HOKKAIDO UNIVERSITY

Title	Comparative Study of Legal Scheme for Covid-19 Disasters: Asian Responses
Author(s)	Yoshida, Kunihiko
Citation	北大法学論集, 72(3), 1-19
Issue Date	2021-09-30
Doc URL	https://hdl.handle.net/2115/82821
Type	departmental bulletin paper
File Information	lawreview_72_3_01_Yoshida.pdf

Hokkaido University Collection of Scholarly and Academic Papers : HUSCAP

論　　説

Comparative Study of Legal Scheme for Covid-19 Disasters: Asian Responses*

Kunihiko YOSHIDA

1. Preface: Disaster Recovery Law in General

In the context of disasters, Japan has been overwhelmed by earthquakes, including, for example, the Kobe Earthquake (Jan. 1995), Niigata-Chuetsu Earthquake (Oct. 2004), and East-Japan Earthquake (Mar. 2011). In recent years, due to the precipitous climate change, we have been frequently hit by floods, such as the Joso Flood (Sep. 2015), Iwaizumi Flood (by Lionrock) (Aug. 2016), Northern Kyushu Flood (Jul. 2017), Western Japan Flood (Mabi Flood) (Jul. 2018), East Japan typhoon (Hagibis) (including Marumori Flood, Nagano-Hoyasu Flood) (Oct. 2019) and Kuma River Flood (Jul. 2020). In Indonesia where this lecture was originally planned, they have recently been hit by the Palu Earthquake (Sep.2018), on top of the ominous Banda Aceh Tsunami Disaster (Dec.2004).

Now all of us have been facing the daunting Coronavirus pandemic

---

* This paper was presented for the panel entitled "Covid-19 and 'Herd Immunity' in the Age of Anthropocene" at the online Annual Meeting of the American Law and Society Association on May 29th/30th, 2021. I very much appreciate Prof. Hiroshi Fukurai (U. California, Santa Cruz)'s efforts and thoughtfulness to organize this panel and to give me this priceless opportunity to discuss pandemic issues from the legal perspective with many Asian experts in this field.

disaster for more than a year, since February 2020. In dealing with this continuing pandemic, we need to confirm some principles for disaster recovery: First, the protection of vulnerable people in disasters[1], and second, the need for public assistance for inclusive recovery. In this sense, the role of governments is important[2].

2. Data of Coronavirus Disasters

The coronavirus situation varies from country to country depending on various factors mentioned later. Generally, the Covid-19 overwhelms the entire world, including developed countries.

In terms of data, the situation is serious, first, in European countries and the U.S.A. (33,207,442; 593,533); and second, in Brazil (18,815,191; 441,864) and Latin American countries; and third, in India (26,030,674; 291,365)[3]. On the other hand, some Asian countries have fared well. Numbers are limited in Taiwan (2825; 15), South Korea (134,117; 1916), and Cambodia (23,697; 164), for example[4].

The discrepancies between 'hard-hit countries' and 'mildly affected countries' are surprisingly big and Israel (839,263; 6396) is uniquely

---

[1] See, for example, DANIEL A. FARBER, JIM CHEN, ROBERT R.M. VERCHICK, & LISA GROW SUN, DISASTER LAW AND POLICY (3d ed., Aspen 2015) chap.5 Social Vulnerability.

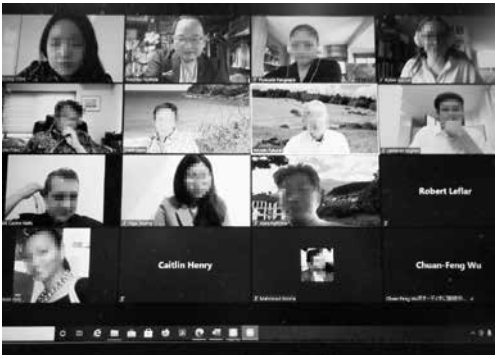
[2] This is the core message of the housing welfare law in the area of disaster recovery in the Japanese context. See, for example, KUNIHIKO YOSHIDA, SOME THOUGHTS OF HOUSING WELFARE LAW (Toshindo, 2006) 3〜.

[3] The numbers in parentheses indicate those of infected people and victims as of May 21st, 2021. Worldwide in total, there have been 164,913,259 infected people and 3,417,91 victims.

