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Restrictions of Human Rights on the Basis of Public Welfare

Thomas Makoto Naruse※

Abstract

One of the basic principles of Japanese Constitution is respect for human rights. However, the Constitution stipulates "public welfare" in 4 Articles, and recognizes restrictions on human rights. From its text, it appears that human rights restrictions are widely recognized. The debate over public welfare has gone through several stages, and understanding has changed. The aim of this article is to introduce the meaning of "public welfare" in Japanese Constitution, and how it works. After introducing the flow of the theory, this article will examine how it functions as a basis for restrictions on human rights.

Keywords: Human Rights, Public Welfare, Restrictions on Human Rights, Japanese Constitution

Introduction

In February 2021, the spread of COVID-19 drastically changed Japan's infectious disease legislation.[1] The concept of measures in conventional legislation dating back to the legislations enacted under the Meiji Constitution was the policy of isolating patients by restraining them physically.[2] However, a fundamental review was made as the Leprosy Prevention Act (*Rai Yobo Ho*) was abolished in 1996, the new Act on the Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (hereinafter the Infectious Diseases Act) was enacted in 1998, and the Act was revised in 2006, and respect for human rights became the new fundamental principle.[3] That principle is clarified in Article 2 of the Infectious Diseases Act, as "Measures implemented by the national and local governments for the purpose of preventing the outbreak or spread of any infectious diseases are to be promoted…giving full respect to the human rights of those persons."[4] The principle of respect for human rights was also adhered to in the Act on Special Measures against Novel Influenza, etc., which is a special law of the Infectious Diseases Act.[5] In the Area-Focused Intensive Measures for Prevention of the Spread

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1 Yasuda Rie, *Nihon no Corona Virus KansenshoTaisaku kara Mita Kuni, Todofuken oyobi Jumin no Kankei*, 788 Hougaku Seminar 4 (2020), Isobe Tetsu, *Kansensho-ho, Tokuso-ho no Shikumi ni Kansuru Iji-Gyosei-ho-teki Kosatsu*, 93 (3) Horitsu Jiho 61 (2021), Isobe Tetsu, *Jishuku ya Yosei no Imi,* 486 Hogaku Kyoshitsu 10 (2021), Kanai Toshiyuki, *COVID-19 Taisaku ni okeru Kuni, Jichitai Kankei*, 93 (2) Horitsu Jiho 1 (2021). Ogata Ken, *Shingata Corona Virus-ka no Fukushi Kokka—Ichi Kenpo Kenkyu-sha kara Mita Shingata Corona to Ho*, 790 Hougaku Seminar 56 (2021), Obayashi Keigo ed., Corona no Kenpo-Gaku [The Constitution Under Covid-19 Crisis] (Koubundou 2021). This article cites Professor Ichihashi's article, but also referred to other listed articles, especially Professor Isobe's articles.

2 Ichihashi Katsuya, *COVID-19 no Manen to Kansensho-ho oyobi Tokuso-ho no Tenkei*, 799 Hougaku Seminar 62, 62 (2021).

3 *Id.*

4 Act on the Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases, Amendment of Act No. 115 of 2014, Art. 2.

5 Ichihashi, *supra* note 2, at 64.

of Infection under the state of emergency, it was possible for the authorities that to request that people stay home or not operate their businesses, and to instruct those who did not comply to do so, but there were no penalties.[6] From the perspective of respecting human rights, the keynote was "requesting" rather than "forcing." Thus, Japan's recent laws on infectious diseases have been extremely restrained about restricting human rights. However, revisions to the law in 2021 have allowed the authorities to order businesses and individuals to curtail their activities and soon, and set penalties as well.[7] In this way, infectious disease legislation has undergone "a major transformation."[8]

One of the basic principles of Japan's Constitution is respect for human rights. However, the Constitution stipulates "public welfare" in Articles 12, 13, 22 and 29, and recognizes restrictions on human rights. In particular, Article 13 of the Constitution states that "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs."[9] From this text, it appears that human rights restrictions are widely recognized, but how do restrictions on public welfare actually work?

