training for the company is the responsibility of the employer. Workers are also the main actors in deciding on positions, and it is not the case that any position is fine as long as it is with a major company. Changes of placement also operate in the same way, and the consent of the worker is required if the location changes, even if the job type remains the same, as well, of course, as for job rotation between different types of job. Promotions, pay rises and decisions concerning benefits are not completed within the internal labor market, and tend to reflect trends in external labor markets (market rates according to job type or occupation), with a strong tendency towards individual decisions through agreement with workers. Changes of working conditions are the same, and measures such as change and termination notifications are required. It is common for workers who are engaged in important jobs to suddenly quit, due to their own career strategies, and to move to other, competing companies, so the prohibition of competition and the preservation of secrecy after employees leave their posts are important matters of concern for companies. There is a strong interest in their own careers, so for workers, the right to request actual work is important. Complaints tend to be handled on an individual basis and collective labor relations do not necessarily fit in with this. Career support through employment policy targets individual workers. In relation to environmental changes, the focus is on adjustment through external labor markets, and it is sometimes not easy to achieve adjustments within the company.

If we consider the matter in this way, the transition from decisions made on an organizational basis to those made on an individual basis is not easy at the level of individual companies and workers, but it is even less easy for society as a whole. In fact, the long-term trends amidst the myriad of options according to industry, region, company, job type and occupation, and worker are expected to be for the characteristics on the left-hand side of the table to fade, grad-

ually shifting towards the right-hand side. In addition, as the transition to the right-hand side progresses, career guarantees (the establishment of the right to a career) will become more important than employment guarantees.

2. The Challenges Presented by the Right to a Career

The right to a career is currently an abstract right of a conceptual nature with its basis in the Constitution, but it is limited to program provisions that lead the employment policy and labor legislation, and there is still little basis in positive law.³ The doctrine of case law is still as yet unexplored, as well. This reflects the fact that career guarantees and the concept of the right to a career have not been formed and established as employment practices to the extent that they supplement the content of labor law in Japan, which is often generalized through legislation that provides broad frameworks for important areas. These have been absorbed into employment guarantees, or are hiding behind them and have not yet surfaced.

Consequently, in order to establish the right to a career, it is important for concerted efforts to be made in employment policy and labor legislation that reflect those principles; at the same time, attention will focus on the degree to which a stance of emphasizing careers will be adopted by both management and workers in practical labor relations. The right to a career is not only an issue for external labor markets, but also involves internal labor markets. Against the background of the movements involved, it is likely that the essence of the right to a career will gradually be formed.

Thus, in order to ensure that the right to a career has a robust status in labor law, a number of preconditions must be fulfilled. Let us list these in more detail.

Firstly, in personnel and labor management, it is necessary to have a clearer awareness of the concept of a career. If both workers and managers are indifferent to career preparation, formation and development and it does not become oriented towards the practical world, career practices will not be formed. Employment of new graduates by job type, a system of specialist occupations, and contract employees employed on projects will not become widespread and yield results without the perspective of career guarantees. What is required is the approach of emphasizing occupational careers, which has emerged not only in foreign companies, but also in Japanese companies; in other words, it is necessary to match the ideas of employers and workers, while seeking the formation of skills and development of a work history in line with career prospects. Moreover, in the event that the concept of a career is introduced in individual labor contracts, one should not interpret it solely in terms of conventional employment guarantees, but also bring the perspective of guaranteeing a career more to the forefront. An interpretation that achieves a balance between guaranteeing employment and guaranteeing a career will be required.

³ As it will be discussed later, there are some new legislations on the issue. Concerning the case law, recently a decision was made by Tokyo District Court, February 8, 2010, *Rodo Keizai Hanrei Sokuho* [Flash Report on Labor and Economic Cases], vol. 2067, p. 21 (2010). It gave more attention to the career judging the legal effect of a job transfer.

