

RESEARCH ARTICLE

A Comparative Study of Socio-Legal Scenarios in the COVID-19 Pandemic: Focusing on Asian Responses

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Abstract

This article first distinguishes three governance scenarios that have been enacted in the COVID-19 pandemic, including identification and control; herd immunity without policy adjustments; and periodic lockdowns and hasty opening. In suggesting how different governments' strategies were taxonomized into these categories, the paper examines major socio-legal challenges, including variations in social structures and government responsibilities; differences in public health cultures and legal policy options available to governments; unequal distribution of health and social welfare benefits; and public concerns of government overreach in relation to privacy of the infected and the preservation of individual liberty and freedom. Finally, the paper offers critical recommendations in the interest of ensuring a robust social-legal framework for providing adequate medical care to the infected; improving public health for vulnerable groups; ensuring that less privileged countries have access to vaccines; and designing post-disaster reconstruction by seeking global health objectives, rather than state-centric national justice.

Keywords: COVID-19; COVAX; vaccination; WHO; Japan; Asia; global justice

1. Disaster recovery law in general

In recent decades, Japan has been overwhelmed by disastrous earthquakes, including the Kobe Earthquake (January 1995), the Niigata-Chuetsu Earthquake (October 2004), and the Great East Japan Earthquake (March 2011). Within the past decade alone, due to precipitous climate change, Japan has experienced frequent flooding, including the Joso Flood (September 2015), Iwaizumi Flood (by Lionrock) (August 2016), Northern Kyushu Flood (July 2017), Western Japan Flood (Mabi Flood) (July 2018), East Japan typhoon (Hagibis) (including Marumori Flood, Nagano-Hoyasu Flood) (October 2019), and Kuma River Flood (July 2020). Indonesia has also experienced such disastrous events as the Palu Earthquake (September 2018) and, before that, the ominous Banda Aceh Tsunami Disaster (December 2004).

Since February 2020, Asian countries, along with the rest of the world, have had to face the disaster of a daunting COVID-19 pandemic. In dealing with this and other disasters, it is important to reaffirm these vital principles: first, the need for protection of vulnerable people,¹ and second, the need for public assistance to support inclusive recovery. In both of these areas, governments have a critical role to play.²

¹ Farber et al. (2015).

² This is the core message of the housing welfare law in the area of disaster recovery in the Japanese context.

2. Extent of COVID-19 disasters

The COVID-19 pandemic has varied from country to country, depending on various factors that will be explored in this paper. Generally, COVID-19 has overwhelmed the entire world, including developed countries. By May 2021, the three most affected areas were European countries and the US (33,207,442; 593,533); Brazil (18,815,191; 441,864) and Latin American countries; and India (26,030,674; 291,365).³ At that time, some Asian countries were faring well, with limited numbers in Taiwan (2,825; 15), South Korea (134,117; 1916), and Cambodia (23,697; 164), for example.⁴

The discrepancies between “hard-hit countries” and “mildly affected countries” were surprisingly large, with Israel (839,263; 6,396) uniquely located in the latter category. Japan’s demographic data (698,524; 11,940) should also be located in the latter and can be contrasted with those of Indonesia, which had more than 48,000 casualties and was one of the most highly affected regions in Southeast Asia. After the rollout of the Covid vaccines in limited countries, including for more than half of the populations in Israel, the US, and the UK, the situation transformed in important ways,⁵ with comparative reductions in some areas, but a dramatic spike of infection in India.⁶

By July 2021, another Covid wave had set in, even in Asian countries, due to the Delta variant as well as the limited vaccination rate. Epicentres were India and Indonesia,⁷ where numbers of infected people and victims respectively amounted 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. Even in countries that had contained Covid in the past, transmission increased dramatically, casting in doubt the future in East/Southeast Asia, especially in relation to the controversial Tokyo Olympic Games scheduled for 2020. For example, Japan (857,799; 15,106) [159,275; 3,166]; Korea (187,362; 2,068) [53,245; 152]; China (92,462; 4,636) [1,542; 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) [362,382; 3,227], as compared to Israel (857,977; 6,457) [18,714; 61]; the US (34,340,894; 615,752) [1,133,452; 22,219]; and

³ The numbers in square brackets indicate those of infected people and victims as of 21 May 2021. Worldwide, at that point, there had been 164,913,259 infected people and 3,417,91 victims.

⁴ Vietnam (4,809; 39) and Thailand (119,585; 703) were doing comparatively well, while Indonesia (1,758,898; 48,899) became one of the worst cases in Southeast Asia.

⁵ Bosman & Mervosh (2021). This report showed that due to the high percentage rate of vaccine inoculation (more than 50%) in the US, the COVID-19 infection rate generally receded. However, the daily numbers of infected people and victims there (~47,000; 700) were still much higher than those numbers in Japan as of 28 May 2021 (4,317; 104). For China, see Wang & Bradsher (2021).

⁶ India had more than 300,000 infected people daily, but the true number was much higher. See Gettleman & Raj (2021); Gettleman et al. (2021). See also Mashal & Yasir (2021); Mashal et al. (2021). Cremations reached more than 100 a day at the Ghazipur crematory in eastern New Delhi.