[4] Besides, Vietnam (4809; 39), and Thailand (119,585; 703) are doing fairly well, while China (90,920; 4636), the originator, is paradoxically not bad. On the other hand, Indonesia (1,758,898; 48,899) is one of the worst cases in Southeast Asia.



(Photo taken when I was a presenter) (May, 2021)



(Discussion Screen at the American Law & Society Annual Meeting) (May, 2021)

located in the latter. Against this backdrop, where are Japan's demographic data (698,524; 11,940) located?

After the rollout of Covid-19 vaccines in limited countries, especially in Israel, the United States, and the United Kingdom for more than half of their population, the situation has become different nowadays[5], while the dramatic spike of infection in India is beyond

[5] See, e.g., Julie Bosman & Sarah Mervosh, *As a Wave of Infections Recedes U.S.*

description[6]. We will address the vaccine issues later.

(P.S.)

Two months later, we are facing another wave even in Asian countries, due to the Delta variant and the limited vaccination rate.

Feels Hope: Experts Remain Cautious, but People Ditch Masks and Go Out to Eat Again, THE NEW YORK TIMES, INTERNATIONAL EDITION, May 7th, 2021, p.1, 6, which shows that due to the high percentage rate of vaccine inoculation (more than 50%) in the U.S., Covid-19 infection rate generally recedes. However, we have to be aware that the daily numbers of infected people and victims there (circa, 47,000; 700) is still much higher than those numbers in Japan as of May 28th, 2021(4317; 104).

For China, which makes efforts to attain a goal of 560 million people, or 40% of its population, see, Vivian Wang & Keith Bradsher, *Vaccinating 560 Million: Ice Cream Is a Good Start: With an Array of Tactics, China Tries to Meet a June Deadline for Inoculations*, THE NEW YORK TIMES, INTERNATIONAL EDITION, April 8th, 2021, p.1, 3.

[6] Recently in India, there have been daily more than 300,000 infected people, but the true number is much higher (e.g., Jeffrey Gettleman, Sameer Yasir, Hari Kumar & Suhasini Raj, *As Covid Ravages India, True Toll Is Hidden: Experts Say Total Deaths Far Exceed the Nearly 200,000 Reported*, THE NEW YORK TIMES, INTERNATIONAL EDITION, April 27th, 2021, p.1, 4; Jeffrey Gettleman & Suhasini Raj, *Desperation Spreads to Rural India From Cities: The Virus's Advance Causes Profound Alarm in Areas Without Safety Nets*, THE NEW YORK TIMES, INTERNATIONAL EDITION, May 13th, 2021, p.1, 4).

For the miserable mourning rituals and medical workers there, see, e.g., Mujib Mashal, Sameer Yasir & Shalini Venugopal Bhagat, *Denied the Rites of Grief: Covid-19 Has Transformed Mourning Rituals in India into Lonely, Public Affairs*, THE NEW YORK TIMES, INTERNATIONAL EDITION, May 10th, 2021, p.1, 4(Cremations reached more than 100 a day at the Ghazipur crematory in eastern New Delhi); Mujib Mashal & Sameer Yasir, *Empty and Helpless in India: Medical Workers Suffer Emotional Toll While Risking Lives in a Crushing Outbreak*, THE NEW YORK TIMES, INTERNATIONAL EDITION, May 20th, 2021, p.1, 2.

Epicenters are India and Indonesia[7], where numbers of infected people and victims relatively amount to 31,331,202 and 420,043〔5,300,528; 128,278〕[8] in India, and 3,082,410 and 80,598〔1,323,512; 31,699〕in Indonesia as of July 24th, 2021. Even in the countries that contained coronavirus infection in the past, transmission is increasing dramatically and the future in East/Southeast Asia will be precarious when the controversial Tokyo Olympic Games in 2020 is being held, as the figures show: for example, Japan (857,799; 15,106)〔159,275; 3,166〕; Korea (187,362; 2,068)〔53,245; 152〕: China (92,462; 4,636)〔1542; 0〕; Taiwan (15,535; 784)〔12,710; 769〕; Cambodia (71,244; 1,222)〔47,547; 1,058〕; Vietnam (81,678; 370)〔76,869; 331〕; and Thailand (481,967; 3,930)