Secondly, even in cases where conventional employment practices and labor contracts are still in place, it will be necessary to reconsider whether or not career guarantees are needed if there are guarantees of employment. As a means of hedging employment risk in an age of change, the accumulation of a career that will be the “property” (human capital) of a worker cannot be downplayed. It may be possible that personnel policies that prioritize only the needs of the organization and which conspicuously ignore the careers of individual workers could, depending on the circumstances, be deemed to constitute an abuse of right over personnel issues (Article 1, paragraph [3], of Civil Code). It is also believed that consideration of such matters as education and training, placement, changes in placement, secondment, promotions and pay increases, and employment requests by workers will need to be approached from a different angle from that employed hitherto.

Thirdly, there is the fact that career formation and development must be considered individually, respecting the independence of the individual. From the perspective of the right to a career, organizational composition that emphasizes the individual to a greater degree, self-development that requires self-motivation on the part of the individual, various systems of qualifications, and career counseling that deals with the viewpoints of individual careers will become the focus of attention. Above all, with regard to the formation of skills, it will be necessary to enhance support in employment policy for skills development that targets not only companies, but also individuals; moreover, it would be preferable to implement measures that enhance training opportunities and provide financial and time-related support for the development of skills. An initiative based on skills development vouchers is also conceivable. With regard to skills development, achieving a good balance between costs and benefits is an issue, and if considering in whom limited educational resources should be invested, one would have to say that it should mainly be young people. For middle-aged and older people, the question of how to avoid changes of career and, in the event that this is inevitable, who should bear what level of cost burden is an important point for discussion.

Fourthly, the training provided by companies includes such matters as the formation of skills and the deployment in the workplace with a view to career development, on-the-job training that provides opportunities for skills formation, participation in training courses, subsidies for self-development and leave in order to participate in training, but it is necessary to re-confirm the legal issues relating to these. Until now, the limits of “the right to training” of companies through employment contracts and the right to give orders have often been discussed, but from the perspective of the right to a career, “the right to learning (right to receive training)” of workers through employment contracts is also important. In judging equal treatment and the prohibition of discrimination (Article 3 of the Labor Standards Act, Article 6 of the Gender Equality in Employment Act, and Article 7, paragraph [1] of the Labor Union Act), as well as the granting of opportunities in line with contracts, this is a point that should be borne in mind.

Fifthly, as employment, placement and benefits that emphasize careers become more widespread, there will be a stronger flavor of individual management, and there will be a greater need for contractual treatment. With regard to the content, management, revision or changes

in content and resolution of labor contracts, a different approach from that employed hitherto will be required. Above all, notification of changes and dismissal will become an issue. Discussions about the regulations required as legal systems also seem likely to surface in the future.

IV. The Right to a Career Established as a Positive Law

In the sense that interest in professional careers has become the focus of regulation under labor law, the 2001 revision of the Employment Countermeasures Act and the Human Resources Development Promotion Act (through Act No.35 of 2001, Act Concerning the Partial Revision of the Employment Countermeasures Act, etc. in Order to Promote Smooth Re-employment in Response to Socioeconomic Changes) was truly worthy of note.⁴

1. Vocational Life Planning and Legal Restraints

First of all, Article 3 (Basic Principles) of the Employment Countermeasures Act, which is the basic law concerning employment policy, is a provision that is worthy of attention.

“Through appropriate vocational life planning, the development and improvement of skills in line with that plan, and the promotion of smooth re-employment in the event of a change in job, as well as the effective implementation of other measures, over the course of a worker’s working life, consideration shall be given to ensuring the security of employment.”

The Employment Countermeasures Act, which is the basic law on laws relating to labor markets and employment policy, is positioned squarely with working life, that is to say occupational careers, as the “basic principle.” Article 4, paragraph (1) of this law (State Measures) stipulates that “The state...must formulate the requisite measures in an integrated fashion...in line with the basic principles prescribed in the preceding Article.” There can be no doubt that respect for vocational careers forms the conceptual basis of this positive law, and this marks the first step towards its embodiment, which will have repercussions on various laws and measures.

Next, the revision to the Human Resources Development Promotion Act (hereinafter referred to as the “HR Development Act”) has the following provisions.