⁷ Abdurachman, Paddock, & Suhartono (2021). Thousands of people were sleeping outside of hospitals, gasping for air, waiting for beds and oxygen, while many others died at home helplessly. Indonesia had become the new epicentre of the pandemic, surpassing India and Brazil. On 15 July 2021, nearly 57,000 new cases, seven times as many as a month earlier, were reported. 1,205 deaths were also reported on 16 July and the official toll amounted to more than 73,500 (although 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 later dropped to about 40,000. The surge was part of a wave across Southeast Asia, where vaccination rates were low but countries had until then contained the virus relatively well. Vietnam, Malaysia, Myanmar, and Thailand also faced their largest outbreaks. Only about 15% of Indonesian people were partly inoculated, and just 6% are fully inoculated. Indonesia had relied heavily on the Chinese vaccine, which proved less effective than other shots. At least 20 Indonesian fully vaccinated doctors died from the virus. Dr Budiman, an Indonesian epidemiologist, had predicted more than a year beforehand that it would become a pandemic epicentre because of its dense population and weak health-care system.

⁸ Numbers in parentheses indicate the difference between infected people and victims between 21 May 2021, shortly before the annual meeting presentation, and 24 July 2021, when this postscript was added.

the UK (5,637,975; 129,044) [1,180,232;1,334], which have administered substantial vaccination programmes.

3. Three scenarios for dealing with Covid

There have been three main scenarios for dealing with the Covid pandemic. The first scenario involves identifying and controlling Covid—that is, containing infected people to maintain normal business activities. This strategy was adopted in Taiwan, South Korea, Cambodia, and Oceania countries (New Zealand and Australia), among others. The second scenario is the opposite: attempting the attainment of herd immunity without any policy changes, which means protecting and maintaining normal business activities, despite considerable numbers of Covid victims and survivors. This strategy was adopted in Sweden, although no country had attained herd immunity by mid-2021. In the context of vaccine availability, herd immunity has a different connotation, entailing increasing vaccine inoculation as much as possible.

The third scenario is a middle way, which leaves the Covid situation in an uncontrollable state. In this case, lockdowns are occasionally required, but lead to the dilemma of long-term economic depression. However, the hastened lifting of lockdowns for the purpose of economic recovery runs the risk of leading to an increase in infected people. This approach can be seen throughout the world, and it shares elements of the second scenario in situations like those in the US, European countries, Brazil and other Latin American countries, and India (as of July 2021). On the other hand, when lockdown is stringently enforced through top-down command, as was the case in China in March 2020, it has turned out to be effective in controlling Covid. This approach then shifts back to the first scenario.

There are important questions to be raised about the differences and similarities among the ways these scenarios and their outcomes have taken place in Asian countries—particularly Japan, South Korea, and Indonesia. For example, what is the difference between Japan and South Korea?⁹ Is Indonesia closer to the third category?¹⁰ Why is Indonesia different from other Southeast Asian countries, such as Thailand, Cambodia, and Vietnam?

4. Factors regarding Covid control

The following six factors regarding the control of Covid are key to dealing with current and future pandemics. First, the immediate identification and control of infected people is vital in order to obtain relevant information and to contain clusters of infected people. This factor has been taken into account in Taiwan, Korea, and Israel by using big data emitted from credit cards and cellular phones. However, this approach has the potential of infringing upon individual privacy, and of leading to frequent lockdowns. Second, the health-care system for infected people, and third, public hygiene infrastructure for the homeless and other housing-related vulnerable people, such as the elderly and single-mother families, could also be important factors.

A fourth key factor is the issue of imposing restraints upon businesses and offering economic compensation. A fifth essential factor relates to the development of new medicines and vaccines, which became apparent especially after inoculation began in December 2020. Israel,¹¹ the US, and the UK were initially leading countries in this respect, with a serious

⁹ According to Adjunct Professor Yukyong Choe's presentation on the Korean situation at the Law and Society meeting in 2021, besides the technological devices mentioned below as a cause of the difference, Koreans' attitude towards community protection against COVID-19 might be relatively stronger.

¹⁰ Beech & Suhartono (2020).

¹¹ Kershner (2021).

discrepancy between rich countries and poor countries in the Global South. Another economic element involves the need for alterations of modern intellectual property laws—that is, the need for a waiver of World Trade Organization patent rights, which the Biden administration endorsed¹²—in order to increase production of vaccines in developing countries to achieve global equity and access protection. However, the emerging Covid crises in India and other regions has had a serious negative impact in this regard.¹³

A sixth factor is the need for an international health collaboration system to confront the Covid pandemic—a collaboration that is essential for the enhancement of global justice in relation to north-south problems. The COVAX Facility represents one such approach. However, a state-centric approach known as “vaccine nationalism” has been dominant, as opposed to World Health Organization (WHO) Director-General Tedros Adhanom Ghebreyesus’s proposals for global approaches.¹⁴

5. Research strategies

Research strategies need to involve both interdisciplinary and holistic/inclusive approaches. The importance of natural science researchers should be stressed, especially infectious disease and epidemiology experts, such as Professor Shigeru Omi¹⁵ in Japan and Dr Anthony Fauci in the US.¹⁶ Under the Tsai government in Taiwan, former Vice President Chen,¹⁷ an epidemiologist, played an important role in containing Covid in 2020. He stands in contrast to former President Trump in the US and President Bolsonaro in Brazil, who made clear their dislike and disdain of natural scientists. Former Japanese Prime Minister Yoshihide Suga was another leader who ignored the clear advice of medical experts, as he continued to promote a “Go-To” travel campaign even in the winter of 2020, leading to a third and fourth wave in 2021 that was much more severe than in neighbouring Asian countries.