---

[7] See, for example, Fira Abdurachman, Richard Paddock, and Muktika Suharttono, *A New Focal Point for Covid Horror: Indonesia Is Ill-Prepared for an Infection Rate Higher than in Brazil and India*, The New York Times, International Edition, July 20th, 2021, p.4 (Thousands of people sleep outside of hospitals, gasping for air, wait for beds and oxygen, while many others die at homes helplessly. Indonesia has become the new epicenter of the pandemic, surpassing India and Brazil. On July 15th, nearly 57,000 new cases, 7 times as many as a month earlier, were reported. 1,205 deaths were also reported on July 16th, the official toll amounted to more than 73,500. The true number is three to six times that high. On the other hand, in India, where the Delta variant was first identified, daily cases peaked at more than 414,000 in May, but since dropped to about 40,000. The surge is part of a wave across Southeast Asia, where vaccination rates are low but countries until recently had contained the virus relatively well. Vietnam, Malaysia, Myanmar and Thailand are also facing their largest outbreaks. Only about 15% of Indonesia people are partly, and just 6 % are fully inoculated. Indonesia has heavily relied on the Chinese vaccine which has proved less effective than other shots. At least 20 Indonesian fully-vaccinated doctors died from the virus. Dr. Budiman, an Indonesian epidemiologist, predicted more than a year ago that it would be a pandemic epicenter because of its dense population and weak health care system).

[8] Numbers in tortoiseshell brackets indicate the difference of those of infected people and victims between May 21st, 2021 shortly before the annual meeting presentation and July 24th, 2021 when this post script was added.

〔362,382; 3,227〕, compared with Israel (857,977; 6,457)〔18,714; 61〕; U.S.A. (34,340,894; 615,752)〔1,133,452; 22,219〕; U.K. (5,637,975; 129,044)〔1,180,232;1,334 〕, which have lately advanced vaccination policies remarkably.

3. Three Scenarios

There are three scenarios in the way we deal with the coronavirus pandemic. The 1st scenario is: to identify and control the coronavirus, that is to contain infected people for the protection of free business. This strategy is taken in Taiwan, South Korea, Cambodia and the countries of Oceania (New Zealand ; Australia) etc.

The 2nd scenario is the opposite: to attain herd immunity without any policy change. It means to protect and maintain normal business activities, despite considerable victims and survivors. This strategy was taken in Sweden (allegedly), but actually no countries have attained this level.

Incidentally, let us be aware that, in the context of vaccines, herd immunity connotes different things and it also entails increasing vaccine inoculation as much as possible.

The 3rd scenario is: a middle way, to leave the coronavirus situation uncontrollable. In this case, lockdown is occasionally needed and it causes a long-term economic depression dilemma. However, its hastened lifting for the purpose of economic recovery might bring about increase of infected people. This policy is taken worldwide, and it shares similarities with the 2nd scenario in case of situations of overshooting, such as in the U.S.A., European countries, Brazil and other Latin American countries and India.

On the other hand, if lockdown is stringent due to top-down command such as in China in March 2020, it has turned out to be effective in controlling infection. In this case, the situation will move to the 1st scenario.

Among these scenarios, where is Japan located? Japan will move from the 1st category to the 3rd category? What is the difference between Japan and South Korea?[9] Indonesia is closer to the 3rd category?[10] Why is Indonesia different from other Southeast Asian countries, such as Thailand, Cambodia, and Vietnam?

4. Factors regarding Coronavirus Infection Control

Let's consider factors regarding coronavirus infection and its control.

First, immediate identification and control of infected people is vital to obtain related information and to control clusters of infected people. This factor has been taken into close account in Taiwan, Korea and Israel, by using big data emitted from credit cards and cellular phones. However, this approach might infringe upon privacy issues and it might lead to frequent lockdown.

Second, health care system for infected people, third, public hygiene infrastructure for the homeless and other housing-related vulnerable people such as the elderly and single mother families, might be important factors. In addition, fourth, on the other hand, we must take care of business restraint and its economic compensation.

Fifth, developments of new medicine and vaccines have become essential, especially after inoculation started in December 2020. Israel[11],

[9] According to Adjunct Professor Yukyong Choe who gave a presentation on the Korean situation at the law and society meeting mentioned at the beginning, besides technological devices mentioned below, she explained that the Koreans' attitude towards community protection against Covid-19 might be relatively stronger as a cause of the difference.

[10] See, e.g., Hannah Beech & Muktita Suhartono, "*It's Too Late*" *: In Sprawling Indonesia, Coronavirus Surges*, The New York Times, May 28th, 2020.

