

**IS “MY NUMBER” REALLY MY NUMBER?:
NATIONAL IDENTIFICATION NUMBERS AND THE
RIGHT TO PRIVACY IN JAPAN**

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ABSTRACT

In 2013, Japan decided to introduce the national identification number ("my number") to be allocated to all registered residents in Japan, primarily in order to secure fair taxation and fair provision of social security benefits. The system started in 2016. All residents are mandated to use "my number" before the administrative agencies with respect to application for registration and identification, payment of tax, and application for social security benefits. Moreover, private companies are mandated to collect and use "my number" of employees, customers, or clients in order to issue necessary documents to be submitted to administrative agencies for tax and social security. Further, in 2015 the government decided to mandate banks to use "my number" to manage saving accounts from 2018, expanding the use of national identification number in the private sectors. Moreover, it plans to allow the card showing "my number" (my number cards) to be used for much broader purposes. Does the "my number" system infringe upon the constitutional right to privacy? This article traces the history of the previous failed attempts to introduce a national identification number system in Japan, outlines the current "my number" system, and examines whether the "my number" system infringes on the constitutional right to privacy and whether it will likely succeed.

I. INTRODUCTION

In 2013, the Diet, the national legislature in Japan, passed the *My Number Act*, creating and authorizing the use of national identification numbers or “individual numbers,” generally called “my number.”¹ The government started distributing this random twelve-digit number allocated to each individual resident in October 2015 and started its use in January 2016. Initially, the purpose of “my number” was claimed as primarily to secure fair taxation and fair provision of social security benefits, but in reality, it was designed to promote efficiency in managing personal information by the government. Residents are mandated to use this “my number” before administrative agencies with respect to applications for registration and identification, payment of tax, and applications for social security benefits. Moreover, private companies were mandated to collect and use the “my number” of employees, customers, or clients in order to issue necessary documents to be submitted to the administrative agencies for tax and social security. This is the first time that private companies are mandated to collect and use the national identification number of individuals. In 2015, the statute was amended to mandate banks to use “my number” to manage saving accounts, thus clearly broadening the purpose of the use of “my number.” Although the customers are not required to submit “my number” for pre-existing saving accounts, eventually, the government mandated every resident to use this number every time the resident receives any service from a bank. Moreover, the government issued the card indicating a person’s “my number” (“my number” card) to verify the identity of the card holder and this card can be used as a public identification card. It may be used in the future as a driver’s license or an identification card for private companies, or may even be used as a debit card or credit card.

Introduction of the national identification number system has been a long-held dream of the Japanese government, but all previous attempts failed in the past. It is worth considering how the “my number” system differs from previous attempts. Additionally, its introduction was a highly controversial one. Many people were opposed to it and claimed that the system infringes on the right to privacy protected by the Constitution. There is also a serious question of whether this new system will prove to be effective since all previous attempts failed to achieve their

1. See Gyousei tetsuduki niokeru tokutei no kojiri wo shikibetsu surutameno bangō no riyoutō nikansuru hōritsu [Act on the Use of Number to Identify the Particular Individual for the Purpose of Administrative Procedure], Law No. 27 of 2013 (Japan) [hereinafter *My Number Act*].

goal of serving as a national identification number system. Furthermore, it is a fair question whether it is worth the tremendous amount of spending necessary for the system's introduction. This article attempts to critically examine the introduction of the national identification number, i.e., "my number" in Japan.

In the United States, there is no official national identification number, but the social security number has functioned as a de facto national identification number. With the development of information technology and the increasing necessity to manage personal information of individual residents, many countries around the world have already introduced the national identification number system or are thinking about introducing one. Japan's experience with the "my number" system will provide valuable lessons for these countries.

II. BACKGROUND TO THE INTRODUCTION OF THE "MY NUMBER" SYSTEM

A. Personal Identification System in Japan

1. Registration Systems

Japan has two very elaborate registration systems: the family registry system and the local resident registration system.

The "family registry" (*koseki*) system created by the *Family Registry Act*² is designed to keep personal records on all Japanese citizens, including details of births, marriages, divorces, parentage, deaths, and family relations and to serve as a national identification system.³

On the other hand, the "local resident registration" (*juminhyo*) system created by the *Local Resident Registration Act*⁴ is designed to keep basic records on all local residents regardless of nationality. Municipal governments are mandated to keep the listed personal information in the local resident registry⁵ based on the family unit.⁶ The basic personal in-

2. See generally *Kosekihō* [Family Registry Act], Law No. 224 of 1947 (Japan).

3. See *id.* art. 13; *Koseki* [Family Registry], MINISTRY OF JUST., available at <http://www.moj.go.jp/MINJI/koseki.html> (last visited Sept. 20, 2019). A similar system existed for non-citizens in the past: the foreigner registration system. This system was replaced in 2009 by a "foreigner stay card" system. *Shutsunyukoku kanri oyobi nanmin ninteihō* [Immigration Control and Acceptance of Refugee Act], Cabinet Order No. 319 of 1951, art. 19-3 (Japan).

4. See *Jumin kihondaichōhō* [Local Resident Registration Act], Law No. 81 of 1967 (Japan).

5. *Id.* art. 5.

6. *Id.* art. 6, ¶ 1.

formation to be recorded includes a person’s name, birthdate, sex, name of the head of the family and relationship with that person, location of the family registry, date the person became a resident, address, date the current address was entered, and previous address.⁷ But it also includes other information regarding voting eligibility and services that the resident is receiving such as national health insurance, disability care insurance, national pension, child benefits, and other information specified by government order.⁸ Every time a person changes address, the individual is mandated to submit a moving-out form to the municipal government responsible for the area the individual is leaving⁹ and submit a moving-in form to the municipal government responsible for the area the individual is moving to.¹⁰ From this, the municipal government is mandated to create a new registration for the new resident and inform the first municipal government of these changes.¹¹

2. Identification of Person

Both registration systems perform an identification function, but the family registry performs a much more official identification function for a citizen. Therefore, in order to obtain a passport, a citizen needs to submit a copy of the citizen’s family registry.¹² On the other hand, the local resident registration performs a more everyday identification function for local residents. A resident can apply for a copy of the resident’s own or the resident’s family’s local resident registration where the resident is recorded after indicating the purpose for which the copy will be used.¹³ Usually, the copy will certify the person’s name, birthdate, sex, address, date the resident moved in, and previous address.¹⁴ Residents in Japan need to bring an official copy of their local resident registration

7. *Id.* art. 7, ¶ 1(1)-(8). After the local resident registration code was introduced, the code was added as information to be recorded. Local Resident Registration Act, *supra* note 4, art. 7, ¶ 1(13). After the “my number” system took effect, “my number” was also added. *Id.* art. 7, ¶ 1(8)(2).

8. See Local Resident Registration Act, *supra* note 4, art. 7, ¶ 1(9)-(12), (14); see also Juumin kihon daichohō sekourei [Local Resident Registration Act Enforcement Order], Cabinet Order No. 292 of 1978, art. 6-2 (Japan).

9. Local Resident Registration Act, *supra* note 4, art. 24.

10. *Id.* art. 22, ¶ 1.

11. *Id.* art. 9, ¶ 1.

12. Ryokenhō [Passport Act], Law No. 267 of 1951, art. 3, ¶ 1 (Japan).

13. Local Resident Registration Act, *supra* note 4, art. 12, ¶ 1. If the purpose of the application is obviously inappropriate, the municipal government head can refuse to provide a copy. *Id.* art. 12, ¶ 6. Anyone other than family members can apply for a copy of certain identification information upon showing a legitimate purpose. *Id.* art. 12, ¶ 3.

14. *Id.* art. 12, ¶ 5.

or other government-issued document, for instance, to open a bank account¹⁵ or to enter a contract with a mobile phone company.¹⁶ Other government-issued documents include a passport,¹⁷ driver's license,¹⁸ and national health insurance certificate.¹⁹

Very few Japanese citizens are unregistered in a family registry. Once a child is born, parents are mandated to file a childbirth notification with the municipal office.²⁰ When parents fail to perform this obligation, the municipal government can create a record *ex officio*.²¹ It is highly uncommon for a Japanese citizen not to have a family registry. But there are certainly some cases, for example, where a run-away mother refuses to file the childbirth registration notification out of fear that her abusive ex-husband might discover her whereabouts and the municipal government does not find out about the childbirth, then the child would remain unregistered.²²

Similarly, most residents have a local resident registration but some, for instance, women who are hiding from an abusive ex-partner, may be unwilling to file a move-in form and may not have an updated local resident registration. If a child does not have a family registry, then the child likely does not have a local resident registration. But it is quite difficult to live a normal life without a local resident registration

15. See *Hanzai niyoru shueki no itenboushi nikansuru hōritsu* [Act on Prevention of Transfer of Benefit Raised by the Criminal Conducts], Law No. 22 of 1977, art. 4, ¶ 1 (Japan).

16. See *Keitai onsei tsushin jigyousha niyoru keiyakushatō no hon-nin kakunin oyobi keitai onsei tsushin ekimu no huseina riyō no boushi nikansuru hōritsu* [Act on Customer Identification by the Mobile Phone Companies and on Prevention of Improper Use of Mobile Phone Service], Law No. 31 of 2005, art. 3, ¶ 1 (Japan).

17. Passports are issued by the Foreign Affairs Minister through prefectural governors. *Passport Act*, *supra* note 12, art. 5, ¶ 1.

18. Driver licenses are issued by prefectural public safety commissions, which supervise the prefectural police. See *Douro Kotsuhō* [Road Traffic Act], Law No. 105 of 1960, art. 84, ¶ 1, 92 (Japan).

19. Japan has a mandatory national health insurance system and everyone is obliged to have national health insurance. The national health insurance certificate is issued by the municipal head to the family head and the insurance holder needs to show this certificate at hospitals or clinics to receive care under the public health insurance system. See *Kokumin kenko hokenhō* [National Health Insurance Act], Law No. 192 of 1958, art. 9, ¶ 2, art. 36, ¶ 3. However, the national health insurance certificate is often used for identification purposes as well.

20. *Family Registry Act*, *supra* note 2, art. 49.

21. *Id.* art. 44, ¶ 3.

22. The Ministry of Justice revealed that as of November 10, 2017, there are 719 persons without family registry. See *Siryō 5* [App. 5], CABINET GENDER EQUALITY BUREAU OFF., MINISTRY OF JUST. (2017), available at <http://www.gender.go.jp/kaigi/senmon/boryoku/siryō/pdf/bo90-5.pdf> (last visited Sept. 20, 2019).

because residents have extreme difficulty in receiving government services including welfare, health care, medical treatment, and educational services without local resident registration.

B. Past Government Attempts to Introduce a National Identification Number

1. Service Numbers

The public receives various kinds of services from the government. Most of these services are provided by local governments, usually municipal governments. Some services are provided by the central government through local governments. In the past, each of these services necessitated different service recipient lists, which were not interconnected. With the development of information technology, each of these services came to carry a different service number. Thus, passports, driver's licenses, national health care, welfare payments, unemployment benefits, pensions, and others came to carry different service numbers.