6. Challenges in controlling Covid

6.1 Social structure: individualism or group-orientedness and the role of government

Among the key elements that can pose challenges in controlling Covid is the nature of the social structure—that is, whether a society is individualistic or communally and collectively oriented. The individualistic society is dominant and resilient in Europe and the US, and there has been strong criticism in some sectors of public regulations, such as restaurant closures and, most notoriously, total lockdown.¹⁸ Interestingly, in the US, the Right wing has supported more libertarian arguments related to Covid regulations, while Left-wing groups have paradoxically supported strong public health control through such measures as travel restrictions, quarantine requirements, mask-wearing, and social

¹² Goldberg (2021a).

¹³ Schmall & Singh (2021).

¹⁴ Ghebreyesus (2021).

¹⁵ Dr Shigeru Omi (1949~), the Chairman of COVID-19 Council, made a proposal to stop the “Go-To” campaign in Tokyo on 9 December 2020, but it was rejected by the Suga Japanese administration.

¹⁶ Dr Anthony S. Fauci (1940~) has been a director of 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, and was praised for effectively managing the 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.

¹⁸ E.g. for criticisms of Governor Cuomo’s 10 p.m. closure regulation of restaurants, see Kilgannon (2020); The Editorial Board (2020).

distancing, despite the risk that support for such measures could become a target of Foucauldian critiques of biopower.¹⁹ Comparable levels of criticism are rare in Japan. An exception was the filing by Global-Dining, Inc., a Tokyo restaurant company, of a nominal damages lawsuit in March 2021, arguing that the Tokyo Municipal government's order to limit business hours by the Special Statute of New Influenza, including COVID-19 (Art. 45, s. 3), violated the constitutional right of business, freedom of expression, and equal protection under the law (Arts 22, 21, and 14)²⁰ and similar arguments have recently been put forth by Professor Yasutaka Abe, Japan's prominent administrative law scholar.²¹

Although the communally or collectively oriented society often leads to dictatorships, such as in China and Cambodia, it has nevertheless been praised for its effectiveness in Covid control. In Japan, regulation without punishment had been considered relatively effective due to the strength of group-oriented mentality in Japanese society,²² although some punishments for violation of regulations were added in February 2021, through 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 (as developed by Professors Guido Calabresi and Yoshio Hirai²³)

The theoretical framework of legal policy-making propounded by Professor Guido Calabresi, a founding father of "Law and Economics," and his student, Yoshio Hirai, involves a bifurcated scheme of market and command, overlapping with the previous discussion and offering helpful insights into the context of COVID-19 management.

The pure command system seen under the dictatorships in China and Cambodia is effective, as was shown in the case of the Wuhan lockdown in China in early 2020. Under the dictatorship in Cambodia, once infected people were found, they were traced stringently by the command system.²⁴ However, such strict approaches cannot serve as a model for other market-based countries.

This theoretical framework is also helpful in conceptualizing the dissemination of COVID-19 vaccines, which remains an urgent concern. On the European continent, vaccine supply was at times insufficient due to many countries becoming selective about vaccines, especially in the case of sensitivity to AstraZeneca's rare blood-clot side effects,²⁵ even though in the UK, in collaboration with Oxford University, this vaccine has been effective. This has been considered a policy-making "blunder."²⁶ However, Japan then followed suit and became one of the worst countries in terms of vaccine rollout, by becoming similarly selective in its inoculation measures despite their approval by the Ministry of Health, Labour and Welfare in May 2021. In this sense, the Japanese vaccine allocation mechanism is a covert commandification system without the participation of individual citizens.²⁷

¹⁹ Douthat (2021).

²⁰ Asahi.com (2021).

²¹ Abe (2021).

²² Kopp (2020b); Rich and Dooley (2022).

²³ Guido Calabresi (1932~) is a world-famous founding father of "law and economics" in the US, and his student, Yoshio Hirai (1937~2013), was the most prominent legal theorist in Japan. See Calabresi & Bobbitt (1978); Hirai (1987; 1995); Calabresi (2016). Interestingly, late Hirai developed the third type of decision making, i.e. "prior consensus building" type of decision making ((1995), p. 26) and it might fit with the communal society in Japan.

²⁴ Khmer Times (2020).

²⁵ About four people out of 1 million people inoculated with AstraZeneca vaccines had suffered from blood clots as of March 2021.

²⁶ Goldberg (2021b); Krugman (2021).