[11] See, Isabel Kershner, *Hope in Data from a Vaccine Front-Runner: Two*

the U.S., and the U.K. are leading countries in this respect, with serious discrepancy between rich countries and poor countries in the South. Relatedly, the need for deconstruction of modern individualistic intellectual property, that is, the waiver of WTO patent rights that the Biden administration has endorsed[12], is required to increase the production of vaccines in developing countries for global equity and access protection. However, the recent Covid-19 crisis in India has serious negative impacts in this regard[13].

Sixth, and lastly, an international health collaboration system to confront coronavirus pandemic is also indispensable for the enhancement of global justice in relation to north-south problems. The Covax Facility is such an idea. However, a nation-state centered approach known as 'vaccine nationalism' is currently dominant, as opposed to the Tedros's proposal[14].

5. Research Strategies

Let's move on to research strategies: As our research strategies principles, first of all, there is a need for interdisciplinary and holistic/

Early Studies in Israel Point to a Significant Drop in Infections after One Dose, The New York Times, International Edition, January 27th, 2021, p.5.

[12] For the supporting opinion, see, Michelle Goldberg, *America Can Help End the Pandemic: The Biden Administration Should Support a Waiver of Intellectual Property Rules for Covid-19 Vaccine Patents*, The New York Times, International Edition, April 26th, 2021, p.1, 9.

[13] See, Emily Schmall & Karan Deep Singh, *Stumbles by Vaccine Giant Fuel India Crisis: Pandemic Has Pushed the Pharmaceutical Maker Past Its Limits*, The New York Times, International Edition, May 11th, 2021, p.8, 9.

[14] Tedros Adhanom Ghebreyesus, *Rich Countries Must Keep Their Vaccine Promises: As Head of the W.H.O., I Believe This Is the Best Chance We Have to End the Pandemic*, The New York Times, International Edition, April 24th -25th, 2021, p.9, 11.

inclusive approaches. Second, the importance of natural science researchers should be stressed, especially infectious disease and epidemiology experts, such as Prof. Omi[15] in Japan and Dr. Fauci[16] in the U.S.A.

Under the Tsai government in Taiwan, former Vice President Chen[17], an epidemiologist, played an important role to contain the coronavirus in 2020. He can be contrasted to Presidents Trump in the U.S. and Bolsonaro in Brazil who despised natural scientists. Prime Minister Suga also continued to promote travel "Go To" campaign in the winter of 2020, by ignoring the advice of medical experts. Thus, the third and fourth wave in 2021 became much more serious compared to neighboring Asian nations.

6. Challenges in Controlling Coronavirus Infection

6-1. Social Structure: Individualism or Group-Oriented-ness and the Role of Government

Let's consider some of the key elements and challenges in controlling Coronavirus infection. First, the social structure, that is, whether the society is an individualistic one or a communal/collectively oriented one.

---

[15] Dr. Shigeru Omi (1949～) who is the Chairman of Covid-19 Council, made a proposal to stop the 'Go To' campaign in Tokyo on Dec. 9th, 2020, but was rejected by the Suga administration.

[16] Dr. Anthony Fauci (1940～) has been a director of NIAID [National Institute of Allergy and Infectious Diseases] since 1984.

[17] Dr. Chen Chien-jen (1951～), a graduate of Johns Hopkins University as well as Taiwan University, studied public health, human genetics and epidemiology, was praised for effectively managing SARS epidemic as health minister from 2003 to 2005 under the Chen Shui-bian government and joined the Tsai government as Vice President from 2016 to 2020. I met with him at the government building in Taipei in November 2019.

The former is dominant and resilient in Europe and the USA. In such societies, criticisms of public regulations, such as restaurant closure and most notoriously total lockdown, are strong[18]. On the other hand, comparable criticism is not salient in Japan. Exceptionally the Global Dining, Inc., a restaurant company in Tokyo, filed a nominal damages lawsuit in March, 2021, arguing that Tokyo Municipal Government's order to limit business hours due to Special Statute of New Influenza, including Covid-19 (art. 45, sec.3), is against constitutional right of business, freedom of expression and equal protection under law (art. 22, 21, and 14)[19] and similar arguments have been recently professed by Prof. Yasutaka Abe, an administrative law scholar[20].