The debate over public welfare has gone through several stages, and understanding has changed. What does "public welfare" mean, and how are restrictions imposed on the basis of public welfare recognized? After introducing the flow of the theory, this article will examine how it functions as a basis for restrictions on human rights.[10]

1. Early Postwar Period: *Ichigenteki Gaizaiseiyaku Setsu* (Unified External Restriction Theory)

Around the time the current Constitution was enacted, the purpose of the debate over public welfare was to elucidate the idea.[11] A theory called the *ichigenteki gaizaiseiyaku setsu*, which was the first major theory proposed during this period,[12] held that public welfare is a principle that is separated from human rights (placed outside of the human rights) that can widely restrict human rights, and this was the prevailing view at the time.[13] As examples of this theory, Professor Minobe's view was that "these

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6 *Id.*
7 *Id.* at 64-65.
8 *Id.* at 64.
9 Nihonkoku Kenpo [Constitution] [Kenpo] art. 13 (Japan).
10 Other than articles cited directly, I referred to and was influenced by the following articles. Especially about each theory mentioned in the articles, criticism of those theories, and flow of the theories, please refer to the following articles. Hasebe Yasuo, *Kokyo no Fukushi to Kirifuda toshite no Jinken*, 74 (4) Horitsu Jiho 83 (2002), Nishimura Yuichi, *Jinken naki Jinkenjoko-ron*, 380 Hogaku Kyoshitsu 42 (2012), Nakajima Toru, *Kokyo no Fukushi*, 605 Hougaku Seminar 12 (2005), Ueno Mamiko, *Kokyo no Fukushi to Keizai-teki Jiyu*, 567 Hougaku Seminar 81 (2002), Sogabe Masahiro, *II Jinken Hosho Seiyaku Genri-Kokyo no Fukushi-ron, Cho-Houki-teki Seiyaku Jiyu*, 641 Hougaku Seminar 18 (2008).
11 Tamamushi Yuki, *Jinken to Kokka Kenryoku-Kokyo no Fukushi no Tagenteki Kino*, 86 (5) Horitsu Jiho 29, 29 (2014).
12 *Id.*
13 Ashibe Nobuyuki, Kenpo-gaku II Jinken Souron 188 (Yuhikaku 1994). About the theory and criticism for this theory, see also, *Id.*at 188-90, Hasebe Yasuo, Kenpo [Constitutional Law] 107 (Shinsei-sha 4th ed. 2008), Sato Koji, Nihonkoku Kenpo-ron 132 (Seibundoh 2011), Miyazawa Toshiyoshi, Kenpo II Shinban 219 (Yuhikaku 1974), Shibutani Hideki, Kenpo [Japanese Constitutional Law]163-64 (Yuhikaku, 3rd ed. 2017), Tawara Shizuo, *Kihonteki Jinken to Kokyo no Fukushi, in* Kiyomiya Shiro & Sato Isao eds., Kenpo Koza 2—Kokumin no Kenri oyobi Gimu 3 (Yuhikaku 1963), Sogabe Masahiro, *Jinken no Seiyaku, Genkai—Kokyo no Fukushi wo Chushin ni, in* Minamino Shigeru ed., Kenpogaku no Sekai 135, 138-39 (Nippon Hyoron-sha 2013), Takahashi Kazuyuki, Rikken-shugi to Nihonkoku Kenpo [Constitutionalism and the Constitution of Japan] 115 (Yuhikaku 2nd ed. 2010). In this article, we follow the classification by today's dominant theories, but in 1963, there were some other classifications. Tawara, *supra* note 13, at 3-5.

personal rights require the utmost respect in national affairs as long as they do not interfere with the public welfare,"[14] and Professor Nakatani's view was that public welfare is the "limit of all individual basic human rights, and it is determined by the judgment of the people, that is, the law, that whether the exercise of individual basic human rights is restricted as contrary to the public welfare in any particular case."[15]

Case law adopted the same idea. In a case where the constitutionality of the death penalty was disputed, the Supreme Court admitted restrictions on human rights on the basis of public welfare and justified the death penalty accordingly.[16] When obscenity and freedom of expression were at issue, the Supreme Court said that "none of these constitutional provisions which deal with various phases of basic human rights are unlimited. Whether they contain self-restrictive clauses or not, they all fall under the delimitation prescribed under the provisions of Articles 12 and 13 in the interest of the public welfare, so that no one may abuse the privileges guaranteed thereunder. This principle has been clearly established and frequently pointed out in the decisions rendered by this court."[17]

However, the above views were strongly criticized. If human rights restrictions are recognized by the concept of public welfare, which has no fixed content, rights can easily be restricted.[18] Professor Ashibe points out that this goes against the spirit of the Constitution, which excludes limits of the law.[19] The human rights provisions under the Meiji Constitution widely recognized limits of the law, which made the guarantee of human rights insufficient. The current Constitution is based on the reconsideration of such a system. If we easily acknowledge restrictions on rights based on public welfare, the situation will be no different than it was under the Meiji Constitution. Judicial precedents were also criticized by academics for their formulaic application of the concept of public welfare,[20] and a new theory was presented to overcome this theory.