However, there was no national identification number that could connect the recipients of all these services. As a result, each individual needed to use a different service numbers to receive government services and the government agencies were unable to know what other kinds of services the particular individual was receiving from the other government agencies. The Japanese government had a long-held dream of creating a national identification number to connect all recipients of these services.

2. National Taxpayer Number System

The first such attempt was to create a “national taxpayer number” system. The system was designed to allocate a different taxpayer number to each taxpayer and mandate the use of this number for tax purposes. In addition, financial institutions were required to use this number, so the tax agency could easily find out the banking and financial information of any given taxpayer.²³ The government had been discussing the possibility of introducing national taxpayer number since 1979.

23. See Zeimuseido chousakai [Advisory Board on Tax System] & Nouzeisha bangou seido [National Taxpayer Number System], WEB ARCHIVING PROJECT (Dec. 1, 2010), available at <http://warp.da.ndl.go.jp/info:ndljp/pid/1238758/www.cao.go.jp/zeicho/tosin/zeichof/z028.html> (last visited Sept. 15, 2019); Iwata Yoko, *Nouzeisha bangou seido no donyu to kin-yu shotoku kazei* [Introduction of the National Taxpayer Number System and Tax on Financial Gains], 475 RIPPON CHOUSU 1 (2005), available at <https://www.ndl.go.jp/jp/diet/publication/issue/0475.pdf> (last visited Sept. 15, 2019).

As for salaried workers employed by private companies, the employer company deducts taxes and pay that tax to the tax agency when paying employer salaries. Therefore, their income is significantly controlled by the tax agency. Some other types of income are harder to detect. Capital gain needs to be declared in the tax return, but it was subject to a flat tax. So, the tax agency needed to detect all the capital gain income of a particular taxpayer. And since interest payments paid by banks and dividends earned were taxed separately and subject to a flat tax, the taxpayer did not have to declare interest or dividend income in their tax return. Therefore, the tax agency had extreme difficulty in finding out how much additional income the taxpayer received. The tax agency was naturally frustrated by this loophole. Thus, the tax agency wanted to keep track of income sources other than salaries by introducing the national taxpayer number system.²⁴

However, very strong opposition erupted against the introduction of a national taxpayer number, in fear that it might lead to the creation of a national identification number system which would allow the government to keep an eye on all individuals' personal information. As a result, the attempt failed.

3. Basic Pension Number System

The second attempt was the introduction of the "basic pension number" in 1997. In 1997, Japan again attempted to create a national identification number system by introducing the "basic pension number." The government disseminated the "basic pension number" to all pension subscribers and pension recipients,²⁵ which, practically-speaking, allocated a national identification number to all individuals paying pension premiums and/or receiving a pension. Since all Japanese people over the age of twenty living in Japan are mandated to become subscribers to the pension system,²⁶ this system, in practice, forced every Japanese citizen living in Japan to have a basic pension number. The basic pension number was a ten-digit number allocated to each individual subscriber. Here, the government's primary purpose

24. Iwata, *supra* note 23.

25. Kisonenkinbangou no kiso-chisiki [Basic Facts on Basic Pension Identification Number], MINISTRY OF HEALTH, WELFARE & LAB., available at <https://www.mhlw.go.jp/www1/topics/kiso/> (last visited Sept. 21, 2019).

26. See Kokumin nenkin-ho [National Pension Act], Law No. 141 of 1959, art. 7-8 (Japan).

was to connect the previous three separate pension systems and achieve efficiency.²⁷

Again, many criticized the basic pension number system for being merely an attempt to create a national identification number system. In the end, the basic pension number system was introduced, but its use was strictly limited to the national pension administration. As a result of this limited use, the system failed to function as a national identification number.

4. Local Resident Registration Code System

The third attempt was the introduction of a “local resident registration code” under the *Local Resident Registration Act*.²⁸ Introduced in 1999 and put into operation in 2002, this code is an eleven-digit number randomly allocated to all local residents registered in the local resident registry.²⁹ Initially, a “designated organization” randomly chose the specific number pertaining to each resident. Now, the Japan Agency for Local Authority Information System (J-LIS), which was established by a separate statute,³⁰ assigns the number to residents, and municipal governments are in charge of notifying each resident.³¹ This code enables the local government to share certain information of local residents (i.e., name, birthdate, sex, address, local resident registration code and other designated information) with the central government and other local governments. They can now accomplish this using an independent computer network (not the Internet) designed to fulfill designated ad-

27. See *id.* art. 14. Previously, there were three separate pension systems: the national pension system, the welfare pension system, and the mutual help system. Basically, all Japanese citizens are mandated to subscribe to the national pension system. Those who worked for private companies also subscribed to additional welfare pension systems and public employees subscribed to the mutual help pension system. Each system employed separate and independent identification numbers and there was nothing to connect all these numbers. As a result, there was confusion when someone changed jobs. The basic pension number system was introduced primarily to connect these different systems. Basic Facts on Basic Pension Identification Number, *supra* note 25. Mutual help pension system has now been integrated into welfare pension system. Therefore, now only the national pension system and the welfare pension system remain

28. See Local Resident Registration Act, *supra* note 4.

29. See *id.* art. 30(3); see also Jumin kihondaichohō sekou kisoku [Local Resident Registration Act Enforcement Regulation] Law No. 10 of 1999, art. 1 (Japan) (promulgated by the Ministry of Local Government Regulation, which is now Ministry of Internal Affairs and Communications).

30. See Local Resident Registration Act, *supra* note 4, art. 30(2), ¶ 1 (revised), art. 30(3), ¶ 2.

31. *Id.* art. 30(3), ¶ 4.

ministrative duties, such as managing the personal information of local residents.³²

Moreover, residents were allowed to apply for a local resident registration card.³³ There were two options: residents could choose a card with only a photo or a card also with the IC chip. The card with a photo bears an identification photo and can be used as identification for opening a bank account, applying for a credit card, or purchasing a mobile phone. The cards with an IC chip can be used to file a tax return online or to apply for a copy of the person's local residence registration. It was anticipated that this card could be used more broadly in everyday life, for example, as a library card or as a point card for private businesses.

The local resident registration code system, however, failed to achieve its broader goal. Because of strong opposition to it, the government could not allow for the wider use of the local resident registration code. The scope of available information through the network is strictly limited to a resident's name, birthdate, sex, address, and local resident registration code.³⁴ Its use is limited to the central government and local government. The purpose of its use is also limited to share identity information among government departments. And the local resident registration card, which could be used by local residents as proof of their identity for the government and private organizations, was not widely used. Such a small fraction of the public actually applied for the card³⁵ since it is almost useless to have one.

The government then came up with a proposal to use a national identification number system for broader tax and social security purposes. This proposal eventually led to the introduction of the "my number" system.

32. *Id.* art. 30(6)-(7). The municipal government transmits this identification information to the prefectural government using the independent computer network and the prefectural government then sends it to J-LIS. The other local governments and the central government agencies can ask J-LIS to provide the identification information of residents in order to perform the listed duties. *Id.* art. 30(9)-30(12), apps. 1-4.

33. *Id.* art. 30-44, ¶ 1 (repealed). Once the "my number" system took effect, the local resident registration card was replaced by the "my number" card.

34. Local Resident Registration Act, *supra* note 4, art. 30-36. After the "my number" system took effect, "my number" was added to shared identification information. *Id.* art. 7, no. 8(2).

35. Four years after it was first implemented, only 1.4 million cards were issued by 2007. Jumin kihondaichō card nitsuite [On Local Residence Registration Card], MINISTRY OF INTERNAL AFF. & COMM., available at http://www.soumu.go.jp/main_sosiki/jichigyousei/c-gyousei/daityo/old/pdf/070718_1_s11.pdf (last visited Sept. 21, 2019). That is slightly over 1% of the entire population of Japan.

III. THE “MY NUMBER” SYSTEM

A. “My Number”

1. Allocation of “My Number”

“My number,” officially an “individual number,” is a twelve-digit number³⁶ created based on the local resident registration code provided by the municipal head to identify a resident and allocated to each resident by the J-LIS.³⁷ All transmissions between the municipal heads and the J-LIS need to use an independent and separate “Information Providing Network System,”³⁸ in other words an independent computer network, not the internet. The municipal head is mandated to notify this number to each resident by a “notification card,” listing the resident’s name, address, birthdate, sex, individual number, and other information.³⁹ The government started the distribution of “my number” in October 2015. It was decided to be used from January 1, 2016.

The purpose of allocating this “my number” to all residents is claimed as primarily to secure fair taxation and fair provision of social security benefits.⁴⁰ Therefore, it was anticipated from the beginning that “my number” would be used to ensure residents pay income tax according to their actual income and to prevent residents from concealing their income to fraudulently claim government benefits such as welfare benefits. However, apparently promotion of effective and efficient information management in the government is also a primary goal and

36. The twelve-digit number consists of an original eleven-digit identification number plus one check digit. My Number Act, *supra* note 1, art. 8, ¶ 2; Gyousei tetsuduki niokeru tokutei no kojiri wo shikibetsu surutamenō bangō no riyōtō nikansuru hōritsu sekourei [Cabinet Order to Enforce the Act on the Use of Number to Identify the Particular Individual for the Purpose of Administrative Procedure], Cabinet Order No. 155 of 2014, art. 8 (Japan).

37. My Number Act, *supra* note 1, art. 2 ¶ 5, & art. 7. The “individual number” will be provided by J-LIS, when the municipal head sent the local resident registration code of resident. *Id.* art. 8, ¶ 1. It needs to be created by converting the local resident registration code, needs to be unique to a particular resident, and needs to have a non-regularity to prevent re-conversion back into local resident registration code. *Id.* art. 8, ¶ 2. Since the local resident registration code is only allocated to registered residents of Japan, regardless of nationality, Japanese citizens living abroad without a local resident registration are not granted a local resident registration code or “my number” as well. On the other hand, so long as foreigners are living in Japan and are registered on the local resident registration, they are also assigned their “my numbers.”

38. *Id.* art. 2, ¶ 14.

39. *Id.* art. 7, ¶ 1.

40. My Number Act, *supra* note 1, art. 1.

therefore it was anticipated that “my number” would be used in much broader contexts inside the government.⁴¹

“My number,” once assigned, cannot be altered and every resident is supposed to use the same “my number” for life. A resident’s “my number” can only be changed upon application or ex officio when it is leaked or stolen and could be abused.⁴² Once a resident receives the notification card, the resident needs to present that notification card if the resident moves to another municipality and submits a move-in form to that municipal government.⁴³ The individual must present the notification card when there is any change to the information recorded⁴⁴ and notify the heads of the municipality if it is lost.⁴⁵ Furthermore, residents should use “my number” every time its use is authorized by the statute for performing government jobs.