Conversely, the latter often leads to dictatorship in China and Cambodia. Nevertheless, it is often praised for its effectiveness of coronavirus control. In Japan, however, regulation without punishment had been considered relatively effective due to the strength of group-oriented mentality in Japanese society[21], although some punishments were

---

[18] For example, for criticisms of Governor Cuomo's closure regulation of restaurants after 10pm, see, e.g., Corey Kilgannon, *After Bar Manager's Arrest, Covid Culture Wars Escalate on Staten Island*, The New York Times, December 2nd, 2020, and NYT(IE) Editorials, *Save America's Restaurants: A Fresh Round of Federal Aid Can Keep Restaurants in Business during the Winter Months While Also Protecting Public Health*, The New York Times, International Edition, November 20th, 2020, p.9, on California Governor Newsom's regulation.

[19] See, e.g., Asahi Shimbun Digital, May 21st, 2021 (Mr. Kozo Tanaka, a president of Global Dining, Inc. says the deficit due to the business hours' restriction has amounted to 2 billion yen.)(https://digital.asahi.com/articles/ASP5P61XZP5PUTIL01W.html).

[20] Yasutaka Abe, Legal Prescriptions against Covid-19 Issues (Kindle, 2021).

[21] On this issue, see, Rochelle Kopp, *Is Japan's Low Covid-19 Mortality Rate Due to a 'Higher Cultural Level'?: The Handling of the Pandemic Has Become a Point of Pride for Many Japanese*, The Japan Times, June 13th, 2020, p.7.

later added, in February, 2021, by the revisions of the New Influenza Special Statute, that covers Covid-19, and the Infectious Disease Act.

6-2. Related Legal Policy Scheme: Market Decision or Command Decision (by Prof. Calabresi and Hirai[22])

The theoretical framework of legal policy-making by Professors Calabresi, a founding father of 'Law and Economics' and his student, Hirai, a bifurcated scheme of market and command, overlaps with the previous discussion and is helpful in the Covid-19 context.

First, the pure command system under the dictatorships in China and Cambodia is effective, as has been shown from the case of the Wuhan lockdown in early 2020. Under the dictatorship in Cambodia, once infected people are found, they are chased stringently by the command system[23]. However, those approaches cannot be a model for other, market-based, countries.

Second, this theoretical framework is helpful in terms of conceptualizing the 'dissemination of Covid-19 vaccines', which is an utmost urgent agenda nowadays. In the European continent, vaccine supply is insufficient because many countries have become choosy about vaccines and sensitive to AstraZeneca's rare blood-clot side effect[24], although it has been effective in the U.K. in collaboration with

---

[22] Guido Calabresi (1932～) is a world-famous penetrating founding father of 'law and economics' in the U.S. and his student, Yoshio Hirai (1937～2013), is the most prominent legal theorist in Japan. See. GUIDO CALABRESI & PHILIP BOBBIT, TRAGIC CHOICES (Norton, 1978), GUIDO CALABRESI, THE FUTURE OF LAW AND ECONOMICS: ESSAYS IN REFORM AND RECOLLECTION (Yale U.P., 2016) (Its Japanese version by Kunihiko Yoshida will be forthcoming in the fall of 2021) and YOSHIO HIRAI, LEGAL POLICY-MAKING (Yuhikaku Pub. Co., 1987; 1995) in this context.

[23] See, e.g., *An Ambulance Waiting to Ferry a Suspected Covid-19 Patient to a Hospital in Phnom Penh*, Khmer Times, November 30th, 2020.

[24] About 4 people out of 1 million inoculated people with Astra Zeneca vaccines suffer from blood clots as of March, 2021.

Oxford University. This is considered a policy-making 'blunder'[25]. However, Japan is now following suit and is one of the worst in terms of vaccine rollout by similarly becoming choosy in its inoculation measures despite approval by the Ministry of Health, Labor and Welfare in May 2021. In this sense, the Japanese vaccine allocation mechanism is a covert commandification system without any participation of individual citizens[26]. Applying Calabresi's analysis to the dissemination of vaccines against Covid-19, which can be counted as one of those important merit goods that he emphasized[27], it is my opinion that the individualistic market mechanism should be mixed-used to increase supply of vaccines.