2. *Gaizai Naizai Nigenteki Seiyakusetsu* (External/Inherent Twofold Constraint Theory)

The *gaizai naizai nigenteki seiyakusetsu* was proposed based on criticism of the unified external constraint theory. Let's take a look at the representative views of the time.[21]

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14 Minobe Tatsukichi, Shin-Kenpo Chikujo Kaisetsu 62 [Miyazawa Toshiyoshi rev.] (Nippon Hyoron-sha, Reprinted, 2018) [First published in1956].

15 Nakatani Yoshitoshi, *Kokyo no Fukushi ni Tsuite*, 4 Koho Kenkyu 1, 18 (1951).

16 2-3 Keishu 191 (Sup. Ct., March 12, 1948). In this article, cited from following website; Supreme Court of Japan (visited Sept. 20, 2021) <https://www.courts.go.jp/app/hanrei_jp/detail2?id=56385&fbclid=IwAR0GFj_O1lyVj7TYLC0SI1LfpmNhWRd0dtArcc7xqLze56hM5kxt0PpWX0c >.

17 11-3 Keishu 997 (Sup. Ct., March 13, 1957). In this article, cited from following website; Supreme Court of Japan (visited Sept. 20, 2021) <https://www.courts.go.jp/app/hanrei_en/detail?id=11&fbclid=IwAR1BNRaJMShfRz63koW574TuYZC-1gggXkixfkGtACLzKFcUhbzI6G9iYiE >.

18 Shibutani, *supra* note 13, at 163.

19 Ashibe, *supra* note 13, at 189.

20 Matsumoto Kazuhiko, *Kokyo no Fukushi no Gainen*, 67 Koho Kenkyu 136, 138-39 (2005). See also, Takahashi, *supra* note 13, at 118. Professor Miyazawa points out that the Supreme Court does not apply the public welfare squarely to each case, but is trying to determine the content of public welfare individually for each human right. Miyazawa, *supra* note 13, at 233.

21 About the theory and criticism for this theory, see also, Ashibe, *supra* note 13, at 190-94, Sogabe, *supra* note 13, at 139, Hasebe, *supra* note 13, at 107-08, Takahashi, *supra* note 13, at 115-16, Sato, *supra* note 13, at 132-33, Shibutani, *supra* note 13, at 163-64, Urabe Noriho, Kenpo-gaku Kyoshitsu 83-84 (Nippon Hyoron-sha, 2nd ed. 2006). As a related view and criticism of that time, and overview of the early theories, see generally, Yanase Ryokan, *Kihonteki Jinken to Kokyo no Fukushi*, *in* Suekawa Hiroshi ed., Kihonteki Jinken to Kokyo no Fukushi (Horitsu Bunka sha (1957) [hereinafter Kihonteki Jinken], and Yanase Ryokan, *Kokyo no Fukushi ni tsuite*, 4 Koho Kenkyu 19 (1951). He also introduced concern about the return of "limits of the law" in the name of public welfare. Kihonteki Jinken, *supra* note 21, at 203-04.

This theory states that the dominant view and judicial precedents at that time(unified external restriction theory) were that for the sake of public welfare, the rights and freedoms listed in the Constitution can be generally restricted by law.[22] However, laws are enacted for public welfare and most of them contain elements of public welfare.[23] Therefore, most of the meaning denying the "limits of the law" in the current Constitution will be lost.[24] This theory then divides human rights into two categories, according to the nature of each right: the right to be subject to only the restrictions inherent in the right, and the right to be subject to the right's external restrictions.[25]

First, as the "natural reasons"[26] preceding Articles 12 and 13 of the Constitution, each right is not unlimited but is relative in character, and is subject to restrictions in society such as prohibition of abuse of rights.[27] This restriction is naturally included in the human rights, through the formation and development of human rights throughout history.[28] Such restrictions are not external to human rights but are inherent restrictions.[29] The limits vary by right, but there are objective limits as to the restriction, which cannot be changed even by legislators.[30] On the other hand, there are restrictions that go beyond the inherent restrictions and that are made from the "outside."[31] In other words, such restrictions are made for the public interest to achieve national objectives and policy considerations, and "could be restricted in any way by the will of legislators.[32]"[33] However, such restrictions are not generally accepted. [34]