Article 2, paragraph (4): “The term “vocational life planning” as used in this Act shall mean that workers set their own vocational objectives throughout their long-term vocational life and make their own plans for their efforts and other matters for selecting jobs and for developing and improving their vocational abilities, in accordance with their individual aptitude, vocational experience and other circumstances, for the purpose of realizing those objectives.”

Vocational life planning is the design of a career relating to one’s job. The planning of one’s own vocational career cannot be left up to someone else, so ultimately, the only thing to be done is for individual workers to plan it themselves. This law affirms this fundamental rule and proclaims the basic principles that underpin it.

⁴ Sugeno (2010) attributes these amendments on “vocational life planning” or career design to the concept of right to a career developed by Suwa (1999) and other papers.

Article 3:“In view of the fact that having workers exercise their abilities effectively throughout the entire period of their vocational lives is indispensable for their security of employment and an improvement of their status and will constitute a basis for the development of the economy and society as a whole, the development and improvement of human resources pursuant to the provisions of this Act shall, as a basic principle, be carried out systematically by stages throughout the entire period of workers’ vocational lives, while giving due consideration to their vocational life planning, so as to make them more adaptive to changes in their duties caused by changes in industrial structures, advances in technology, and other changes in the economic environment, and to contribute to their smooth reemployment in the case of job transfers.”

There is an additional paragraph.

Article 3-2, paragraph (1): “In accordance with the basic principle prescribed in the preceding paragraph, the voluntary development and improvement of workers’ vocational abilities shall be promoted by way of ensuring opportunities for them to receive the necessary vocational training and educational training on the job, in line with their vocational life planning, having them have the necessary work experience, and conducting an appropriate evaluation of the trade skills they need for their jobs that they have acquired through such training and experience and of their knowledge thereon.”

2. The Significance of the Revised Human Resources Development Promotion Act

These provisions point out the following and focus clearly on a system of lifelong learning (education) from the viewpoint of individual workers:

- i. The fact that it is essential for workers to be able to “exercise their abilities effectively throughout the entire period of their vocational lives”;
- ii. The fact that the development of human resources should “be carried out systematically by stages throughout the entire period of workers’ vocational lives, while giving due consideration to their vocational life planning”;
- iii. The fact that “the voluntary development and improvement of workers’ vocational abilities shall be promoted”;
- iv. The fact that it should make workers more adaptive to changes in the employment and industrial situations surrounding them;
- v. The fact that “opportunities to receive educational training,” “work experience” and “appropriate evaluation” are required.

In other words, the HR Development Act does not simply set forth short-term measures designed to treat the symptoms, providing support for the development of vocational abilities to enable workers who are currently unemployed to find jobs, or to promote vocational training by the companies where workers are currently employed; rather, it sets forth a stance of deploying a variety of measures to facilitate the development of workers’ vocational abilities “systematically by stages throughout the entire period of workers’ vocational lives,” from a broader and deeper perspective.

Thus, the right to a career relating to one's occupation is no longer solely a theoretical principle, but is also beginning to take root as a modern concept of rights in positive labor law that has its foot in the door of positive law.⁵

3. Significance for Labor Law in the Future

As pointed out in the statement "labour is not a commodity" (ILO Philadelphia Declaration), even if human labor is placed in a transactional relationship of demand and supply in labor markets, based on the market economy, one cannot treat it in the same way as a normal commodity exchange. With regard to the reality in which market transactions with workers and management on an equal footing are hardly expected, policy intervention is indispensable, which gives consideration to the safety nets that are deemed necessary for the maintenance and development of a society and economy having humans at their heart. In this sense, the roles of labor law and social law in the form of social security law are unlikely to disappear in the future.

With regard to this point, the question of how to position the careers or vocational lives of workers in labor law and how to reflect these in legislation and judicial precedent is likely to become an important challenge for the future. Legal policy that bolsters those in a subordinate position in negotiations in labor markets has been adopted hitherto, and is likely to continue to be adopted in the future. However, just as there are two types of basic attitudes in employment policy law regarding market intervention, that is to say passive policy (policy that responds passively to the results of market trends, such as providing benefit for unemployment and the like) and active policy (policy that seeks an active intervention, such as adjusting the preconditions of the market and seeking to intervene in market trends), regulations in labor law in general fall into one of two categories: the passive policies concerning labor law and the active policies concerning labor law.