Incidentally, it has been reported that the Japanese government

---

[25] E.g., Paul Krugman, *Vaccines: A Very European Disaster: When Policymakers Are Averse to the Wrong Risks*, THE NEW YORK TIMES, INTERNATIONAL EDITION, March 22nd, 2021, p.9. See also, Michelle Goldberg, *My Shot Was a Ticket Out of Hell: Some People Are Balking at the One-Shot Johnson & Johnson Vaccine, but I Was Thrilled to Get it*, THE NEW YORK TIMES, INTERNATIONAL EDITION, March 26th, 2021, p.1, 9.

[26] Incidentally, Japan's historical propensity towards covert commandification regarding legal policy design can be noticed in the Japanese health care system in general. Compared to the American market-oriented health care system, I described this unique Japanese feature more than two decades ago, following the Calabresi=Hirai theoretical legal policy framework. See, Kunihiko Yoshida, *Some Critical Analysis of the Recent Medical Informed Consent*, in do., RELATIONAL DEVELOPMENTS OF CONTRACT AND HEALTH LAW (Yuhikaku Pub. Co., 2003) (originally in 1993) 306-. When I made a presentation about the comparative legal policy scheme analysis at the Stanford Health Care Policy Comparison project in the early 1990s, and pointed out the superiority of the Japanese health care finance system in terms of efficiency, it attracted the Stanford health economics experts. However, it seems to me, in the context of recent chaotic Covid-19 vaccination policies, the same covert command system might bring about inefficiency and ethical problems.

[27] For Calabresi's noteworthy analyses of various merit goods, see, Calabresi, *supra* note 22 (2016), chaps 2～4.

has decided by governmental command that it will donate AstraZeneca vaccines surplus to Taiwan, even though these vaccines had been procured for 60 million Japanese people by contract with AstraZeneca in July 2020, but the Ministry of Health has recently given up inoculation virtually, despite approval, for Japanese citizens, considering the side-effect of blood-clots[28]. However, this international policy is ethically problematic, if scientists really have apprehensions about their dangers, on top of the covert political process on vaccine rollout which occurred without any individual democratic participation of the 21% of Japanese citizens who desire immediate inoculation regardless of vaccine company, including AstraZeneca, according to the recent TV news poll[29].

(P.S.)

Japanese government has eventually started AstraZeneca vaccination since late August, 2021[30]. But very few mass media have wondered how many people have been killed or seriously infected by the questionable three-month-long covert governmental inaction in the recent drastic 5th wave spike due to the Delta variant.

---

[28] See, e.g., Asahi Shimbun, May 29th, 2021, p.4.

[29] According to Yahoo News from the FNN Prime online on May 23rd, 2021 (https://news.yahoo.co.jp/articles/b2ea38d259dd9d5347e619a74394de8deb27a634) (discussions among Dr. Haruo Ozaki, Minister Takuya Hirai of Digital Innovation, and former Governor Toru Hashimoto). It is noteworthy that Dr. Ozaki argued in the discussion that AstraZeneca vaccines could be used for the elderly who were resilient to the blood-clot side effects.

[30] See, e.g., Yahoo News, August 19th, 2021 (Fukuoka Prefectural Government decided to start AstraZeneca vaccination for the people who are either 40 years and over or who are allergic to Pfizer and Moderna vaccines according to the guideline of Ministry of Welfare) (https://news.yahoo.co.jp/articles/663e486e4f60e756dd64ad87a8e819822ef20d0f).

6-3. Difference of Public Hygiene Culture

Stark differences in public hygiene culture should also be noticed, including, for example, wearing masks, taking shoes off before entering buildings, shaking hands, and hugging & kissing etc. Social distancing and disinfection by alcohol is a new notion for all of us in the Covid-19 era. Generally speaking, Asian people are obedient to these social norms about public hygiene. In this sense, the so-called 'cultural wars' regarding masks in Anglo-American countries[31] is culturally not understandable to us.

6-4. Discrimination against Infected People

Individual human rights issues are serious in case of group-oriented societies, especially Asian countries in contrast to Euro-American countries, as is shown in leprosy-related discrimination cases[32]. However, similar discrimination is serious in recent cases of Covid-19 related hate speech and violence against Asian American people[33], and thus, we cannot generalize discrimination issues in an essentialized nor categorical manner.

