

State of Emergency: Self-Restraint and Compensation



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The COVID crisis has been recognized as a disaster or a state of emergency in many countries, and special government measures are being adopted according to the circumstances in each country. Some countries have actively gathered and disclosed the personal information of infected people and their close contacts, while other countries have enacted lockdowns in cities, thereby severely restricting the freedom of movement and freedom of business. Compared with these countries, Japan's state of emergency declaration has little legally binding force and is seen as lukewarm.

Certainly, even when a state of emergency declaration is made under the New Influenza Special Measures Law, prefectural governors can expropriate land and buildings to open temporary hospitals, expropriate essential drugs and foods, call on people to refrain from going outside, and make requests or issue instructions to restrict or stop the use of establishments in which large numbers of people gather, but the only sanctions available against those who violate these requests or instructions are the disclosure of the names and other details of the establishments in violation. Naturally, there are regulations for compensation for losses due to expropriation, but there are no regulations on compensation for appeals and instructions for each type of self-restraint measure. Perhaps the fact that there are no compensation regulations for the latter is based on traditional legal arguments that there is no need for compensation when there are passive or policing restrictions to prevent the spread of disease.

Where did the idea that self-restraint appeals with neither penalties nor compensation were

enough come from? I've been told that "We couldn't establish penalties because the opposition to limitations on private rights is too strong," but is it really the case? I doubt they are asserting that citizens must obey the government's appeals, as preventing the spread of infectious diseases is the government's job and citizens are the objects of the government's countermeasures. That said, the self-appointed "pandemic police" may be a phenomenon that can be understood within this context.

The Institute of Disaster Area Revitalization, Regrowth and Governance considers autonomous disaster victims themselves to be the main constituents of revitalization. The government's role is to support the recovery of victims' autonomous existence. If we consider the COVID crisis to be a kind of disaster, then autonomous citizens are the main actors who try to prevent the spread of illness and plan for the restoration of normal life. The role of the government and prefectural governors is not to issue appeals to and instructions for the public and force them to follow the government's policies. Let the role of the government and prefectural governors be the provision of essential support so that people can act to prevent the spread of illness based on their own judgment. The first step in this change would be to convey accurate information and let citizens know about the necessity of changing behavioral patterns through self-restraint. Then, the most important thing will be to provide economic assistance to support citizens' self-restraint activities.

This is not based on the rationale that compensation is necessary for losses incurred by self-restraint in observance of the instructions of the government or prefectural governors. The logic is that since citizen-centered (in-)activity is indispensable in preventing the spread of disease, economic support is needed for that (in-)activity. There are various points of debate regarding state of emergency legislation, but we must not lose the perspective that these are systems for restoring autonomy to civil society.

July 2020