If we take the example of equal employment opportunities law, one can categorize such measures as the ban on discrimination as a policy that adopts a passive response, and affirmative or positive action as a more active response measure. In labor law from the 19th century to the first half of the 20th century, the main focus had been on raising the status of workers, who were in a subordinate position in market transactions, to the basic minimum level, and it had been left at the mercy of the formation and development of labor relations and trends in labor markets to a considerable degree to enable those workers who had reached that legally-defined basic minimum level, to obtain stronger bargaining power. However, currently, with the realms in which industrial relations function becoming narrower, as seen in the decline in the unionization rate, and the areas of labor markets with secure employment (employment of so-called permanent employees) becoming more limited, it is likely that the government will be com-

⁵ In Japan, currently as of November 26, 2010, there are at least 22 labor and social laws which stipulate articles concerning "vocational life planning" or career design (Web site on Japanese laws and ordinances, Ministry of Internal Affairs and Communications: <http://law.e-gov.go.jp/cgi-bin/idxsearch.cgi>). Ouchi (2008) gives us a brief outlook of the concept in various laws.

pelled to implement new responses – above all, more active policies concerning labor law.

In particular, support measures to strengthen the bargaining power of workers in labor markets are required. For that purpose, more proactive support for the formation of their vocational skills is indispensable. In that case, it is not sufficient to only provide them with educational training in a narrow sense; rather, it is absolutely vital to ensure career development (vocational life), that is to say, educational training and the formation of vocational abilities through work. Attempts to conceptualize “the right to a career” are moves that are linked to the fundamental rules and basic principles that form the foundations for the systematic development of response measures relating to this aspect.

V. Concluding Remarks

1. Summary

As a result of envisaging the right to a career in one’s occupation, the author has reached the following conclusions.

Firstly, it was fine for the guiding principles of employment policy that emphasized internal labor markets to be “securing and guaranteeing employment,” but if we also take external labor markets into consideration and seek measures that respond to an era of change, a more coherent viewpoint emerges by focusing on careers. This is the resurfacing of securing employment, with a response that emphasizes the concept of a career at the core of this.

Secondly, when citing the slogan “a career is property,” it is not the case that the human capital represented by a career becomes “property” in a legal sense. This itself cannot be disconnected from the human being and turned into the object of the transaction. It is necessary to envisage the right to a career in a different form.

Thirdly, in this case, this paper has focused on the right to education and learning (Article 26 of the Constitution of Japan), the freedom to choose one’s occupation (Article 22 of the Constitution), and the right to work (Article 27 of the Constitution), in relation to their links to occupations, against the background of respect for the individual and the right to pursue happiness (Article 13 of the Constitution) and the right to existence (Article 25 of the Constitution). In doing so, the prospect has emerged of the right of individuals as the main actors to prepare for and form a career at their own initiative (the right to learn), the right to choose a job in order to form and develop own career (the freedom to choose one’s occupation) and the right to request various measures aimed at securing career opportunities (the right to work).

Fourthly, however, at this point in time, even if a comprehensive concept were introduced, in the form of the right to a career relating to an occupation, and even if the content of the right to education and the right to learning, the freedom to choose one’s occupation and the right to work were clearly stipulated and enriched, it is unlikely that it would go so far as to change their fundamental legal nature. Consequently, it is still difficult for an individual to demand a certain level of job or pay from the state or employers, on the grounds of the right to a career. It only goes as far as taking on the role of the clarification and modernization of principles in program

provisions.