Looking at the issue in more detail, the nature of human rights is not homogeneous: some rights aim to eliminate infringement by the state, while others demand security from the state.[35] With regard to freedom from the state in terms of "liberty of the person (*jinkakuteki jiyu)*," such a right can be restricted only by inherent restrictions.[36] On the other hand, Articles 22 and 29 are the basis for legal policy restrictions that go beyond inherent restrictions.[37] Those rights have a social nature and require involvement and guarantee by the state.[38] For this reason, the rights themselves are planned to be regulated by the state, and the degree of guarantee is also decided by the state for public welfare.[39] As long as that is the case, social restrictions are strong to begin with, and a guarantee like "liberty of the person" is not appropriate.[40]

As described above, while Articles 22 and 29 recognize external restrictions, inherent restrictions are valid for other rights. This theory states that Articles 12 and 13 indicate "inherent limits as a mental

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22 Hogaku Kyokai ed., Chukai Nihonkoku Kenpo Jokan 293 (Yuhikaku 1953).
23 *Id.* at 294.
24 *Id.*
25 *Id.* at 295.
26 *Id.*
27 *Id.* at 294-95.
28 *Id.* at 295.
29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.*
35 *Id.* at 297.
36 *Id.*
37 *Id.* at 296-97.
38 *Id.* at 297.
39 *Id.*
40 *Id.*

attitude"[41] that indicate ethical guidelines and have no positive meaning.[42]

Although the level of guarantee regarding "liberty of the person" is set high in this view, it was criticized that there are ambiguities whether a right is a liberty of person or not, that restrictions on rights other than liberty of the person are widely allowed, and that if Article 13 is set as a prescriptive provision, it would not be possible to develop new human rights.[43]

3. *Ichigenteki Naizai Seiyaku Setsu* (The Unified Inherent Restriction Theory)

Ichigenteki naizai seiyaku setsu was posited after the above two theories and became the dominant view. Professor Miyazawa's view is a representative example.[44]

The starting point of this theory is that "if any restrictions are required on the possession and claims of each person's human rights, they must always be in relation to the human rights of others."[45] In the idea of democracy, human beings are "supreme" and human rights have the highest value.[46] The existence of a nation is also a means for guaranteeing human rights.[47] Only the human rights of other individuals, be they numerous or not, are accepted as grounds for restricting certain human rights.[48] But in social life, the human rights of one person can conflict with the human rights of others, so it is necessary to adjust them fairly.[49] This principle of substantive fairness is the public welfare and is a principle inherent in human rights.[50]

Professor Miyazawa presents the two views of the nation envisioned by the Constitution and two corresponding public welfare concepts: public welfare based on the view of the free state, and public welfare based on the view of the social state.[51] A free state aims to adjust the possibility of conflict from the standpoint of respecting each person's human rights equally when individuals' basic human rights conflict, and to guarantee the basic human rights of each person fairly.[52] In a social state, on the other hand, social rights are set out as basic human rights, but in order to guarantee them, civil liberties (and especially economic liberties) are restricted.[53] Therefore, restrictions on economic freedom in order to guarantee social rights are also included in the social states' public welfare.[54] Here, Articles 22 and 29 are also understood in the context of "human rights vs. human rights."

4. Criticism of the Unified Inherent Restriction Theory and Recent Discussions

As a general theory, the unified inherent restriction theory is the dominant view. However, there are criticisms. Professor Sogabe pointed out that in the current state of the theory, while the expression

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41 *Id.* at 335, 339
42 *Id.*
43 Shibutani, *supra* note 13, at 164.
44 See also, Ashibe, *supra* note 13, at 195-200, Urabe, *supra* note 21, at 83, Tawara, *supra* note 13, at 6, Takahashi, *supra* note 13, at 116, Hasebe, *supra* note 13, at 108, Tamamushi, *supra* note 11, at 31-32, Sogabe, *supra* note 13, at 139-41, Shibutani, *supra* note 13, at 164-65.
45 Miyazawa, *supra* note 13, at 229.
46 *Id*. at 230.
47 *Id*.
48 *Id*.
49 *Id*.
50 *Id*. at 230-32.
51 *Id*. at 235.
52 *Id*.
53 *Id*.
54 *Id*.

of the unified inherent restriction theory was accepted as a general theory by the dominant views, the general view was that public welfare includes some public interest.[55] Below, I would like to take a look at the majour criticisms directed at the unified inherent restriction theory and the views presented as alternatives.