2. “My Number” Card

Residents can apply for the “my number” card,⁴⁶ officially an individual number card, and can use this card instead of the notification card to move-in.⁴⁷ Thereafter, the resident needs to submit the card for revision within 14 days every time there is a change in the information recorded in the “my number” card.⁴⁸

The “my number” card displays the resident’s name, address, birthdate, sex, and photo, as well as the assigned number on the back.⁴⁹ The card also contains an IC chip, which includes the same information as electronic data and functions as an electronic identity verification certificate.⁵⁰ The card is free. The “my number” card can be used as verification when the card is presented to a government agency, local gov-

41. As a result, the compilation of disaster victims in time of disaster was also allowed to use “my number.” *Id.* app. 1, no. 36-2. The Japanese government came to argue that the disaster response is one of the primary purposes of the use of “my number,” although the statute only mentions to the purpose of fair taxation and fair provision of social security benefits. My Number Seido [My Number System], MINISTRY OF INTERNAL AFF. & COMM., available at http://www.soumu.go.jp/kojinbango_card/01.html (last visited Sept. 21, 2019).

42. My Number Act, *supra* note 1, art. 7, ¶ 2.

43. *Id.* art. 7, ¶ 4.

44. *Id.* art. 7, ¶ 5.

45. *Id.* art. 7, ¶ 6.

46. *Id.* art. 17, ¶ 1. When the resident receives the “my number” card, the resident must return the notification card.

47. My Number Act, *supra* note 1, art. 17, ¶ 2.

48. *Id.* art. 17, ¶ 4.

49. *Id.* art. 2, ¶ 7.

50. *Id.* The card must have security necessary measures to prevent unauthorized access and revision.

ernment, independent administrative organization, and others who need to verify the identity of the person.⁵¹

When you present the “my number” card for tax and social security benefit, it will verify your “my number” and also verify your identity. As will be explained below, the government intends to allow more extended use of this “my number” card in the future. It could be integrated into a driver’s license. It could be used at home to log into the “my number portal” using special card-readers and the electronic verification information included in the IC-chip could function as an electronic verification system.⁵² Then, the resident will be able to apply for various government services online. It could be used as an identification card for the government⁵³ and for private corporations and could be integrated into bank debit card or credit card as well.⁵⁴

3. Use of “My Number”

According to article 9, paragraph 1, of the *My Number Act*, government agencies, local governments, and independent administrative organizations listed in the appendix 1 can use “my number” of residents in relation to administration of their duties as listed in the same appendix to the extent necessary in order efficiently to search and manage personal information contained in the “designated personal information files,” which contains “my number.”⁵⁵ For example, the head of the National Tax Agency is authorized to use “my number” in order to decide the amount of tax to be paid, the deduction and other tax matters under the national tax legislations.⁵⁶

51. *Id.* art. 18.

52. “My number portal” (often abbreviated as “myna portal”) started its full operation in November 13, 2017. See Myna portal, available at https://myna.go.jp/SCK0101_01_001/SCK0101_01_001_InitDiscsys.form.

53. The government started integration of identification card for its public workers with their “my number” cards. Kantei Kokkakoumuin, *IC card no kojimbango card eno it-taika nitsuite*, Integration of IC Identification Card for Public Employees and My Number Card (Sept. 4, 2015), available at <https://www.kantei.go.jp/jp/singi/it2/cio/dai63/siryu4.pdf>. Some local government came to allow my number cards as a membership cards for their public libraries. See Jichitai point navi, available at <https://www.pointnavi.soumu.go.jp/pointnavi/summary/point>.

54. *Id.* The government came to allow local government to convert the credit card point or air miles of airlines to municipal points to be used for paying the public fees, receiving shopping certificates, or buying the local souvenirs.

55. My Number Act, *supra* note 1, art. 9, ¶ 1, app. 1. “Designated personal information” is personal information, which contains individual number and “designated personal information file” is a personal information file, which contains individual number. *Id.* art. 2, nos. 8-9.

56. *Id.* app. 1, no. 38.

According to article 9, paragraph 2, heads of the local governments can also use “my number” if authorized by local bylaws for the purpose of the administration of their duties for distributing welfare benefits, social security benefits such as health care, medical treatment, and others, and for local taxation to the extent necessary in order efficiently to search and manage personal information contained in the designated personal information files, which contain individual number.⁵⁷

These jobs performed in accordance to article 9, paragraph 1 and paragraph 2 are defined as “jobs using individual number” and the agency or person who is performing these jobs is defined as “an executor of the job using individual number.”⁵⁸ In addition, according to article 9, paragraph 3, persons who are mandated or authorized to submit documents using “my number” of residents to an administrative agency, local government, or independent administrative organization or to their heads of the local government listed in the appendix 1 for the purpose of national health insurance, inheritance tax, welfare pension insurance, income tax, unemployment insurance, and others can also use “my number” to the extent necessary to perform their jobs.⁵⁹

These jobs performed in accordance with this provision are defined as “jobs that are related to individual number” and the organization or individual who is performing this job is defined as an “executor of the job that is related to individual number.”⁶⁰ This provision mostly mandates private individuals and corporations to collect and use “my number” in the documents to be submitted to administrative agencies.

Those authorized to use “my number” can ask individuals whom “my number” belongs to, or others who are authorized to use “my number”, to provide “my number.”⁶¹ No one is allowed to ask for the provisions of “my number” other than those who are authorized to receive “my number” information in accordance with the provisions outlined in the Act.⁶² Those who are authorized to receive “my number” need to adopt necessary measures to verify the “my number” card or notification card and the identity of the person who submitted these cards.⁶³

57. *Id.* art. 9, ¶ 2.

58. *Id.* art. 2, ¶¶ 10, 12.

59. My Number Act, *supra* note 1, art. 9, ¶ 3.

60. *Id.* art. 2, ¶¶ 11, 13.

61. *Id.* art. 14, ¶ 1.

62. *Id.* art. 15.

63. *Id.* art. 16. When the person providing “my number” brought notification card for identity verification, it is necessary to check the other proof of identity such as driver’s license but when a person providing “my number” brought “my number” card, the card will function as the identity verification.

They also have an obligation to adopt sufficient security measures.⁶⁴ They can delegate the whole or part of those jobs to others and those who are authorized can also use “my number.”⁶⁵ However, they need to enforce necessary and appropriate supervision over those who are delegated these jobs.⁶⁶

Thus, residents are asked to produce “my number” to government agents or their local government in order to change their name, address, to file a tax return or apply for child benefits, entrance of children into kindergarten, medical booklets for pregnant mother, disability care, disability benefits, welfare, joining the national health insurance system, and receiving health benefits or special senior health benefits, all with respect to registration and identification, tax and social security benefits.⁶⁷ Additionally, the *My Number Act* mandated residents to provide “my number” to private corporations. For example, private companies paying salaries to their employees need to deduct income tax and social security premiums from the payroll, pay the deducted tax and deducted social security premiums to relevant agencies,⁶⁸ and then issue the necessary documents which requires that they know the “my number” of each employee. They will also need to collect the “my number” of the spouse of the employee as well.⁶⁹ They will ask each employee to noti-

64. My Number Act, *supra* note 1, art. 12.

65. *Id.* art. 9, ¶¶ 1-3. Those who received delegation can re-delegate those jobs to others only when they are authorized by delegating agency. *Id.* art. 10, ¶ 1.

66. *Id.* art. 11.

67. May number no teikyou wo motomerareru omona case [When the Residents Are Asked to Produce “My Number”], MINISTRY OF INTERNAL AFF. & COMM., available at https://www.cao.go.jp/bangouseido/pdf/qa_case.pdf.

68. Shotokuzeihō [Income Tax Act], Law No. 33 of 1965, art. 183, ¶ 1; National Pension Act, *supra* note 26, art. 95; Kenko hokenhō [Health Insurance Act], Law No. 70 of 1922, art. 155, ¶ 1 & art. 167.

69. For the employer to deduct tax, they need to calculate the tax break for the spouse along with the submission of spousal declaration with the “my number” of dependent spouse from the employees. See Income Tax Act, *supra* note 69, art. 185, ¶ 1. The employee needs to provide the “my number” of the employee’s spouse to the employer as “executor of job that is related to individual number.” The employer is not mandated to verify the identity of the spouse in this case. On the other hand, the dependent spouse can claim special treatment as a spouse for the National Pension system. The employer is then mandated to submit the document verifying the dependent status of the spouse to the National Pension agency. National Pension Act, *supra* note 26, art. 94-96. In order to submit this document, the employer needs to collect the “my number” of the spouse of the employee and in this case the employee will act as a representative for his or her spouse and submit the document to employer (he or she needs to be appointed as a representative. The employer then needs to verify the identity of the spouse. The duty of the employer is to check “my number” and the identity of the “my number” holder which could be different depending upon on how the employer collects “my number.” My number Q&A, CABINET SECRETARIAT (内閣官房 -

fy their “my number” as well as the employee’s spouse’s “my number” and then verify the number and identity of the person who submitted the number. Security companies, insurance companies and others also need to use “my number” to issue payment record to be submitted to the tax agency.⁷⁰ As a result, a huge number of private corporations have now come to use “my number” of their employees, customers, and others and the residents are asked to produce “my number” to these private corporations.

B. The 2015 Amendment and the Future Plan

1. 2015 Amendment

In 2015, just prior to the start of using “my number,” the *My Number Act* was amended and the scope of use of “my number” was expanded.⁷¹ Most importantly, the amendment mandates banks to manage savings accounts using “my number” from January 1, 2018.⁷² As a re-

NAIKAKU KANBŌ, available at <https://www.cao.go.jp/bangouseido/faq/faq4.html#q4-3-9>. (last visited Sept. 15, 2019).

70. See Income Tax Act, *supra* note 68, art. 224 (dividend), art. 223 (payment for the sale of stocks), art. 225, ¶ 1 no. 4 (life insurance payment), art. 225, ¶ 1, no. 5 (property damage insurance payment); see also MINISTRY OF INTERNAL AFF. & COMM., *supra* note 67. It became mandatory to provide my number to security companies to open an account from January 1, 2016. The security companies are mandated to collect my number from their customers by the end of 2018. *Japan securities industry supports SDGs!*, JAPAN SEC. DEALERS ASS'N, available at <http://www.jsda.or.jp/sonaeru/oshirase/kojinbangou.html>. (last visited Sept. 16, 2019). Since 2019, the security companies might be prevented from paying dividend or sale of securities without submission of my numbers. Eventually, however, the government decided to postpone the deadline of submission of “my number” for another three years. See *Outline of Tax System Reform*, MINISTRY OF FIN. (Dec. 21, 2018), available at https://www.mof.go.jp/tax_policy/tax_reform/outline/fy2019/20181221taikou.pdf. (last visited Sept. 16, 2019). For information pertaining to banks, see *infra* note 72.