6-5. Health Care and Housing Welfare Protection

The Japanese health care system is communitarian and might be generally resilient with regard to coronavirus. However, "PCR[Polymerase Chain Reaction]" testing is limited due to the

---

[31] See, Motoko Rich, *Japan's Mask Habits May Have Kept it Safe: A Strong Cultural Affinity for Face Coverings Could Explain a Low Death Toll*, The New York Times, International Edition, June 8th, 2020, p.4

[32] On this point, see, Rochelle Kopp, *Is Culture to Thank for Low Covid-19 Numbers?*, The Japan Times, April 6th, 2020, p.10.

[33] E.g., Jorge Ramos, *Combating Anti-Asian Hate in U.S.: A Segment of America Refuses to Accept that the Country Is Made Up of People from Many Different Background*, The New York Times, International Edition, March 6th -7th, 2021, p.1, 15.

restrictive legal regime of the Infectious Disease Act of 1998[34], and the control of coronavirus has been systemically insufficient from the beginning.[35] On the other hand, the American health care system is market-oriented and racial disparity/discrimination is serious.

However, the housing welfare problem in Japan, i.e., general lack of public assistance for vulnerable people for their housing, is serious and its coronavirus consequences might be ominous[36].

6-6. Control of Private Information

South Korea and Israel are salient in terms of private information-control to contain Covid-19 infection. In Taiwan, digital device invented by Minister Audrey Tang (1981～) has been used for providing masks. In the face of the recent spike in infected people, he has invented a registration system by smartphone to find people who contacted with infected persons within 5 seconds[37]. However, as mentioned before, there is a strained relationship between these devices and privacy issues.

6-7. Leadership

Top-down leadership is strong in China and Cambodia: command

---

[34] It originates from the Contagious Disease Prevention Act of 1897, which mainly targeted tuberculosis and leprosy patients whose infection features were different from Covid-19.

[35] On this issue, see, Kunihiko Yoshida, *Reconsidering Legal Institution Scheme with Regard to Covid-19 (part 1): Delay of PCR Testing and Its Institutional Failure*, Modern Theory vol. 49 (2020) 18～23. See also, do., *Reconsidering Legal Institution Scheme with Regard to Covid-19 (part 2): Future Vision of Law and Public Policy with Emphasis of Leadership*, Modern Theory vol.50 (2020) 117～123.

[36] See, e.g., Takeshi Inaba et al. eds., Running through Tokyo under Coronavirus Emergency: Diaries of Assistance For Housing Vulnerable People (Iwanami Shoten, 2021).

[37] NHK News on May 20th, 2021
(https://www3.nhk.or.jp/news/html/20210520/k10013040811000.html)

decision-making is cost effective in the Covid-19 context, although it might infringe upon individual matters. Additionally, leadership based on correct scientific data is essential. This is in contrast with Presidents Trump and Bolsonaro's attitudes that have caused serious coronavirus disasters[38].

7. Achieving Objectives: Concluding Remarks

Achieving objectives are as follows:

(1) Establishing Framework of Coronavirus Containment

The framework for Coronavirus containment is: to (I) increase "PCR testing", (II) identify infected people, and (III) trace and quarantine them. Using computer networks and big data might be effective, but there is a tension with regard to protection of privacy.

Additionally, the international border-check is important to block people infected by variants of Covid-19. Compared to other countries, Japan is allegedly weak on this level of regulation[39]. Contrary to the Japanese situation, according to my personal experience[40], the restriction of foreign travelers is much more stringent in Cambodia : For example, ① PCR negative medical certificate, certificate of designated Covid-19 insurance, and $2000 prepayment for quarantine are required for entry; ② the PCR testing at the arrival airport; ③ 2 week mandatory quarantine at the designated hotel according to the November 18th 2020 ordinance (home quarantine was formerly

[38] There are numerous related articles. For example, Earnesto Londono, Leticia Casado & Maricio Lima, *Dysfunction and Mistrust in Brazil Fuel Catastrophe: Conspiracy Theories and Complacency Bring Hospitals Close to Collapse*, The New York Times, International Edition, March 30th, 2021, p.1, 4.

[39] Japanese regulators generally stick to the evidence of infection. Taking account of Covid-19 features, I think we should have a coronavirus-specific 'precautionary principle' measure.

[40] I travelled to Cambodia from Nov. 22nd, 2020 through Dec. 6th, 2020.

admitted); and ④ the 2nd PCR testing on the 13th day after arrival and negative results on the following day are required for release from the designated hotel.