²⁷ Incidentally, Japan's historical propensity towards covert commandification regarding legal policy design can be noticed in the Japanese health-care system in general. See Yoshida (2003). However, in the context of recent chaotic COVID-19 vaccination policies, the same covert command system might bring about inefficiency and ethical problems.

Applying Calabresi's analysis to the dissemination of COVID-19 vaccines, which can be seen as one of those important merit goods that he emphasized,²⁸ it appears that the individualistic market mechanism should be mix-used so as to increase the supply of vaccines.

Relatedly, it has been reported that the Japanese government decided to donate AstraZeneca surplus vaccines to Taiwan, even though these vaccines had been procured for 60 million Japanese people by contract with AstraZeneca in July 2020. The Japanese Ministry of Health decided to give up inoculation, despite its approval for Japanese citizens, in considering the rare side effect of blood clots.²⁹ However, such a policy, by the government command-like decision, can be seen as ethically problematic if scientists truly have apprehensions about the dangers of the AstraZeneca vaccine. There is the additional problematic issue of the covert political process involved in vaccine rollout, which occurred without any individual democratic participation, including the 21% of Japanese citizens who, according to a TV news poll,³⁰ desired immediate inoculation regardless of the source company, including AstraZeneca. The Japanese government eventually began the AstraZeneca vaccination in late August 2021.³¹ However, in the drastic fifth wave spike that followed, due to the Delta variant, very few members of the media questioned how many people may have been killed or seriously infected by that three-month period of covert governmental inaction.

6.3 Differences in public hygiene culture

Stark differences in public hygiene culture also present challenges in Covid control. These include such behaviours as wearing masks, taking shoes off before entering buildings, not shaking hands, hugging, kissing, etc. Social distancing and use of alcohol-based disinfectants became new practices for most people in the COVID-19 era. Generally speaking, Asian people are more obedient to social norms about public hygiene, which makes the so-called "cultural wars" regarding mask-wearing in Anglo-American countries³² seem strange and even inexplicable to many Asian people.

6.4 Discrimination against infected people

Individual human rights concerns present real challenges in the case of communally and collectively oriented societies, especially Asian countries, in contrast to Euro-American countries, as is shown in leprosy-related discrimination cases.³³ However, similar discrimination issues have arisen in Euro-American countries, with recent cases of COVID-related hate speech and physical violence against Asian-American people,³⁴ and thus it is not possible to generalize discrimination issues in an essentialized or categorical manner.

6.5 Health care and housing welfare protection

The Japanese health-care system is communitarian and might be seen as generally effective with regard to Covid control. However, "PCR [polymerase chain reaction]" testing has

²⁸ Calabresi, *supra* note 23, chapters 2–4.

²⁹ Asahi.com, *supra* note 20.

³⁰ According to YahooNews.com (2021a). It is noteworthy that Dr Ozaki argued that AstraZeneca vaccines could be used for the elderly who were resistant to the blood-clot side effects.

³¹ YahooNews.com (2021b).

³² Rich (2020).

³³ Kopp (2020a).

³⁴ Ramos (2021).

been limited due to the restrictive legal regime of the Infectious Disease Act of 1998,³⁵ and the control of Covid has thus been systemically insufficient from the beginning.³⁶ Although the American health-care system is market-oriented, racial disparities and discrimination have been serious issues in the Covid response. Similarly, the housing welfare problem in Japan (i.e. the general lack of public assistance for housing for vulnerable populations) has presented serious challenges during Covid with ominous consequences.³⁷

6.6 Control of private information

South Korea and Israel have both implemented forms of private information control to contain Covid outbreaks. In Taiwan, a digital device invented by Minister Audrey Tang has been used for providing masks. In the face of spikes in numbers of infected people, a registration system was invented that used smartphones to find people who had contacted infected persons within five seconds.³⁸ However, as mentioned before, there are tensions between the use of these devices and privacy issues.

6.7 Leadership

Top-down leadership is strong in China and Cambodia, and command decision-making has been cost-effective in the context of COVID-19, although it might infringe upon individual freedom, rights, and privacy. Leadership based on correct scientific data is essential in any case. This is in contrast with the anti-science attitudes of President Trump and President Bolsonaro, which have led to serious Covid disasters that might otherwise have been prevented.³⁹

7. Achieving objectives: concluding remarks

7.1 Establishing a framework for Covid containment

The framework for Covid containment involves (1) increasing “PCR testing,” (2) identifying infected people, and (3) tracing and quarantining them. Using computer networks and big data might be effective, but it also raises issues with regard to the protection of privacy. Similarly, the use of international border checks has been important in blocking entry of people infected by variants of COVID-19. Compared to other countries, Japan has been seen as weak in this form of regulation.⁴⁰ Contrary to the Japanese situation, according to my personal experience,⁴¹ the restriction of foreign travellers was much more stringent in Cambodia; for example: (1) PCR negative medical certificate, certificate of designated COVID-19 insurance, and \$2,000 pre-payment for quarantine was required for entry; (2) PCR testing at the arrival airport; (3) two-week mandatory quarantine at the designated hotel according to the 18 November 2020 ordinance (home quarantine had been formerly

³⁵ This trend originates from the Contagious Disease Prevention Act of 1897, which mainly targeted tuberculosis and leprosy patients whose infection features were different from COVID-19.