71. *Kojin jouhō no hogo nikansuru hōritsu oyobi gyousei tetsuduki niokeru tokutei no kojinn wo shikibetsusuru tame no bango no riyoutō nikansuru hōritsu no ichibu wo kaiseisuru hōritsu* [Act to Amend the Administrative Personal Information Act and My Number Act], Law No. 65 of 2015 (Japan).

72. *Id.* (adding app. 1, no. 55-2). The 2015 amendment allowed the Deposit Insurance Corporation of Japan, agency handling pay-off system of banks, a system to guarantee savings in the savings account up to the certain limits in case banks lost money and could not pay back all the saved money, to use “my number,” thus forcing banks to collect “my number” in order for the savings to be covered by the pay-off system. It thus allowed the use of “my number” beyond the purpose of securing fair taxation and fair provision of social security benefit. But at the same time, the 2015 amendment also revised the National Tax General Principle Act and mandated banks to manage their account using “my number” of customers, thus making it easier to execute tax investigation. See *Kokuzei tsusukuhō* [National Tax General Principle Act], Law No. 66 of 1962, art. 74-13-2. It also revised the National Pension Act to allow Health, Welfare and Labor Minister to ask banks on the financial situation of the insured by using “my number.” National Pension Act, *supra* note 26, art. 108. To

sult, in order to open a new saving account at a bank, the customer is asked to notify the bank of his or her “my number.”

Previously, it was mandatory to notify “my number” to banks in order to invest, to use special tax-free saving account for disabled person or to transfer money internationally,⁷³ but there was no need to notify it to banks in order to open or use savings accounts. Interest is taxable but since it was taxed separately by a flat rate and is paid by paying banks, there was no need to issue a payment slip and there was thus no need to assign a particular number to a bank savings account. Now, however, the banks are mandated to use “my number” to manage saving account, indicating much broader use of “my number” in private corporations.

The 2015 amendment does not mandate banks to collect “my number” for all pre-existing bank accounts right away. It is estimated that there are more than one billion bank accounts in Japan, including those with Japan Post Corporation, for a total population of just 120 million.⁷⁴ It was too difficult to immediately mandate to collect “my number” for all pre-existing accounts. However, banks are required to use my number by the end of 2018. Although there is still nothing to compel the customers to submit their “my numbers” for saving accounts, eventually the government might compel them to submit their “my numbers”.

The national pension administration is allowed to use “my number” for managing pension.⁷⁵ However, after all the scandals involving administration of the national pension system discussed below,⁷⁶ the government decided to postpone the application of “my number” to the national pension administration.⁷⁷ It became possible for the Japan Pen-

that extent, this amendment allowed tax agency and social security agency to get access to bank record using “my number” to check the financial situation of the resident. But still there is nothing to compel the customers to submit their “my numbers” to banks.

73. Income Tax Act, *supra* note 68, art. 224 (dividend payment slip); Shotokuzeihō sekourei [Cabinet Order to Enforce the Income Tax Act], Cabinet Order No. 96 of 1965, art. 34 (tax-free account declaration document); Naikokuzei no tekisei na kazei no kakuho wo hakarutame no kokugai soukintō ni kakawaru chōsho no teishutsutō nikansuru hōritsu [Act concerning the Submission of Document on International Money Transfer in order to Secure the Proper Taxation of Domestic Tax], Law No. 110 of 1997, art. 3 (international money transfer document) (Japan).

74. *Yokin kouza nimo my number: Ginko gyokai akumu sairaiika [My Number Will be Applied to Bank Accounts: Nightmare Again for Banking Industry?]*, J-CAST NEWS (Apr. 21, 2014), available at <https://www.j-cast.com/>.

75. My Number Act, *supra* note 1, app. 1, no. 31.

76. *Infra* notes 101-03.

77. My Number Act, *supra* note 1, addendum art. 3-2 (revised by the 2015 amendment).

sion Service to use “my number” from January 1, 2017, and as of March 5, 2018, customers can use “my numbers” to file various applications and change registration instead of the basic national pension number.⁷⁸ Still, national pension number has not been replaced by “my number.”

When the Japan Pension Service started to use “my number,” the initial goal was to secure fair taxation and fair provision of social security benefits. The government further anticipates a much broader use of “my number” in the future.⁷⁹ When “my number” becomes broadly used by government agencies, we can anticipate that private organizations will be authorized to use “my number” for documents to be submitted to these government agencies and that the public will be more frequently forced to provide “my number” to these private organizations as well.⁸⁰

Moreover, the government plans to allow the use of the “my number” card far more broadly in daily life. For instance, the roadmap prepared by the government plans to use the “my number” card as an identification card for public employees.⁸¹ It will also allow private companies to accept “my number” cards as identification cards, as a way to verify the identity of the buyer of an event ticket, for a mobile phone contract, or to challenge entrance examinations for colleges.⁸² Further, it plans to allow the integration of the “my number” card with other government-issued cards, such as driver’s licenses, national health insurance certificates, and professional licenses such as medical licenses and teachers’ licenses. It will also extend to be included with other pri-

78. Gyosei tetsuduki niokeru tokuteino kojn wo shikibetsu surutameno bango no riyotō nikansuru hōritsu husoku dai3jou no 2 no seireide sadameru hi wo sadameru seirei [Cabinet Order to Provide for the Date Anticipated by Addendum 3-2 of the My Number Act], Cabinet Order No. 347 of 2016 (Japan); Japan Pension Service, Nihon nenkin kikō niokeru my number eno taioou [Response to the Introduction of My Number of the Japan Pension Service] (Japan), available at <https://www.nenkin.go.jp/mynumber/kikoumynumber/1224.html> (last visited Sept. 12, 2019).

79. The original Act also intended for “my number” to be used during the times of disaster. My Number System, *supra* note 41. The 2015 amendment also allowed “my numbers” to be used to provide advice for medical check-ups and to share immunization records among local governments. My Number Act, *supra* note 1, revising app. 1, no. 2 & no. 10.

80. The national health insurance is also added as a job to use “my number.” My Number Act, *supra* note 1, app. 1, no. 30. Thus, the use of “my number” is mandated for the purpose of national health insurance administration, such as enrollment on the national health insurance system, from January 2016.

81. *My number seido rikatsuyou suishin roadmap [Roadmap to Facilitate Wider Use of My Number System]*, available at https://www.kantei.go.jp/jp/singi/it2/senmon_bunka/number/dai9/siryou6.pdf.

82. *Id.*

vately issued cards, such as retail point cards or medical clinic cards, and even as debit cards or credit cards.⁸³

The “my number” card can be used to log into the “my number portal” online using a special card reader to ascertain the procedures taken by using “my number” and to check the information sent from the government, to function as a one-stop site to take all the procedures when the user asks for help from local government for raising a child, or even to file a tax return.⁸⁴ The government also plans to work with mobile phone companies and app developers to develop special “my number” apps that can be used on smartphones.⁸⁵ “My number” and “my number card” could be used as a key to access all sorts of government and private services in the future

IV. NATIONAL IDENTIFICATION NUMBER SYSTEM AND THE RIGHT TO PRIVACY

A. *Right to Privacy*

1. *The Right to Be Let Alone*

The Constitution of Japan, enacted in 1946, has a bill of rights, but there is no provision that specifically protects the right to privacy. The right to privacy was first proposed in the United States as a tort right to be protected from the publication of private information by mass media as a “right to be let alone”.⁸⁶ Thereafter, the right to privacy came to be accepted in many states by court holdings or by statutes.⁸⁷ Nevertheless, the right to privacy used to be viewed as a tort right.

83. *Id.*

84. *My Number, Myna portal towa [What is Myna Portal?]* CABINET SECRETARIAT, available at <https://www.cao.go.jp/bangouseido/myna/index.html> (last visited Sept. 12, 2019).

85. Roadmap, *supra* note 81, at 19. An application for “my number” can be now filed through my smartphone. See *Individual Number Card*, JAPAN AGENCY FOR LOC. AUTH. INFO. SYS., available at <https://www.kojinbango-card.go.jp/kofushinse-smartphone/> (last visited Sep 16, 2019). Experimentation of identification using “my number” through a smartphone has been conducted and it looks like it should be ready in time for the Tokyo Olympics in 2020. See *You can enter your phone number on your iPhone to confirm your identity with a smartphone such as the Tokyo Olympics*, SANKEIBIZ, available at <https://www.sankeibiz.jp/macro/news/170329/mca1703290500003-n1.htm> (last visited Sept. 13, 2019).

86. Samuel Warren & Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

87. JOHN T. SOMA, STEPHEN D. RYNERSON & ERICA KITAEV, *PRIVACY LAW IN A NUTSHELL* 31-32 (2nd ed. West 2010); see also Harry Kalven, Jr., *The Right of Privacy in Tort Law—Were Warren and Brandeis Wrong?*, 31 L. & CONTEM. PROBS. 326 (1966).

However, the right to privacy came to embrace not only a right to be protected from publication of private information, but also from intrusion or collection of private information.⁸⁸ With the invention of computer technology and with the increased possibility of collecting, using, and disclosing a huge amount of personal information about individuals using the computer technology, a gradually increasing number of commentators came to perceive the right to privacy as a right to control one's own personal information.⁸⁹ It is a right to control the collection or gathering of personal information, use and storage or management of personal information, and disclosure or publication of personal information.⁹⁰

In Japan, the courts have accepted the right to privacy, to be protected from publication of private information, as a tort.⁹¹ The Supreme Court of Japan also made this right enforceable against the government for its reckless disclosure of private information.⁹² Moreover, it held that the provision of personal information to third parties, even to the police, without consent could also be illegal as a tort.⁹³

2. Constitutional Right to Information Privacy

With the increased use of computers by the government, an increasing number of commentators came to accept the right to privacy, not just as a tort right, but also as a constitutional right to be protected against government infringement. The United States Supreme Court intimated that it would acknowledge the right to privacy as a constitutional right, but so far, the privacy seems limited to an autonomous right to decide one's personal affairs.⁹⁴ Although the United States Supreme

88. William L. Prosser, *Privacy*, 48 CAL. L. REV. 383 (1960); see also Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser*, 39 N.Y.U. L. REV. 962 (1964).

89. See ALAN WESTIN, *PRIVACY AND FREEDOM* 7 (1967); see also Charles Fried, *Privacy*, 77 YALE L. J. 475, 482 (1968).

90. See DANIEL J. SOLOVE, *UNDERSTANDING PRIVACY* (2008); see also William J. Fenrich, *Common Law Protection of Individuals' Rights in Personal Information*, 65 FORDHAM L. REV. 951, 955 (1996).

91. Saikō Saibansho [Sup. Ct.], Feb. 8, 1994, 1989 (O) 1649, 48 Saikō Saibansho Hanreishu Minju [Minshū] 149 (Japan); Saikō Saibansho [Sup. Ct.], June 28, 2001, 1999 (Ju) 922, 55 Saikō Saibansho Hanreishu Minju [Minshū] 837 (Japan).