(2) Appropriate Health Care for Infected People, especially Serious Cases

However, without any effective medication, immediate vaccine inoculation might be the only way to improve the situation. In this sense, its delay in Japan is a serious political problem and the way the Suga administration allocates vaccines by a covert command system is also problematic in terms of legal policy as mentioned before.

(3) Establishment of Public Hygiene

For example, wearing masks, washing hands, social distancing, and ventilation (to avoid 3Cs [1: closed spaces; 2: crowded places; 3: close-contact settings]) should be minimally required. Moreover, improving sewage systems and disinfecting systems should be an important infrastructure priority.

(4) Immediate Access to Vaccines

This is the most urgent agenda in 2021, but Japan is far behind the goal, unlike Israel, the U.S. and the U.K. As mentioned above, the way the Japanese government tries to deal with this issue is also problematic.

(P.S.)

Vaccine holdouts have been an urgent topic especially in the U.S. The vaccination rate in the U.S. has plateaued and it has been surpassed in inoculations by European countries[41]: The rate of fully

[41] See, e.g., Elian Peltier, *How the E.U. Passed the U.S. in Inoculations: Vaccine Resistance in the United States Is More Widespread and Vehement, Particularly Among Conservatives*, The New York Times, International

vaccinated people is 62.0% in the U.K., 55.0% in France, 58.6% in Germany, 58.2 % in Italy, 66.3% in Spain, while it is 51.8% in the U.S. and 40.0% in Japan as of August 21st, 2021.

Millions of Americans who reject vaccination consider it a personal and private decision making. Its mandatory coercion might look against individuals' freedom as they choose. However, it has been rightly refuted by arguing that achieving herd immunity through vaccinations is not a private issue like seatbelts in cars or bikers' helmets, but a social problem to solve through collective action. Preventable harms should not be inflicted upon family, friends, neighbors, community, country and planet by unvaccinated people. This effort is based on America's tradition of republican solidarity and social responsibility attacked by the Reagan Revolution, the argument goes.[42]

(5) Correcting Global Disparities after the Pandemic

The importance of International Heath Care projects, most notably the WHO [World Health Organization]'s plan, cannot be over-emphasized. Global inclusive health-oriented policies based on global justice are contrasted with the isolationist policies by the Trump administration based on "America First" populism.

EDITION, July 31st -August 1st, 2021, p.4.

[42] See, Jamelle Bouie, *Vaccination Should Not Be a Choice: America Has Struggled to Achieve Herd Immunity against Covid Because We Refuse to Act Collectively*, THE NEW YORK TIMES, INTERNATIONAL EDITION, August 14th -15th, 2021, p.1, 15. For the critical analysis of the Reagan Revolution and its marketization consequences, see, JOSEPF STIGLITZ, REWRITING THE RULES OF AMERICAN ECONOMY (Norton, 2015); MIKE KONCZAL, FREEDOM FROM THE MARKET: AMERICA'S FIGHT TO LIBERATE ITSELF FROM THE GRIP OF THE INVISIBLE HAND (New Press, 2021). Regarding privacy and self- decision making, TAKAO TAMADA, PRIVATE ISSUES AND SELF DECISION MAKING (Nihon Hyouron Pub. Co., 1987) might be a classic in Japan.

Towards this goal, the global development of new drugs and vaccines is an immediate agenda for stopping the pandemic in its true sense. To advance in this direction, there is a need for deconstruction of the modern individualistic intellectual property legal regime. In other words, global access schemes, especially those such as the Covax Facility project (est. in 2020) by more than 180 countries to guarantee access to vaccines by the world's 20% most vulnerable people, need to be pursued. The Covax Facility is organized by the WHO, in collaboration with Gavi (Global Alliance for Vaccine and Immunization, 2000～) and CEPI (Coalition for Epidemic Preparedness Innovation, 2017～).

According to this project, 0.7 billion available shots should be increased to 2 billion shots by the end of 2021. However, the world situation has been overwhelmed by so-called vaccine nationalism, and the Covax Facility's achievement is still very limited so far.

(6) Theoretical problems

As mentioned, to deal with Covid-19 issues, there is normative tension between individualism and collectivism, and relatedly between market decision-making and collective command decision-making.

Moreover, equal protection, with special attention to the protection of vulnerable people for disaster recovery is also imminently required. Especially, in case of the world pandemic, global justice rather than nationalistic justice should be pursued. However, the reality still lags far behind this ideal.