³⁶ Yoshida (2020a); Yoshida (2020b).

³⁷ Inaba (2021).

³⁸ NHK.com (2021).

³⁹ Londono, Casado, & Lima (2021).

⁴⁰ Japanese regulators generally stick to the evidence of infection. Taking account of COVID-19 features may require a coronavirus-specific “precautionary principle” measure. [The situation has changed: as of mid-2022, Japan is one of the most stringent countries with regard to foreign visitors compared with Euro-American countries.]

⁴¹ The author travelled to Cambodia from 22 November 2020 through to 6 December 2020.

admitted); and (4) second PCR testing on the thirteenth day after arrival and negative results on the following day were required for release from the designated hotel.

7.2 Appropriate health care for infected people, especially serious cases

Prior to the availability of any effective medications for treating Covid, immediate vaccine inoculation seemed the only way to address the outbreak. In this sense, the delay of inoculation in Japan was a serious political and public health issue, and the way in which the Japanese administration allocated vaccines through a covert command system was also problematic in terms of legal policy, as mentioned earlier.

7.3 Establishment of public hygiene

Such measures as wearing masks, washing hands, practising social distancing, and installing adequate ventilation (to avoid the 3Cs (1) closed spaces; (2) crowded places; (3) close-contact settings) should be minimally required in addressing the Covid crisis. Moreover, the improvement of sewage systems and disinfecting systems constitutes an important infrastructure priority.

7.4 Immediate access to vaccines

By mid-2021, immediate access to vaccines was the most urgent agenda item, with Japan far behind the implementation of vaccines in Israel, the US, and the UK. Japan's approach to this issue, as mentioned above, was problematic. "Vaccine holdouts" was also an urgent issue, especially in the US as the vaccination rate plateaued and the US was surpassed in the rate of inoculations by European countries.⁴² As of 21 August 2021, the rate of fully vaccinated people was 62.0% in the UK, 55.0% in France, 58.6% in Germany, 58.2 % in Italy, 66.3% in Spain, but only 51.8% in the US and 40.0% in Japan.

Millions of Americans who rejected vaccination regarded their decision as a personal and private matter. Its mandatory nature appeared to some to be contrary to individual freedom of choice. This argument has been rightly refuted by noting that achieving herd immunity through vaccinations is a social problem to solve through collective action, for one's vaccination status affects others more directly than choosing to fasten one's seatbelt or wear a bicycle helmet. The idea was that preventable harm should not be inflicted upon family, friends, neighbours, community, country, and the planet as a whole by unvaccinated people. This community effort, the argument goes,⁴³ is based on America's tradition of republican solidarity and social responsibility— notions that were countered by programmes advanced by the Reagan Revolution.

7.5 Correcting global disparities after the pandemic

The importance of International Health Care projects, most notably the WHO's plan, cannot be overemphasized. Inclusive health-oriented policies based on global justice are easily contrasted with the isolationist policies adopted by the Trump administration that were based on an "America First" populism.

Working towards this goal, an immediate agenda must involve the global development of new drugs and vaccines in order to bring an end to the Covid pandemic. To advance in this direction, it is critical to pursue the deconstruction of the modern individualistic

⁴² Peltier (2021).

⁴³ Bouie (2021). For the critical analysis of the Reagan Revolution and its marketization consequences, see Stiglitz (2015); Konczal (2021). Regarding privacy and self-decision-making, see Yamada (1987).

intellectual property legal regime. Global access schemes need to be pursued, such as the COVAX Facility project established in 2020 by more than 180 countries to guarantee access to vaccines for the 20% constituting the world's most vulnerable people. 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~). This project planned for 0.7 billion available shots to be increased to 2 billion shots by the end of 2021. However, the world situation has been overwhelmed by so-called "vaccine nationalism," thus affecting the extent of the COVAX Facility's achievement thus far.

7.6 Theoretical problems: postscripts for future prospects

In dealing with COVID-19 issues, there is a normative tension between individualism and collectivism, and relatedly between market decision-making and collective command decision-making. Yet equal protection, with special attention to the protection of vulnerable people during disaster recovery, is of vital importance. Especially in the case of a global pandemic, global justice rather than nationalistic justice should be pursued. This is a goal that has yet to be achieved.