92. Saikō Saibansho [Sup. Ct.] Jan. 31, 2017, 2016 (Kyo) 45, 71 Saikō Saibansho Hanreishu Minju [Minshū] 149 (Japan).

93. Saikō Saibansho [Sup. Ct.] Sept. 12, 2003, 2002 (Ju) 1656, 57:8 Saikō Saibansho Hanreishu Minju [Minshū] 973 (Japan).

94. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973); see also SOMA ET AL, *supra* note 87, at 21; see also Louis Henkin, *Privacy and Autonomy*, 74 COLUM. L. REV. 1410 (1974).

Court has suggested that it might be willing to grant constitutional protection towards the “right to information privacy”,⁹⁵ it is still unclear whether one has a constitutional right to control and protect personal information against the government.⁹⁶

Most commentators in Japan, however, have come to interpret the “right to life, liberty and pursuit of happiness,” guaranteed in Article 13 of the *Constitution of Japan*, to include some sorts of unenumerated freedom as a constitutional right.⁹⁷ They would grant constitutional protection to freedom, which is essential for the development of personal integrity, in contrast to other non-essential freedoms. Article 13 thus functions just like the Ninth Amendment or like the Due Process Clause of the Fourteenth Amendment in the United States. Moreover, most commentators agree that the right to informational privacy should be included in the right to life, liberty and pursuit of happiness.⁹⁸

These commentators define the right to information privacy as a right to control one’s own personal information.⁹⁹ Accordingly, any government use of personal information, beyond the purpose of collection or gathering authorized by a statute, without justification could also be challenged as an invasion of the constitutional right to privacy. Any disclosure or publication of personal information without justification could similarly be an invasion of the constitutional right to privacy. What is important is that individuals can claim constitutional infringement of the right to privacy and challenge the constitutionality of the authorizing statute.

Moreover, the right to privacy mandates that the government must secure the personal information collected or gathered. If a government

95. See *Whalen v. Roe*, 429 U.S. 589 (1977) (suggesting that the constitutionally protected “zone of privacy” extends to the “individual interest in avoiding disclosure of personal matters”).

96. *NASA v. Nelson*, 562 U.S. 134 (2011) (even assuming that the U.S. Constitution does in fact guarantee a right to information privacy, the federal law requiring background checks of private contract employees does not violate that privacy right). Fred H. Cate & Robert Litan, *Constitutional Issues in Informational Privacy*, 9 MICH. TELECOMM. & TECH. L. REV. 35 (2002); Russell T. Gorkin, *The Constitutional Right to Informational Privacy: NASA v. Nelson*, 6 DUKE J. CONST. L. & PUB. POL’Y SIDEBAR 1 (2010). Many argue for the acceptance of the constitutional right to information privacy. Michael J.O’Donnell, *Reading for Terrorism: Section 215 of the USA Patriot Act and the Constitutional Right to Informational Privacy*, 31 J. OF LEGIS. 45, 48 (2005).

97. NOBUYOSHI ASHIBE (SUPPLANTED BY KAZUYUKI TAKAHASHI), KENPŌ [CONSTITUTIONAL LAW] 119 (6th ed. Iwanami Shoten 2015); KOJI SATO, NIHONKOKU KENPŌRON [JAPANESE CONSTITUTION] 176 (Seibundo 2011).

98. ASHIBE, *supra* note 97, at 123; SATO, *supra* note 97, at 181.

99. ASHIBE, *supra* note 97, at 123; SATO, *supra* note 97, at 182.

employee recklessly leaks personal information, then that leak is a tort, and the victim can recover damages from the government. When a statute authorizing collection, gathering, or use of personal information lacks sufficient security measures, then the authorizing statute itself could be challenged as unconstitutional.

The Supreme Court of Japan has not accepted all of these arguments yet. The Supreme Court of Japan acknowledged that the collection and gathering of individuals' personal information without justification is an infringement of the right to private life protected by article 13 of the Constitution.¹⁰⁰ It has not squarely held, however, that the unreasonable use of personal information beyond the purpose of collection or unreasonable disclosure or publication is an unconstitutional infringement of the right to privacy. It has also not squarely held that the collection and use of personal information without sufficient security measures is a constitutional violation. In light of the understanding of the right to privacy in tort law, however, there is a good chance that the Supreme Court of Japan is willing to accept all of these as infringements of the constitutional right to privacy.

B. National Identification Number System and the Challenge to the Right to Privacy

1. Problems Raised by the National Identification Number System

The use of the national identification number system raises a very significant challenge to the constitutional right to privacy. The risk will surely be far greater if the government establishes a comprehensive database containing personal information about all residents and uses national identification numbers to retrieve all personal information from that central database. However, even if the government decides to use the national identification number system without establishing a national database, the use of the national identification number system raises very serious questions because, by using national identification numbers, it becomes easy to collect all sorts of personal information about a particular individual. There is a real risk that the government could abuse its power and use the personal information collected for other purposes or for data matching. There is also a serious risk that, if abused or leaked, the national identification numbers will allow hackers to access and steal all sorts of personal information from the government.

100. Saikō Saibansho [Sup. Ct.] Dec. 15, 1995, 1990 (A) 848, 49 SAIKŌ SAIBANSHO KEIJI HANREISHŪ 82 (Japan).

Moreover, allowing or mandating the use of national identification number by private organizations or private persons will allow a huge number of persons to get access to that number of the other person and allow them to fraudulently use it. In short, there is a realistic risk of identity theft. Moreover, if leaked, there is a risk that “my number” can be used by database companies to secretly construct the private data banks of residents, making it possible to retrieve all private personal information using “my number”.

This risk is not merely fictional: by now the public knows about the improper information management inside the national pension administration. In 2005, Social Security Agency employees, who are not directly in charge of dealing with pension information, obtained access to the pension information of other residents in violation of the Agency’s policy and more than 3,000 employees were disciplined.¹⁰¹ In 2007, with the introduction of the basic pension identification number system, the Agency disclosed that there are more than 50 million pension records that cannot be connected with a basic pension identification number and that it lost at least fifty-five pension records.¹⁰² Moreover, after the Agency was transformed into a new administrative agency, the Pension Administration was hacked and more than 1.25 million pension records were leaked in 2015.¹⁰³ The public evidently has a legitimate concern about the security of personal information when that information can be traced using the national identification numbers.

The Public Workers Act mandated that government workers keep government secrets confidential.¹⁰⁴ *The Act on Protection of Personal Information Held by Administrative Organs*¹⁰⁵ restricts the collection, use, and management of personal information inside administrative agencies. Basically, government agencies are allowed to hold the per-

101. *Naiki ihan no zusan kanri: 55 manken password setteisezu [Sloppy Information Management in Violation of Internal Policy: More Than 55,000 Records Left Unprotected by Password]*, SANKEI NEWS (June 1, 2015) available at <http://www.sankei.com/affairs/news/150601/afr1506010046-n1.html> (last visited Sept. 13, 2019).

102. Higuchi Osamu, *Nenkin kiroku mondai no kei to kadai [History of the Pension Records Issue and the Future Agenda]*, 654 CHOSA TO JOUHO 1 (2009). There were also 6,900 improperly deleted records.

103. *Kensho hokokusho [Review Report]*, MINISTRY OF HEALTH, WELFARE & LAB. (Aug. 21, 2015), available at http://www.mhlw.go.jp/kinkyu/dl/houdouhappyou_150821-02.pdf (last visited Sept. 14, 2019).

104. *Kokka koumuinhō [National Public Workers Act]*, Law No. 120 of 1947, art. 100 (1). There is a similar restriction for local government workers as well. See *Chihō koumuinhō [Local Government Workers Act]*, Law no. 261 of 1950, art. 34 (1).

105. *Gyouseikikan no hoyu suru kojn jouhou no hogo ni kansuru hōritsu [Act on Protection of Personal Information Held by Administrative Organs]*, Law No. 58 of 2003.

sonal information of individuals only to the extent necessary to perform its job and needs to specify the purpose of the use and is prohibited from holding personal information beyond the necessary limit specified.¹⁰⁶ In order to collect personal information, it needs to disclose the purpose of the use.¹⁰⁷ The government agency is prohibited from using it or providing it for purposes other than specified and disclosed.¹⁰⁸ Of course, it is mandated to adopt appropriate measures to secure personal information from leaks or destruction.¹⁰⁹ All government workers who currently handle or used to handle personal information are also specifically prohibited from revealing to others personal information which he or she came to know, and from using it for other improper purposes.¹¹⁰

To enforce these restrictions, government workers who leak government secrets learned through their work face criminal liability.¹¹¹ The *Administrative Personal Information Protection Act* imposes criminal punishment on national government workers who provide personal information files containing individual secrets without justification,¹¹² or who abuse their powers and collect documents, pictures, or electronic records containing individual secrets for unauthorized use.¹¹³

It even imposed criminal punishment on those individuals who received disclosure of personal information by falsification or other im-

106. *Id.* art. 3.

107. *Id.* art. 4.

108. *Id.* art. 8.

109. *Id.* art. 6.

110. Act on Protection of Personal Information Held by Administrative Organs, *supra* note 105, art. 7. There are similar restrictions for local government per its by-laws. There are also such restrictions on independent administrative organizations and their workers. Dokuritsu gyousei houjintō no hoyusuru kojū jōhō no hōgo nikansuru hōritsu [Act on the Protection of Personal Information Held by Independent Administrative Organizations], Law No. 59 of 2003. The collection, use, and provision of personal information by private companies is regulated by the Kōjū jōhō no hōgo nikansuru hōritsu [Personal Information Protection Act], Law No. 57 of 2003.

111. See National Public Service Act, *supra* note 104, art. 109, no. 12 (imprisonment for not more than one year or fine for not more than one-half million JPY); see also Local Government Workers Act, *supra* note 104, art. 60, no. 2.

112. Act on the Protection of Personal Information Held by Administrative Organs, *supra* note 105, art. 53-54 (imprisonment for not more than two years or fine for not more than one million JPY). If the worker provided or stole personal information he or she came to know during his or her duty for the purpose of gaining improper advantage for oneself or others, the punishment is also imposed (imprisonment for not more than one year or fine for not more than one-half million JPY).

113. *Id.* art. 55 (imprisonment for not more than one year or fine for not more than one-half million JPY).

proper methods.¹¹⁴ However, there is a serious concern regarding whether the restriction is sufficient enough. The sloppy record management practice and accessing of other people’s pension records from inside the Social Security Agency was not prevented by the *Administrative Personal Information Protection Act*. Indeed, as will be discussed, there is no criminal punishment on government workers for unintentional leaks, failure to adopt sufficient security measures, losing or destroying personal information, or even peeping into personal information of others outside of their jobs.