The most fundamental criticism is the view that points out the theory's divergence from reality. Professor Hasebe points out that human rights are restricted under public welfare for the benefit of society as a whole, for example, maintaining aesthetics or upholding of sexual morals, which do not pertain to individual human rights.[56] He also claims that the basis of the theory makes vagu, the obvious fact that the government is pursuing public welfare for the sake of society as a whole, and points out that it may lead to the false belief that such restrictions are based on the human rights of other individuals.[57] Regarding this point, the trend of the theory is to recognize restrictions not limited to contradictions and conflicts between human rights.[58] In this way, in reality, human rights are actually restricted beyond the "human rights vs. human rights" situation, and this idea is widely shared.

At the same time, there is a gap with case law. Professor Shishido points out that judicial precedents do not take the same view regarding public welfare as in the dominant view, and that application of public welfare in judicial precedents is not consistent.[59] It has been said that the theory does not explain case law successfully and that there are inconsistencies within the dominant views, and the theory's validity has been questioned.[60] Criticism and doubts, which many say "should be overcome,"[61] have been cast on the theory in this way.

Professor Shibutani categorized the contents of public welfare in case law as (1) prohibition of harm to others, (2) prohibition of self-harm, (3) protection of social legal interests, (4) protection of the national interest, and (5) policy restrictions.[62] Professor Takahashi also said that the purpose of Article 13 of the Constitution is that public welfare must be understood in the context of individualism, and that "the core of public welfare is necessary measures to guarantee human rights equally to all individuals."[63] On the assumption that situations where human rights restrictions are required are not limited to cases where human rights conflict with each other, Professor Takahashi categorizes these into four types: (1) coordination of conflicts between human rights and human rights, (2) prohibition of violations of the human rights of others, (3) human rights restrictions for the benefit of others, and (4) restrictions on human rights for the benefit of the individual him or herself.[64] He claims that the "public interest" here is not the "interests of the whole that transcend individuals"[65] as it was under the Meiji Constitution, but the interests (non-human rights) that all individuals can enjoy, which establishes harmony between reality and vigilance.[66]

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55 Sogabe, *supra* note 13, at 138. See also, Sato, *supra* note 13, at 134, Takahashi, *supra* note 13, at 117, Tamamushi, *supra* note 11, at 32-33.
56 Hasebe, *supra* note 13, at 109.
57 *Id.*
58 Shishido George, Kenpo Kaishakuron no Oyo to Tenkai 10 (Nippon Hyoron-sha, 2nd ed. 2014).
59 *Id.* at 8.
60 *Id.*
61 Sogabe, *supra* note 13, at 148.
62 Shibutani, *supra* note 13, at 167-69.
63 Takahashi s*upra* note 13, at 111. See also, Sogabe, *supra* note 13, at 144-45.
64 Takahashi s*upra* note 13, at 112-13.
65 *Id.* at 117.
66 *Id.*

There is tension between the view that attempts to categorize the aspects of human rights restrictions as described above and the basic stance of constitutional law that has tried to limit the situations where human rights restrictions are allowed.[67] However, it is not possible to return to the conceptual ideal of the unified inherent restriction theory.[68] Therefore, the view that positions current theory (categorization) as the reaching point and entrusts the role of acting as a brake to the refinement of each judicial standard of review is noteworthy.[69] In addition to these viewpoints, there have been deeper discussions, including Professor Urabe's view.[70] However, although there is a consensus on the current state of affairs, there is no consensus, given the state of affairs of "one person, one theory."[71]

5. Justification of Human Rights Restrictions and Public Welfare

So far, we have looked at the development of the most representative theories. Here, we will look at how human rights are restricted by public welfare.

Today, academics agree that examination of the limits of specific human rights restrictions is an issue of judicial standards of review.[72] This is in sharp contrast to early post-war precedents, which applied public welfare directly to actual cases and justified restrictions. In other words, it should be judged by criteria composed according to the nature of each individual right, and the purpose and mode of regulation.[73] The aim should be to establish individual standards while basically relying on the understanding of the principle of substantive fairness.[74] Professor Koji Sato also points out that while the concept of public welfare is the conceptual basis for human rights restrictions, it is not a concept that justifies individual, specific restrictions.[75] Public welfare may be the basis for the constitutionality of restricting human rights by law, but it is not a standard by which to judge the constitutionality of each specific restriction.[76] In other words, public welfare can justify restriction of human rights by law as a general term, but it is not a measure for examining the constitutionality of specific restrictions. Professor Takahashi also argues that the acceptability of specific measures should be determined by comparative balancing.[77]