First of all, vaccination remains an essential factor in controlling Covid. The landscape described at the annual meeting of the Law and Society Association in May 2021 has been transformed due to the widespread availability of COVID-19 vaccination.⁴⁴ With regard to the three models for dealing with Covid, most major countries moved to Model 2 or 3, except China, which still operated according to Model 1, i.e. a stringent top-down "zero tolerance" commandification model. This policy increasingly made China an outlier, as the rest of the world began to reopen, including New Zealand and Australia, which had also once embraced zero tolerance. For a time, China became the only country chasing the goal of full eradication of the virus. This containment model is still hailed by many as proof of the superiority of its competent governance model that enables lockdowns and testing to be carried out with astonishing efficiency. However, some experts, such as Zhang Wenhong, worry about economic slowdown related to the costs involved in pursuing a zero-cases policy, and suggest that China should learn to live with the virus, and that the Model 1 approach is unsustainable.⁴⁵

Second, the problem of discrepancy between vaccination rates in rich and poor countries, with most of the latter located in the South, persists.⁴⁶ The COVAX Facility project based on global equity concerns remains short of its goal. In 2021, in South and Southeast Asia, the fully vaccinated rate was still low in many countries (e.g. India (25.8%), Indonesia (29.9%), Vietnam (32.0%), Thailand (49.8%), Bangladesh (19.6%), Philippines (33.4%), Myanmar (15.2%)), with a few exceptionally successful countries (Malaysia (76.4%), Singapore (82.7%), Cambodia (78.8%)).⁴⁷

⁴⁴ As of 11 November 2021, the rate of fully vaccinated people in some of developed East Asian countries (Japan (75.2%), South Korea (77.0%)) surpassed that of Anglo-American countries, while the rate in EU countries was generally higher than 65% (e.g. France (68.7%), Germany (67.4%), Italy (73.3%), Spain (79.0%); cf. the UK (68.4%)). On the other hand, it was staggeringly low in the US (58.6%), as a result of the disparate political situation in each state, while the rate in Oceania countries (e.g. New Zealand (66.2%), Australia (68.8%)) had recently spiked yet was still slightly lower than in the EU countries.

⁴⁵ Wang (2021). Professor Zhang of Fudan University in the Department of Infectious Disease was attacked online as a lackey of foreigners (*ibid.*).

⁴⁶ In Africa, the vaccination rate was generally extremely low, e.g. South Africa (22.1%), Mozambique (8.9%), Zimbabwe (18.0%), Kenya (3.8%), Cote d'Ivoire (4.0%), Ethiopia (1.2%), Ghana (2.7%).

⁴⁷ Kurlantzick (2021).

Third, after the fifth wave, COVID-19 was almost gone in Japan for a time, while remaining rampant in Russia, the UK, and other regions, even though the number of deaths had relatively decreased. However, the fourth wave, which corresponds with the sixth wave in Asia, surged in EU countries overall, despite some variance across countries, and the resulting health restrictions, most stringently applied in Austria, dampened economic activities more seriously than expected.⁴⁸

Some of the mysterious differences between the situations in Japan and Korea, or between France and Germany, with the number of infected people much higher in the latter cases, cannot be explained so far (the more frequent night gatherings in Korea and the efficacy of President Macron's regulation of public space through the use of vaccine passports are some hypothetical explanations⁴⁹). Booster shots, and vaccines for youngsters and infants, are domestic challenges for rich countries that have been overwhelmed by "vaccine nationalism," while many discrepancies across the world remain unresolved.⁵⁰ As economic reopening restarted unevenly in 2021, hundreds of millions in the Global South have been driven into extreme poverty. More co-operation and co-ordination will be desperately needed to achieve a transformative era of progress.

Fourth, the so-called "Omicron variants" first detected in South Africa began to attract world attention in December 2021, causing flight bans and global isolation of the sub-Saharan African area. The Omicron variants based on sets of mutations allegedly spread twice as quickly as Delta variants. It is important to consider why Covid mutations arose in South Africa—a country of 8 million people, in which 13% of its population live with HIV, and 5.2 million people receive treatment, but only two-thirds of them are successfully suppressing the virus with medication. For the rest, HIV weakens their immune systems and if they catch COVID-19, it lasts longer than in the standard case, and reiterates mutations in their bodies (e.g. 216 days of Covid and 32 virus mutations in one HIV patient). The same phenomenon can be observed in the cases of transplant patients and those undergoing cancer treatment. In these cases, vaccinations are especially important.⁵¹ Thus, the prioritization of people with HIV to receive vaccine boosters to increase the effectiveness of their immune responses should be one element of a global justice approach to the COVID-19 pandemic, and "vaccination nationalism" should be strongly criticized as a global health policy.

However, as the Omicron virus began to spread dramatically, it was as if the COVID-19 situation had started anew: each country starting with the first scenario, then moving to the third scenario, as this article explicates. According to the WHO meeting in mid-December 2021, lab studies strongly suggested that the Omicron variant would cause many more breakthrough cases by evading antibodies generated by vaccines and prior infections. Yet it was also suggested that such breakthrough infections could be mild, with vaccines still continuing to provide substantial protection against severe disease, and T cells

⁴⁸ Cohen & Eddy (2021).

⁴⁹ With regard to the differences between Korea and Japan in the sixth wave of Covid, other explanations have been posited. The first attributes it to the difference in vaccines and their quality/effectiveness: in Japan, Pfizer and Moderna vaccines are dominant, while in Korea, other vaccines such as Johnson & Johnson and AstraZeneca have been fairly widely used. The second emphasizes the difference in prevalence of PCR testing, arguing that due to the insufficiency of PCR tests in Japan, which this paper has discussed, infected people, especially youngsters, are more hidden in Japan than in Korea and this explains the difference.