2. Local Resident Registration Code System

Accordingly, the local resident registration code system had to introduce additional safeguards and limit the scope of use and shared identification information and local resident registration code. First, information needs to be transmitted by an independent computer network and not by the Internet.¹¹⁵ Second, local residents are free to change their local residence registration code.¹¹⁶ Third, the identification information shared is limited to a resident’s name, birthdate, sex, address, local resident registration code and others¹¹⁷ so that if leaked or revealed, it will not lead to a serious breach of privacy.

J-LIS is allowed to provide identification information other than the local resident code provided from a prefecture when it is requested from listed government administrative agencies with respect to listed administrative jobs.¹¹⁸ There is also a similar restriction on the provision of identification information to other municipalities inside the same prefecture¹¹⁹ as well as to other prefectures or municipalities in other prefectures.¹²⁰ Moreover, in order to secure private information, agencies that receive identification information through the network are banned from using or providing that information for other purposes.¹²¹ Agencies are also mandated to adopt appropriate security measures for the received identification information.¹²²

Government workers, local public workers, or J-LIS workers who handle shared identification information using computers are specifical-

114. *Id.* art. 57 (monetary penalty for not more than 100,000 JPY).

115. Local Resident Registration Act, *supra* note 4, art. 30-6.

116. *See id.* art. 30-4, at ¶ 1.

117. *Id.* art. 7, ¶ i-xiv.

118. *Id.* art. 30-10.

119. *Id.* art. 30-10.

120. Local Resident Registration Act, *supra* note 4, art. 30-11.

121. *Id.* art. 30-29.

122. *Id.* art. 30-28.

ly prohibited from leaking confidential identification information they came to know during their works.¹²³ There is also a specific ban on local public officials who are handling or used to handle received shared identification information using computers from leaking any confidential identification information.¹²⁴

The government officials cannot ask for local resident registration code unless specifically authorized.¹²⁵ No one outside of the government is also allowed to ask for local resident registration code.¹²⁶ Apparently, the use of local resident registration code is restricted to government officials.

The *Local Resident Registration Act* imposed additional criminal penalty against violation of these confidentiality obligations of public workers.¹²⁷ Anyone who requested the disclosure of identification information from the prefecture or from J-LIS using falsification or improper method will be also punished.¹²⁸

Additionally, J-LIS is subject to all sorts of safeguards against improper use or leaks. Ultimately, the Internal Affairs and Communication Minister (Minister) had also supervisory power over the organization.¹²⁹ The prefecture governors are mandated to adopt appropriate measures to secure the operation.¹³⁰ Each prefecture is also mandated to establish a personal information protection council to supervise the handling of identification information within the prefecture.¹³¹ Therefore, the government claimed that there are sufficient security measures adopted to protect the privacy of residents.

3. *Local Resident Registration Network and the Supreme Court of Japan*

Nevertheless, many still opposed the network. Some municipal governments were reluctant to connect their servers to the central server

123. *Id.* art. 30-26.

124. Jumin kihondaichohō [Local Resident Registration Act], Law No. 81 of 1967, art. 30-31.

125. *Id.* art. 30-37.

126. *Id.* art. 30-38.

127. *Id.* art. 42 (imprisonment for not more than two years or fine for not more than 1 million JPY).

128. *Id.* art. 52 (stating monetary penalty for not more than 100,000 JPY).

129. Jumin kihondaichohō [Local Resident Registration Act], art. 30-19.

130. *Id.* art. 30-22; *id.* art. 30-23. Moreover, J-LIS is tightly regulated by the statute. *Id.* art. 30-24, ¶ 2 (stating necessity of securing information); *id.* art. 30-25, ¶ 2 (stating ban on use for other purposes); *id.* art. 30-31, ¶ 3 (stating confidentiality obligation of workers).

131. *Id.* at 30-15.

using the local resident registration network.¹³² Many citizens also filed suits challenging the constitutionality of the use of the local resident registration code.

Eventually, the Supreme Court of Japan rejected the constitutional challenge.¹³³ In this particular case, local residents sought an injunction asking the defendant, municipal governments, to delete their local resident registration codes, alleging that the introduction of the local resident code network was an unconstitutional infringement of the personal-ity right, including the right to privacy protected by Article 13 of the Constitution.¹³⁴ Although the High Court accepted the plaintiffs’ argument and granted the injunction, the Supreme Court disagreed.

The Supreme Court admitted that Article 13 of the Constitution protects one’s private life, including the right to be protected from unreasonable disclosure or publication of private personal information to third parties.¹³⁵ However, the identification information consists only of the person’s name, birthdate, sex, and address, plus his or her local residence registration code, and others. The Supreme Court believed that these pieces of information are usually used for identification purposes. Such information can be also used by government agencies for identification purposes as long as it is permitted by statute. The information is not thus sensitive.¹³⁶ The local resident registration code is also a random number and does not change this basic characteristic of the other identification information.¹³⁷

The Supreme Court found that the management and use of identification information by the local resident registration network serves a legitimate government purpose of improving local services and administrative efficiency.¹³⁸ Moreover, it found that there is no concrete risk that the identification information would be disclosed or published without a statutory ground or legitimate administrative purpose. There

132. Juuki net no katsuyo joukyo to juuki net husetsuzokudantai nitaisuru zesei no youkyu nitsuite [On the Current Use of Local Resident Registration Network and Request against Local Government to Comply with the Network] (Oct. 15, 2009), available at http://www.soumu.go.jp/main_content/000042074.pdf (last visited Sept. 16, 2019) (stating Yamatsuri Town and Kunitachi City were refusing to connect). All municipalities ended up using the local residence code network.

133. Saikō Saibansho [Sup Ct], Mar. 6, 2008, 62 no. 3 SAIKŌ SAIBANSHO HANREISHU MINJI [MINSHU] 665 (Japan).

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. Saikō Saibansho [Sup. Ct.] Mar. 06, 2008, 2007 (O) 403, Saikō Saibansho Minji Harnreishū [Minshū] (Japan).

is also no concrete risk of hacking and improper access from outside; any improper use or leak of identification information by the recipient is subject to disciplinary action as well as punishment; and an identification information protection council needs to be established in all prefectures and the similar measures needed to be adopted in designated organization (later J-LIS) once established to deal with local resident registration and identification information.¹³⁹ As a result, the Supreme Court concluded that the management and use of identification information by the local resident registration network does not infringe upon the plaintiffs' right to privacy.¹⁴⁰ It was a unanimous judgment of the First Petty Bench.

Nevertheless, all the reluctance and objections to the local resident registration code and the local resident registration network manifestly showed the difficulty of introducing a national identification number system and the unwillingness or reluctance of the public to accept such a system.

V. "MY NUMBER" SYSTEM AND THE RIGHT TO PRIVACY

A. The Security Measures Adopted in the My Number Act

The *My Number Act* carries security measures similar to those introduced for the local resident registration code. The same kinds of restriction are applicable to administrative agencies in the central government, which handle "my number," under the *National Public Workers Act* and *Administrative Personal Information Protection Act*.¹⁴¹ Moreover, the *My Number Act* basically stipulated that these agencies could use "my number" only when it is necessary to search for personal information in their personal information files to the extent necessary and use it only with respect to specifically listed duties.¹⁴²

139. *Id.*

140. *Id.*

141. See Kokka koumuinhō [National Public Workers Act], Law No. 120 of 1947, art. 100, ¶ 1 (Japan); Gyouseikikan no hoyu suru kojū jōhō no hōgo ni kansuru hōritsu [Act on Protection of Personal Information Held by Administrative Agency], Law No. 58 of 2003, art. 3-7 (Japan); Dokuritsu gyousei hōjintō no hoyusuru kojū jōhō no hōgo nikanuru hōritsu [Act on Protection of Personal Information Held by Independent Administrative Organizations], Law No. 59 of 2003.

142. See Gyousei tetsuduki niokeru tokutei no kojū wo shikibetsu surutameno bangō no riyōtō nikanuru hōritsu [Act on the Use of Number to Identify the Particular Individual for the Purpose of Administrative Procedure], Law No. 27 of 2013, art. 9, ¶¶ 1-2, app. 1, no. 8-9, 38 (Japan).

The *My Number Act* also mandates private individuals and corporations use “my number” of residents for documents to be submitted to administrative agencies and local governments. However, the persons in charge who use “my number” are authorized to use them only to the extent necessary to perform their duties.¹⁴³ They are mandated to adopt necessary measures to prevent leaks, loss, or destruction of “my number.”¹⁴⁴ They can delegate these tasks to third parties, but they have an obligation to supervise the delegate third party to secure the safety and security of personal information that contains “my number.”¹⁴⁵ They can ask “my number” from individuals only if it is necessary to perform their duties.¹⁴⁶ Other persons are prohibited from asking for the provision of “my number” from other persons.¹⁴⁷

Moreover, there is a restriction on the provision of designated personal information, which contains “my number.” Basically, no one is allowed to provide designated personal information, which contains “my number,” except in the circumstances listed in the *My Number Act*.¹⁴⁸ One of the circumstances when the provision of designated personal information, which contains “my number,” is allowed is when the executor of the job using “my number” is providing designated personal information, which contains “my number,” to the person whom that personal information belongs to, his or her representatives or to the executor of the job relevant to “my number” to the extent necessary to execute the job using “my number.”¹⁴⁹ Moreover, no one else is allowed to collect or store designated personal information that contains “my number.”¹⁵⁰

Also, the provision of personal information containing “my number” between the government agencies, local government and independent administrative organizations is accomplished by using specific “information provision network system” managed by the Minister.¹⁵¹ It needs to use the telecommunication method, which would prevent the reconstruction of the content of information transmitted, such as encryption.¹⁵² This network will allow the persons listed in the statute who

143. *Id.* art. 2, ¶ 11, 13, app. 1.

144. *See* “My Number Act” *supra* note 1, art. 12.

145. *See id.* art. 11.

146. *See id.* art. 14, ¶ 1.

147. *See id.*

148. *See id.* art. 19.

149. “My Number Act” *supra* note 1, art. 19, no. 1.

150. *Id.* art. 20.

151. *Id.* art. 2, ¶ 14.

152. *Id.*

asked for designated personal information listed with respect to specific jobs listed from the persons listed to receive that designated personal information.¹⁵³ Specifically, when the person authorized to ask for designated personal information according to this provision, the Minister will notify the request to the person who holds that information using this information provision network system.¹⁵⁴

Once the person receives the request from the Minister of Internal Affairs and Communications, then the person must provide the specific personal information to the individual who requested it.¹⁵⁵ If there is a request for specific personal information, the individual who requested it and the individual providing the information must record the request and any information provided in the computer's Information Providing Network System and save the record for the designated Cabinet Order.¹⁵⁶ The Minister, the person who requests the personal information, and the person who provides the information need to adopt security measures to data breaches,¹⁵⁷ and the people providing or requesting information for the Information Providing Network System must not leak or steal the confidential information they acquired during the information request period.¹⁵⁸

Furthermore, the Specific Personal Information Protection Commission (SPIPC), established by the Act for the Establishment of the Cabinet Office, will publish the results of the assessment and seek public feedback prior to holding the designated personal information files,¹⁵⁹ regularly inspect the practices of government agencies and independent administrative organizations that hold designated personal information files.¹⁶⁰ SPIPC may provide the individuals and entities handling the personal information with any guidance necessary to ensure that they handle the information appropriately.¹⁶¹

If the SPIPC finds that an individual or entity violated a statute or regulation related to the proper way to handle Specific Personal Information, it may issue a recommendation to suspend the violating conduct and to take other measures to become compliant with the proper Specif-

153. *Id.* art. 19, no. 7.