Fifthly, having said this, in terms of positive law, it is believed that there is, even now, scope for the right to a career to become the guiding thread in the interpretive theory, by following a particular path; moreover, it seems likely that this will develop further in the future. For example, there is consideration for careers in the standards for selecting personnel for educational training, placement, changes of placement and secondments, and dismissal in order to reorganize the company, as well as consideration for careers when deciding whether or not to recognize the right to request actual work. With regard to personnel measures that run counter to the wishes of the workers themselves and ignore their career, putting them at a disadvantage from which it will be difficult to recover, it is believed that there is scope for this to be judged to be an abuse of right over personnel issues. In forming a legal principle of misuse of the right to dismiss workers, it seems that there are things to consider in relation to the concept of the right to work, along with the actual state of employment.

Sixthly, in light of the concept of the right to a career, one can see actual examples of legislative amendments being carried out. These are still, perhaps, no more than provisions focused on spiritual and conceptual objectives or provisions obliging those concerned to make efforts, and may only have a meaning as “soft laws.” However, the meaning of the phrase “vocational life,” which is scattered around many labor-related laws and ordinances, has become part of the network and, when forming a comprehensive interpretation, the essence of the right to a career will likely become more concrete and be enriched further.⁶

2. Issues Remaining

What are the issues that remain? There are three.

Firstly, the concept of the right to a career is still only a roughly-hewn one, so in order to ensure that it is consistent with the various legal doctrines and principles of labor law, it will be necessary to do some work to refine it as a solid theory of interpretation. This is because, unless this is done, it will not become a useable legal concept.

Secondly, there is the need to establish the right to a career as one of the basic concepts of employment policy. Even if it is a social right as a program provision, it is still important to ensure that the right to work, which is a basic concept guiding laws and policies, is reborn with the concept of the right to a career, and that it provides a good foothold for people in times of change.

Thirdly, there is a need to ensure that the concept of the right to a career is understood in practical terms and is honed through practice in the field, in order to make it a more practical, user-friendly concept. With regard to this point, there is still a great deal of scope for further consideration of the issues raised in this paper.

⁶ JILPT(2007) discusses the importance and possibility of the concept of right to a career from various points.

Comparison of Differences between Two Types of Strategic Actor
in Career Formation and Development

Item	Decision Made by Organization	Decision Made by Individual
Actor with responsibility	Employers	Workers
Employment form	Centering on hiring new graduates	Centering on hiring those with vocational skills
Employment period	Primarily long-term	Primarily short- to medium-term
Employment guarantee	Essential or top priority	Not necessarily the top priority
Career guarantee	Derived from guarantees of employment	Primary priority
Career form	Primarily general positions	Primarily specialist posts
General basic skills education (school education)	Worker, family and society	Worker, family and society
General occupational training (general skills)	Mainly considered by employers	Mainly considered by workers, their families and society
Special occupational training (restricted to the company)	Mainly considered by employers	Mainly considered by employers
Decision concerning jobs	Agreed by workers at the initiative of employers	Agreed by employers at the initiative of workers and their families
Changes of placement	Determined strategically by the employer	Independent wishes of workers are important
Promotions and pay increases	Rely on continuous service in the internal labor market	Rely on value placed on the specialist skills of workers (employability)
Decisions concerning benefits	Uniform decisions based on work rules	Individual decisions based on labor contracts
Changes in conditions	Uniform handling based on work rules	Handled individually based on labor contracts (notification of change or cancellation is also required)
Competition prohibition and secrecy maintenance measures	There is little interest in special response measures	There is a great need for appropriate response measures
Right to request work	Little necessity (degree of interest)	Great necessity (degree of interest)
Handling of complaints	Dealt with collectively through worker – management discussions	Dealt with individually with individual workers
Collective labor relations	Easy to form from company strategy and the need to control internal labor markets	The degree of reliance on individual strategy and external labor markets is increasing, and there are cases where collective labor relations are not formed
Support policies (subsidies, etc.)	Support measures centered on companies	Support measures centered on individuals
Responsibility for responding to environmental changes	Reliance on strategic responses by employers (while it is possible to adjust within the company, it is hard to adjust outside the company)	Reliance on strategic responses by workers (while it is possible to adjust outside the company, it is hard to adjust within the company)

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