⁵⁰ Malloch-Brown, Shah, & Walker (2021). The world needed to assume collective responsibility to achieve the WHO's targets of vaccinating at least 40% of the population in low- and middle-income countries by the end of 2021, and 70% by September 2022. For global economic recovery, the governments of high-income countries needed to reallocate at least \$100 billion in 2021 in recycled special drawing rights for low- and middle-income countries. \$100 billion replenishment of the World Bank's International Development Association fund needed to be used to support the pandemic response and economic recovery in the world's poorest countries.

⁵¹ Nolen (2021).

in vaccinated people remaining effective against the variant. In this case, the rich countries starting with the US moved to booster shots,⁵² thus strengthening the vaccination nationalism mentioned before, while in South Africa and many other poor countries, scepticism or outright hostility toward Covid vaccines ran deep, due to the negative legacy of colonialism, and the rollout of vaccines staggered.⁵³ It remains a Herculean task to remove this persistent discrepancy across the globe, which leads to the up-and-down vicious cycle of COVID-19 variants continuing in rotation at least for the time being.

It is clear that the pandemic landscape has been transformed since vaccines, tests, and oral treatments became available. As Omicron infections, despite breakthrough transmissibility, remain relatively mild for vaccinated people, rising cases do not reliably predict hospitalization surges. It seems that we need to live with some forms of COVID-19 in the long term, in ways similar to outbreaks of influenza (“the flu”), and changes in mindsets and public health policies might be required. Traditionally, Covid case-counts have been the focus, even with the emergence of variants such as Omicron, especially in Japan, which has the most stringent quarantine policies among developed nations based on “precautionary principles,” but, as has been suggested, focusing attention on hospitalizations rather than case-counts might lead to effective and reasonable health-care policies in relation to the allocation of resources.⁵⁴

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References

- Abdurachman, Fira, Richard Paddock, & Muktika Suhartono (2021) “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*, 20 July.
- Abe, Yasutaka (2021) *Legal Prescriptions Against COVID-19*, Kindle.
- Asahi.com (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> (accessed 29 September 2021).
- Beech, Hannah, & Muktita Suhartono (2020) “‘It’s too Late’: In Sprawling Indonesia, Coronavirus Surges,” *The New York Times*, 28 May.
- Bosman, Julie, & Sarah Mervosh (2021) “As a Wave of Infections Recedes U.S. Feels Hope: Experts Remain Cautious, but People Ditch Masks and Go Out to Eat Again,” *The New York Times, International Edition*, 20 May.
- Bouie, Jamelle (2021) “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*, 14 August.
- Calabresi, Guido (2016) *The Future of Law and Economics*, New Haven, CT: Yale University Press.
- Calabresi, Guido, & Philip Bobbitt (1978) *Tragic Choices*, New York: W.W. Norton & Company.
- Chutel, Lynsey, & Max Fisher (2021) “Legacy of Colonialism Slows Vaccination,” *The New York Times, International Edition*, 3 December.
- Cohen, Patricia, & Melissa Eddy (2021) “As Covid Surges in Europe, New Economic Toll Follows,” *The New York Times*, 25 November.
- Douthat, Ross (2021) “The Extremely Weird Global Politics of COVID: We Need to Acknowledge that It’s Strange Where Right and Left Have Ended Up,” *The New York Times, International Edition*, 22 September.
- Farber, Daniel A., Jim Chen, Robert Verchick, et al. (2015) *Disaster Law and Policy*, New York: Wolters Kluwer.
- Gandhi, Monica, & Leslie Bienen (2021) “Hospitalizations Tell Us More About COVID,” *The New York Times, International Edition*, 15 December.
- Gettleman, Jeffrey, & Suhasini Raj (2021) “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*, 13 May.

⁵² Zimmer & Stolberg (2021). Against this backdrop, see Tufekci (2021).

⁵³ Chutel & Fisher (2021).

⁵⁴ Gandhi & Bienen (2021).