154. My Number Act, *supra* note 1, art. 21, ¶ 2.

155. *Id.* art. 22, ¶ 1.

156. *Id.* art. 23.

157. *Id.* art. 24.

158. *Id.* art. 25.

159. My Number Act, *supra* note 1, art. 27, ¶ 1.

160. *Id.* art. 31.

161. *Id.* art. 50.

ic Personal Information handling procedures.¹⁶² If the person who is receiving the recommendation fails to accept it without legitimate reason, the PIPC could order the individual to take the recommended action within the specified period.¹⁶³

The “my number” card can be used for identification by a private organization, however, private organizations are not allowed to collect “my number” displayed on the back side of the card or use it unless specifically authorized to.¹⁶⁴ They are thus precluded from making a photocopy or keeping a copy of the backside of the card. The “my number” card has an IC chip, but it does not by itself include any sensitive personal information. In order to use this card as an electronic verification certificate, one needs to insert the card into a special card reader and type in a password so that the reader can contact the main server and verify the identity of the cardholder. If it is stolen, there is certainly a possibility that it could be misused, but there will be room for criminal punishment for improper gathering of someone else’s “my number.”¹⁶⁵

As a result, there is fairly good protection for personal information and “my number[s].” However, is the protection sufficient to meet the constitutional requirement?

B. Social Security Number and the Right to Privacy in the United States

In order to answer this question, it is helpful to see how other countries that have already introduced similar national identification number systems protect the national identification number. In comparison to Japan’s “my number,” the restrictions on the use of social security numbers in the United States are extremely limited.

Although the social security number was originally designed for use with social security programs, it has become a de facto national identification number in the United States.¹⁶⁶ The 1974 *Privacy Act*¹⁶⁷ restricts the government’s use of private information, but it has too many loopholes and is poorly enforced.¹⁶⁸ There is no other federal

162. *Id.* art. 51, ¶ 1.

163. *Id.* art. 51, ¶ 2.

164. My Number Act, *supra* note 1, art. 6.

165. *See id.* art. 51, ¶¶ 1, 3; *see also infra* note 181.

166. Kathleen S. Swendiman & Emily M. Lanza, *The Social Security Number: Legal Developments Affecting Its Collection, Disclosure, and Confidentiality*, Congressional Research Service, CONG. RES. SERV. 1 (Feb. 4, 2014), available at <https://www.hsdl.org/?view&did=750387> (last visited Sept. 18, 2019).

167. *See e.g.*, 5 U.S.C. § 552(a) (2019).

168. *See Swendiman & Lanz, supra* note 167, at 8.

statute effectively limiting the collection and use of social security numbers by administrative agencies.¹⁶⁹ There is also no restriction on the use of social security numbers by private organizations.¹⁷⁰ Congress has attempted to place limits on the private use of social security numbers, but so far its attempts have been unsuccessful. However, some states have enacted social security number privacy protection laws in the absence of federal laws aimed to protect the dispersion of social security numbers.¹⁷¹ Yet, these state statutes are hardly sufficient to restrict wide use of social security numbers by private organizations. Although the social security number card is not equipped with an IC chip, it nevertheless displays the social security number, which could allow unauthorized persons to steal or misuse another individual's social security number. There is thus a legitimate concern with regard to the possibility of identity theft.

Since the right to information privacy in the United States is not clearly articulated, attempts to prevent the collection or use of social security numbers through the courts seem to have been unsuccessful so far.¹⁷² Although there is a call for more effective restraints on the collection and use of social security numbers,¹⁷³ the constitutional arguments against them seem to have only limited persuasiveness.

C. Are the Security Measures for "My Number" Sufficient?

Surely, therefore, there is stronger protection to national identification numbers in Japan. Despite all the security measures for the "my number" system in Japan, however, the question of whether they are sufficient to protect the right to privacy can still be raised.

First, it needs to be emphasized that "my number" creates privacy. Although it is merely a random 12-digit number, no one can figure out from the number itself whose number it is, as each is uniquely assigned to a particular individual. Each number is attached to sensitive information of a particular individual, culminating with the identification of

169. *Id.* at 11.

170. *Id.* at 16.

171. For example, Michigan's state legislature enacted the Social Security Number Privacy Act in 2004.

172. Swendiman & Lanza, *supra* note 167, at 12.

173. Flavio L. Komuves, *We've Got Your Number: An Overview of Legislation and Decisions to Control the Use of Social Security Numbers as Personal Identifiers*, 16 J. MARSHALL J. COMPUTER & INFO. L. 529, 544 (1998).

the particular individual. It should be thus viewed as private, or at least it should be granted the same protection as privacy.¹⁷⁴

Second, in light of the seriousness of the breach of privacy, the government needs to adopt sufficient security measures. Mere statutory restrictions and bans would not be sufficient to prevent the violations. In order to secure the ban, the *My Number Act* imposes additional criminal penalties against government workers who are engaged or used to be engaged in a job using “my number,” or those who are or used to be involved in a job of creating, assigning, or notifying “my number” or handling identification information for unlawful provision of designated personal information files, which contain “my number,” they came to know during their jobs, without legitimate reason.¹⁷⁵ If the workers provided or stole the “my number” information for the purpose of accomplishing the improper benefit for oneself or for others, then criminal punishment will be imposed even if it is not a file that was provided or stolen.¹⁷⁶ If the government workers engaged in the job of providing or requesting designated personal information, leaked or stole confidential information, then they will be similarly punished.¹⁷⁷ If the government workers, local public workers, independent administrative organization workers or workers of the J-LIS abused their power and collected documents, pictures or electronic data which contains “my number,” that belongs to confidential information of a person for purposes other than the purpose they are authorized to use, they would be criminally punished.¹⁷⁸

But there is still no applicable criminal ban. For instance, on negligent leaks or disclosure, destruction or loss of personal information, or peeping into personal information of residents outside of his or her official job. Therefore, there could be a legitimate question whether these criminal bans are sufficiently broad enough. Moreover, the Japanese

174. The Administrative Personal Information Protection Act was amended to make clear that the definition of “personal information” includes “information, which contains personal identification number[s],” including “my number,” and thus this type of information is protected by this Act. See Act Concerning the Adjustment to the Relevant Acts in order to Contribute to the Creation of New Industry and Realization of Energetic Economic Society and Rich National Life by the Adequate and Effective Use of Personal Information Held by Administrative Agency, Law No. 51 (2016).

175. My Number Act, *supra* note 1, art. 48 (noting that a punishment could include imprisonment up to four years, a fine up to 2 million JPY, or both).

176. *Id.* art. 49 (nothing that a punishment could include imprisonment up to three years, a fine up to 1.5 million JPY, or both).

177. *Id.* art. 50.

178. *Id.* art. 52 (stating that punishments for this could include either imprisonment up to two years or a fine up to million JPY).

government tends to believe that if the misuse is banned with criminal punishment, then the security measures are sufficient enough. However, it is questionable whether the mere ban and possibility of criminal punishment is sufficient to deter the misuse.¹⁷⁹

Furthermore, regarding private corporations, anyone who used fraud, infliction of assault, or intimidation against a person, stealing property, trespassing, illegal access to protected computer, or other kind of conducts which prevent the management of the person who hold “my number” to obtain “my number” is also punished.¹⁸⁰ Also, anyone who received a notification card or “my number” card using falsification or another improper method is criminally liable.¹⁸¹

However, there is no criminal punishment, for instance, if the company or its employee did not adopt sufficient security measures and “my number” is leaked or misused. Moreover, there is no criminal punishment when store clerks make a copy of “my number” when they received “my number” cards. Further, there is nothing to prevent a store clerk from taking a look at the backside of the “my number” card and memorizing the “my number” written there. Finally, there is also a question whether the use of “my number” by private persons or corporations already collected could lead to criminal punishment.

When the private corporation refuses to obey the order of the PIPC to stop the violation of the *My Number Act*, criminal punishment with imprisonment up to three years or a fine up to 500,000 JPY could be imposed.¹⁸² But there is a question whether criminal punishment is sufficient as a deterrent. There is no provision that allows for civil enforcement or a civil damage suit from the persons impacted.

Indeed, there is a huge number of private companies affected, and many have expressed concerns that they are not ready to handle “my

179. *The Same My Number Was Issued to the Different Men; In Kagawa and in Nagano*, MAINICHI SHIMBUN (Feb. 23, 2016), available at <http://mainichi.jp/articles/20160223/k00/00e/040/214000c>. (last visited Sept. 18, 2019). There are several cases where the same number was issued to two different residents. *Response to Wrong Delivery of My Number Notification Cards*, SOUMU (Nov. 2, 2015), available at http://www.soumu.go.jp/menu_news/s-news/01ryutsu14_02000052.html (last visited Sept. 16, 2019). There are already some signs showing the mismanagement of the “my number” system. For instance, there are some cases where the notification cards were delivered to wrong residents, and the Minister of Internal Affairs and Communications warned the president of the Japan Postal Office for its slippery delivery.

180. *My Number Act*, *supra* note 1, art. 51 (stating that a punishment could include imprisonment up to three years or a fine up to 1.5 million JPY).

181. *Id.* art. 75 (stating that there could be imprisonment up to six months or a fine up to 0.5 million JPY).

182. *Id.* art. 68.

number” from its effective start date of January 1, 2016.¹⁸³ It is doubtful whether they are ready now.¹⁸⁴ There could be sloppy management, possible leaks, and misuse of “my number” information. Even today, despite the obligation to keep personal information confidential, there are many instances of leaks and misuse. There is no guarantee that similar leaks and misuse will not happen with respect to “my number” information.¹⁸⁵ There are legitimate concerns that the whole system is not designed to sufficiently secure “my number” information.

Especially when “my number” card is stolen. If a “my number” is stolen, then a fake “my number” card could be created and could be used to identify “my number” and identify the “my number” holder. Such use would allow a criminal to file false change of address, a false marriage application or death application at the local government office.¹⁸⁶ In light of the expanded purpose of collecting and using “my

183. *My Number Taiou Kanryo No kigyō: Wazuka 6.4%*, [Only 6.4% of Companies Finished Preparation for Introduction of My Number], SANKEI NEWS (Nov. 17, 2015), available at <http://www.sankei.com/politics/news/151117/pl1511170024-n1.html> (last visited Sept. 18, 2019).