The significance of the public welfare theory has diminished as the limits of human rights restrictions have been examined under judicial standards of review.[78] Professor Tonami notes that in conventional discussion, two issues, whether human rights are limited and the question of judicial standards of review, have been conflated.[79] Today they are understood as separate issues, and in some respects the theory of public welfare has become a "past discussion",[80] and academics' interest has shifted to the theory

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67 Matsumoto, *supra* note 20, at 138.
68 *Id.*
69 *Id.*
70 Urabe, *supra* note 21, at 84-85. See also, Shibutani, *supra* note 13, at 165-66, Shishido, *supra* note 58, at 10-11.
71 Shishido, *supra* note 58, at 11.
72 Sogabe, *supra* note 54, at 145. See also, Matsumoto, *supra* note 20, at 137.
73 Ashibe, *supra* note 13, at 198.
74 *Id.*
75 Sato, *supra* note 13, at 133.
76 Takahara Kenji, *Shiho Katei ni okeru Kokyo no Fukushi*, 5 Hogaku Kyoshitsu126, 127.
77 Takahashi, *supra* note 13, at 113.
78 Sogabe, *supra* note 13, at 141.
79 Tonami Koji, Kenpo 143 (Gyosei 1994).
80 Tamamushi, *supra* note 11, at 29. This phrase is cited from Kudo Tatsuro, Kenpogaku Kenkyu 78 (Kougakusha 2009).

of judicial standards of review.[81] I would like to return to the human rights restrictions for COVID-19 measures. While human rights restrictions must be based on public welfare, not all restrictions are justified.[82] Public welfare would justify the human rights restrictions by laws in response to COVID-19. However, whether or not specific restrictions are justified will be judged not by the public welfare concept but by judicial standards of review.

6. Conclusion

As described above, the debate over public welfare differed in its focus from time to time. Initially, the purpose of the debate was to clarify the meaning and content,[83] but as noted in this article, discussions progressed toward strengthening human rights protection. The external/inherent twofold constraint theory emerged, after which the commonly accepted unified inherent restriction theory was developed. According to Professor Sogabe, Professor Miyazawa's aim was to limit the vagueness of the former theory,[84] and deny the overall interests that transcend human rights and limit human rights restrictions.[85]

Today, public welfare has taken over most of the role by judicial standards for review, but the debate over its content continued thereafter. In the political arena, the Liberal Democratic Party's draft of constitutional amendment has indicated it will amend "public welfare" to "public interest and public order."[86] At the root of the doctrine is always a sense of caution about facile restrictions on human rights as under the previous Constitution, which is still be important today. Various categorizations are posed and current debate shows "one person, one theory situation"[87], but while sharing caution against unlimited human rights restrictions, today's common understanding is that restrictions on certain social interests are included in public welfare. Based on this understanding, the role of examining constitutionality of each individual restriction is taken over by judicial standard of review.

[Additional Notes]

This article is written based on the "Disaster and Constitution" report at the "Disaster and Law" symposium hosted by the Faculty of Law, Kokushikan University, in March 2021. Although I made many refinements and additions since then (especially in Part 2 of this article), there is some duplication in the structure and contents. The transcription and handout of the symposium is appeared in Vol.44 of the Kokushikan Comparative Law Review, published in December, 2021.

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81 Tamamushi, *supra* note 11, at 29.
82 Sogabe, *supra* note 13, at 142.
83 Tamamushi, *supra* note 11, at 29. Professor Aoyagi pointed out that the initial discussion was a dogmatic discussion on whether human rights were restricted in principle. Aoyagi Koichi, *Kokyo no Fukushi*, 81 Hogaku Kyoshitsu 27 (1987). He criticizes that such framework of the discussion is abstract and does not contribute to the solution of the problem. *Id.* at 29.
84 Sogabe, *supra* note 13, at 139.
85 *Id.* at 140. About those which see the public welfare as the principle of restricting human rights restrictions, see Tamamushi, *supra* note 11, at 31-32. Ichikawa Masato & Sakamoto Masanari, *Jinken to Kokyo no Fukushi*, 553 Hougaku Seminar 49, 52 (2001).
86 Tamamushi, *supra* note 11, at 29. The Liberal Democratic Party of Japan, Nihonkoku Kenpo Kaisei Souan (Genko Kenpo Taishou) [April 27, 2016], Kenpo Kaisei Suishin Honbu, <https://jimin.jp-east-2.storage.api.nifcloud.com/pdf/news/policy/ 130250_1.pdf> (visited Sept. 17, 2021) at 5-6, 7, 10
87 Shishido, *supra* note 58, at 11.