- Gettleman, Jeffrey, Sameer Yasir, Hari Kumar, et al. (2021) "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*, 27 April.
- Ghebreyesus, Tedros Adhanom (2021) "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*, 24 April.
- Goldberg, Michelle (2021a) "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*, 26 April.
- Goldberg, Michelle (2021b) "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*, 26 March.
- Hirai, Yoshio (1987) *Legal Policy-Making*, 1st edn, Tokyo: Yuhikaku Publishing.
- Hirai, Yoshio (1995) *Legal Policy-Making*, 2nd edn, Tokyo: Yuhikaku Publishing.
- Inaba, Takeshi (2021) "Running Through Tokyo Under Coronavirus Emergency: Diaries of Assistance for Housing Vulnerable People," *Iwanami Shoten*.
- Kershner, Isabel (2021) "Hope in Data from a Vaccine Front-Runner: Two Early Studies in Israel Point to a Significant Drop in Infections after One Dose," *The New York Times, International Edition*, 27 January.
- Khmer Times (2020) "An Ambulance Waiting to Ferry a Suspected COVID-19 Patient to a Hospital in Phnom Penh," *Khmer Times*, 30 November.
- Kilgannon, Corey (2020) "After Bar Manager's Arrest, Covid Culture Wars Escalate on Staten Island," *The New York Times*, 2 December.
- Konczal, Mike (2021) *Freedom from the Market: America's Fight to Liberate Itself from the Grip of the Invisible Hand*, New York: The New Press.
- Kopp, Rochelle (2020a) "Is Culture to Thank for Low COVID-19 Numbers?," *The Japan Times*, 6 April.
- Kopp, Rochelle (2020b) "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*, 13 June.
- Krugman, Paul (2021) "Vaccines: A Very European Disaster: When Policymakers Are Averse to the Wrong Risks," *The New York Times, International Edition*, 22 March.
- Kurlantzick, Joshua (2021) "Lessons for ASEAN from Malaysia's Pandemic Success, Chinese and COVAX Vaccines Are Used in Cambodia, while Pfizer-Biotech Vaccines Are Also Used in Malaysia," *The Japan Times*, 5 November.
- Londono, Earnesto, Leticia Casado, & Maricio Lima (2021) "Dysfunction and Mistrust in Brazil Fuel Catastrophe: Conspiracy Theories and Complacency Bring Hospitals Close to Collapse," *The New York Times, International Edition*, 30 March.
- Malloch-Brown, Mark, Raj Shah, & Darren Walker (2021) "A Dangerous Global Divide on Vaccine Access: Unequal Distribution of Shots Leaves World More Vulnerable to the Next Stage of the Virus," *The Japan Times*, 25 October.
- Mashal, Mujib, & Sameer Yasir (2021) "Empty and Helpless in India: Medical Workers Suffer Emotional Toll While Risking Lives in a Crushing Outbreak," *The New York Times, International Edition*, 20 May.
- Mashal, Mujib, Sameer Yasir, & Venugopal Shalini Bhagat (2021) "Denied the Rites of Grief: COVID-19 Has Transformed Mourning Rituals in India into Lonely, Public Affairs," *The New York Times, International Edition*, 10 May.
- NHK.com (2021) "Taiwan Corona Infected Person's Contact Trace New Tool 'Procedure Completed in 5 Seconds'," <https://www3.nhk.or.jp/news/html/20210520/k10013040811000.html> (accessed 29 September 2021).
- Nolen, Stephanie (2021) "A Variant Hunt from the Labs to Dirt Roads: Why Covid Mutations Rise in South Africa," *The New York Times*, 5 December.
- Peltier, Elian (2021) "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 Edition*, 31 July.
- Ramos, Jorge (2021) "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*, 6 March.
- Rich, Motoko (2020) "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*, 8 June.
- Rich, Motoko, & Ben Dooley (2022) "Japan's Way of Curbing Covid: Peer Pressure," *The New York Times, International Edition*, 13 June.
- Schmall, Emily, & Karan D. Singh (2021) "Stumbles by Vaccine Giant Fuel India Crisis: Pandemic Has Pushed the Pharmaceutical Maker Past Its Limits," *The New York Times, International Edition*, 11 May.
- Stiglitz, Joseph E. (2015) *Rewriting the Rules of the American Economy: An Agenda for Growth and Shared Prosperity*, New York: W.W. Norton & Company.
- The Editorial Board (2020) "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*, 20 November.

- Tufekci, Zeynep (2021) "Omicron Threatens the Old: Nursing Homes Must Act," *The New York Times, International Edition*, 10 December.
- Wang, Vivian (2021) "China Tries to Hit 'Zero COVID' as Others Relax: Political Legitimacy Rests on Controlling the Virus Better Than Major Rivals," *The New York Times, International Edition*, 30 October.
- Wang, Vivian, & Keith Bradsher (2021) "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*, 8 April.
- YahooNews.com (2021a) "Discussions among Dr. Haruo Ozaki, Minister Takuya Hirai of Digital Innovation, and Former Governor Toru Hashimoto," <https://news.yahoo.co.jp/articles/b2ea38d259dd9d5347e619a74394de8deb27a634> (accessed 29 September 2021).
- YahooNews.com (2021b) "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> (accessed 29 September 2021).
- Yamada, Takao (1987) *Private Issues and Self Decision Making*, Tokyo: Nihon Hyouron Publishing Corporation.
- Yoshida, Kunihiko (2003) "Some Critical Analysis of the Recent Medical Informed Consent." 22 *Relational Developments of Contract and Health Law* 306.
- Yoshida, Kunihiko (2020a) "Reconsidering Legal Institution Scheme with Regard to COVID-19 (Part 1): Delay of PCR Testing and Its Institutional Failure." 49 *Modern Theory* 18–23.
- Yoshida, Kunihiko (2020b) "Reconsidering Legal Institution Scheme with Regard to COVID-19 (Part 2): Future Vision of Law and Public Policy with Emphasis of Leadership." 50 *Modern Theory* 117–23.
- Zimmer, Carl, & Sheryl Stolberg (2021) "Hopes Rise That Vaccines Shield Against Omicron's Worst," *The New York Times*, 16 December.

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