184. As of February 2016, 49% of the companies responded to a survey that they have finished preparation. *My Number Seido Eno Taiou: Jittai Chosa*, [Response to the My Number System: Survey], EN JAPAN (Apr. 22, 2016), available at <http://corp.en-japan.com/newsrelease/2016/3240.html> (last visited Sept. 18, 2019). This means that roughly half of the companies were not ready for introduction.

185. The National Personal Information Commission, which is tasked with correction of any mistreatment of personal information, including “my number,” reported in November 2017 that during the first half of 2017, there were 273 cases of improper handling of “my number”, including the wrong delivery of tax notification, the loss of personal information by programming error, and the loss of documents by fire. *Heisei29nendo Kamihanki Niokeru Kojinjouhou Hogoinkai Nokatsudou Jisseki Nituite* [Activities of the National Personal Information Commission During the First Half of 2017], NAT’L. PERS. INFO. COMM’N., (Nov. 1, 2017), available at <https://www.ppc.go.jp/files/pdf/h29kamihanki.pdf>. (last visited Sept. 18, 2019). Moreover, the Commission issued 173 recommendations. *Id.*; see also *Jutaku Gyōmu Niokeru Keiyaku Oyobi Hourei Ihan No Gohoukoku To Owabi* [Report on the Contract and Law Violation Concerning the Delegated Jobs and Our Apology] SYS. DESIGN CORP. (Dec. 14, 2018), available at <https://ssl4.eir-parts.net/doc/3766/tdnet/1656293/00.pdf> (last visited Sept. 18, 2019) (revealing that some 700,000 records, including “my number”, delegated from the tax agency were improperly re-delegated to an outside third-party, and also later revealing an additional 1.7 million records were similarly re-delegated to outside third-party).

186. One man was already convicted for trespass and for a My Number Act violation when he entered into a female colleague’s house to take picture of her notification card. See *Doryo Joseitakuni Shin-nyusi My Number Tsuchi Card Satsuei* [My Number Notification Card Shot into a Colleague’s Woman’s House and A Hidden Camera Installed. Prison to A 57-year-old Man June 2 Years], SANKEI WEST (June 21, 2016), available at <http://www.sankei.com/west/news/160621/wst1606210051-n1.html> (last visited Sept. 18, 2019).

number” and insufficient safeguards and risk of leaks and misuses, it can be surely argued that the “my number” system is an unconstitutional infringement of the right to privacy protected by Article 13 of the Constitution of Japan.¹⁸⁷

VI. COULD THE “MY NUMBER” SYSTEM BE EFFECTIVE AND WORTHWHILE?

In addition to all the risks, it should also be questioned whether the newly introduced “my number” system can effectively achieve its goal. This question is justified since all previous attempts have failed to achieve broader goals. Moreover, even if it can achieve its purpose, it is a fair question whether it is a worthwhile attempt.

Whether the “my number” system can effectively function as a national identification number system depends on to what extent it could be accepted among the public as necessary and useful, and to what extent then can it accomplish its goal of securing fair taxation and fair provision of social security benefits. For the purpose of securing the fair and efficient administration of taxation and social security benefits, the “my number” system could surely work to some extent. It would become difficult to hide bank accounts and interest payments, dividend payments, or capital gains for tax purposes. It would also become difficult to claim welfare benefits, for instance, by concealing undeclared income.

But it is still unclear to what extent the “my number” system can actually contribute to the fair taxation and fair provision of social security benefits. For instance, with respect to most salaried workers, their salaries are paid by their employers, who are mandated to deduct taxes and adjust any discrepancies at the end of each year, and it is fairly difficult to evade taxation. For these salaried workers, the use of the “my number” system will make it even more difficult to evade taxation, but they are already controlled to a large extent by the tax agency. With respect to most farmers or small retail-store owners, however, it is hard to detect all of their income. Introduction of the “my number” system

187. At present, more than 100 residents have joined the lawsuit against the government seeking damages alleging the unconstitutionality of the “my number” system. *My Number Was Iken: Zenkokude Issei Teiso, Kunini Kanshisareteiru to Kanjiru* [My Number is Unconstitutional: Suits Were Filed All Over Japan, Alleging that the Government is Looking Over Us], HUFFINGTON POST (Dec. 1, 2015), available at https://www.huffingtonpost.jp/2015/11/30/my-number_n_8685408.html (last visited Sept. 18, 2019); *My Number Lawsuit*, MINISTRY OF JUST., available at http://www.moj.go.jp/shoumu/shoumukouhou/shoumu01_00059.html (last visited Sept. 18, 2019) (noting that suits are pending in eight different courts).

would probably not eradicate this difference in detecting the income between different professions. As long as this discrepancy remains, some citizens can complain about the unfairness of tax collection.¹⁸⁸

Furthermore, currently tax on interest payments or capital gains obtained as a result of investment is separately calculated and it is a flat 20 percent tax, while income tax is a progressive tax, mandating higher income taxpayers to pay a higher tax rate.¹⁸⁹ With the introduction of the “my number” system, it will become difficult to hide interest payments or capital gains however, those who make money through interest payments or capital gains still do not have to share a higher tax responsibility.

Moreover, although the “my number” system will force everyone to declare income such as interest payments, dividend payments, and capital gains, the current tax system heavily relies upon income tax. As a result, regardless of one’s assets, they will not have to pay higher income tax so long as their income is limited. Therefore, there would still be unfairness resulting from the difference between those who have huge asset holdings and those who do not, even after the introduction of the “my number” system.¹⁹⁰

Therefore, it could be questioned whether the “my number” system could significantly contribute to fair taxation, or whether the introduction of the “my number” system is just an early step towards overall tax reform. In the future, the government might introduce a tax system that includes a much more comprehensive asset tax.¹⁹¹ In that case, the government would need to have a system to verify not only the income, but also the assets of all taxpayers. On the other hand, in order to accurately collect income tax and asset tax, the government would need to know the details of every business transaction, and the details of amount of assets taxpayers have. This could be quite intrusive and could strip away the privacy of many lawful taxpayers.

188. *Zeino Hukousei, My Number Demo Shotokuhaaku Ni Nukeana [Unfairness in Taxation: Still Loopholes Left After the Introduction of My Number]*, NIKKEI (July 6, 2013), available at <https://www.nikkei.com/article/DGXZZO56955690U3A700C1000000/> (last visited Sept. 18, 2019).

189. Those with income greater than 40 million JPY are subject to a 45% income tax rate. See Income Tax Act, *supra* note 68, art. 89.

190. See Nikkei, *supra* note 189.

191. See *Wagakuni Zeisei No Genjo to Kadai: Wagakuni Zeisei No Arikata [Current Status and Agenda of Japan’s Taxation System: Future of Taxation System in Japan]*, TAX COMMISSION (July 14, 2000), available at <http://warp.da.ndl.go.jp/info:ndljp/pid/11152999/www.cao.go.jp/zeicho/tosin/zeichof/z008.html> (last visited Sept. 18, 2019).

Furthermore, the acceptance of “my number” as a national identification number in the society depends on how far “my number” would come to be used by the government for much broader purposes. It also depends on to what extent the public will come to view “my number” as a national identification number. Broader use of a “my number” card might facilitate such understanding, but it is still unclear to what extent “my number” card will be actually used. Since any use of “my number” for purposes other than statutorily authorized is prohibited, there is a doubt whether the wide use of “my number” card could lead to acceptance of “my number” as a national identification number.

Finally, it was estimated that more than 270 billion JPY would be needed to start the “my number” system and an additional budget will be required each year to maintain the system.¹⁹² It is a fair question whether all the investment in the “my number” system is worthwhile, especially if the use of “my number” is limited to taxation and social security benefits and the “my number” card is not actually used widely.¹⁹³

VII. CONCLUSION

The “my number” system introduced by the Japanese government is a bold attempt to allocate a national identification number to all registered residents in Japan in order to secure fair taxation and social security benefits. As a result, government agencies, local government and independent administrative organizations are authorized to use “my number” to manage and search personal information in personal information files they use, and the residents are mandated to produce “my number” for filing tax return or applying for social security benefits. It also mandated private corporations to collect and use “my number” of employees, customers or clients in order to submit necessary documents on tax and social security to issue necessary documents. In order to improve the convenience of the residents, the government issued “my number” cards and allowed the residents to receive and present those

192. *Shasetsu: My Number [Careful Operation to Prevent Misuse of My Number]*, KYOTO SHIMBUN (May 26, 2013), available at http://www.kyoto-np.co.jp/info/syasetsu/20130526_3.html (last visited Sept. 18, 2019). The government has not revealed how much it actually costs to start and maintain the system.

193. The local resident registration network is managed by the Ministry of Internal Affairs and Communications, while the “my number” system is managed by the Cabinet Secretariat. Management of the local resident registration network is the local government’s responsibility, while management of the “my number” system is the central government’s responsibility, delegated to the local government. Certainly, the purpose is different and the scope of use is different. Nevertheless, it is a fair question whether there is a need for two different national identification numbers.

cards for verification of identity, but the government anticipates that they could use “my number” in much broader contexts. Moreover, in order to promote the use of “my number” cards, the Japanese government plans to use “my number” cards to allow private companies to use them as identity cards, debit cards, credit cards, and others, but it raises a serious question of whether the system can be justified in light of the right to privacy protected by the Constitution of Japan.

The use of the national identification number is an alluring idea to promote administrative efficiency and to control the residents and citizens. It is indeed quite illuminating that the Japanese government came to call this national identification number “my number” instead of calling it “individual number,” as is provided in the statute. Every resident now has his or her “my number.” However, in light of the serious consequences that could result if that national identification number is misused or leaked, there should be a sober reflection on whether it is sufficiently secured, and whether it is a worthwhile attempt.

Only the future can tell whether the system will be widely accepted and whether the security of the system is sufficient.¹⁹⁴ Since many other countries have already introduced a national identification number system or are now considering its introduction, Japan’s experience would provide valuable lessons.

194. The poll conducted by the Cabinet Office in November 2018, revealed that 34.9% of the residents have no opportunity to use “my number.” Moreover, it is only 27.2% of the residents that have obtained the “my number” card or have applied for it, and, while 16.8% of them plan to apply for it, 53% of them have no intention of applying for it. *My number seido nikansuru yoronchousa no gaiyou* [Summary of the Result of the Poll on the Use of My Number] MAINAN (Nov. 2018), available at <https://survey.gov-online.go.jp/tokubetu/h30/h30-mainan.pdf> (last visited Sept. 16, 2019). Indeed, according to another report, the number of “my number” cards actually issued as of December 1, 2018, was 15,642,405 representing only 12.2% of the total population. *My number card no shikuchouson betsu hakkou maisuto nitsuite* [Number of My Number Cards Issued Depending Upon the Municipalities], MINISTRY OF INTERNAL AFF. & COMM. (Dec. 1, 2018), available at http://www.soumu.go.jp/kojinbango_card/#kouhu (last visited Sept. 16, 2019). This is clear evidence of the difficulty of implementing the national identification number system.