

Humbly yet wholeheartedly dedicated to Martin Rees.



# **Double Debt Disaster: Law, Policy, and Social Justice in the wake of Japan's 2011 Tsunami**

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# CONTENTS

Acknowledgements .....	5
Contents .....	7
Prologue: The 11 March Tsunami .....	9
1. The Economic Issue of Double-Loans .....	10
1.1 Defining Double-Loans .....	10
1.2 An Underexamined Phenomenon .....	13
1.3 Aspects of Double-debt Despair .....	14
2. Law and Policy Responses .....	22
2.1 Emergency Relief: Shelters and Temporary Housing .....	24
2.2 Empowerment: Legal Counselling and Public Informa- tion .....	26
2.3 Private Autonomy: Loan Deferments .....	29
2.4 Bailout: Debt Factoring .....	31
2.5 Bankruptcy: Private Liquidations .....	32
2.6 Contracts: Earthquake Insurance .....	36
2.7 Deregulation: Consumer Credit .....	37
2.8 Charity: Private Benevolence and Public Distribution .....	38
2.9 Social Welfare: Housing Aid, Government Loans and Subsidies .....	40
3. Disaster Recovery and Social Justice .....	45
3.1 Success and Failure in Providing Housing .....	46
3.2 Refusal of Loan Write-offs, Assistance to Creditors, and Half-hearted Debt Relief .....	51
3.3 A Japanese Discourse on Disaster Justice .....	53
3.4 Domain-contingency of Distributive Disaster Justice .....	57
3.5 Avoidance of Blameworthiness and Limitations of Rectifi- catory Disaster Justice .....	60
3.6 Challenges for Victim-centred Approaches to Social Di- saster Justice .....	63
3.7 Prospects: A Victimless Approach to Disaster Justice .....	69

Epilogue: Disaster Risk Financing in the Anthropocene .....78

Japanese Statutes (in Order of Enactment) .....81

Japanese Terminology .....83

Tables and Figures .....86

Bibliography .....87

## PROLOGUE: THE 11 MARCH TSUNAMI

On 11 March 2011, the Great East Japan Earthquake, followed by a tsunami and a nuclear accident, struck the Tōhoku-region of Japan. The triple catastrophe, named *Higashi-nihon dai-shinsai*, or 3/11, unleashed the strongest tremors ever recorded in the country and waves towering up 12 metres high, reaching altitudes of up to 40 metres and travelling ten kilometres inland. Though many were able to escape in the time between the earthquake and the coming of the wave, owing to sophisticated warning systems and swift evacuations, nearly 19,000 did not survive.<sup>4</sup> The event attracted global attention and, according to the World Bank, was the world's costliest natural disaster (prior to the Coronavirus Pandemic).<sup>5</sup>

The earthquake made houses collapse, burn down, or fall victim to ground liquefaction and slippage. However, it did not cause the majority of damage to buildings (*tatemono songai*). More destructive was the tsunami that hit wide swaths of the rural coastline, sweeping away thousands of houses. In total, more than one million buildings were recorded as destroyed or damaged. Three days into the catastrophe, the number of evacuees had risen to almost half a million people. Former homeowners, shopkeepers, farmers, and fishermen found themselves penniless in shelters and evacuation centres. 200,000 homes were lost entirely and over 300,000 people were rendered homeless, evacuated and dispersed across eight prefectures.<sup>6</sup> Many of them have become the victims of another disaster, which has received much less attention: the so-called “double-loan crisis.”

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<sup>4</sup>For an overview of the 3/11 disaster from the perspective of the natural sciences, see e. g. Satake (2014); for one from the social sciences, see e. g. Gill et al. (2013a) and Kingston (2013, pp. 198–220); from a legal perspective, see Butt et al. (2014) and Matsui (2020, 119–162). The sum of fatalities above includes missing persons and related deaths during evacuation in addition to 15,900 confirmed deaths, see *Nihon keizai shinbun* (2020).

<sup>5</sup>See e. g. Economist (2011); see also Ranghieri and Ishiwatari (2014).

<sup>6</sup>Out of 400,000 evacuees, 300,000 resided in temporary housing well into 2013, of which less than 100,000 remained in 2016, see Kozuka (2012, p. 4); Japan Times (2012), (2013); Ueda and Shaw (2014, pp. 210–211).

# 1. THE ECONOMIC ISSUE OF DOUBLE-LOANS

## 1.1 DEFINING DOUBLE-LOANS

By broad definition, double-loans are framed as credit to be “taken out by people or companies to rebuild their homes or other property and replace business equipment – while still having to repay loans taken out before the disasters”.<sup>7</sup> Double-loan problems (*nijū rōn mondai*) are, in essence, post-disaster problems of over-indebtedness and access-to-credit, rooted in pre-disaster obligations that were disaster-prone yet uninsured or underinsured. They occur in scenarios where mortgaged homes are destroyed or declared uninhabitable, where vehicles, fishing boats, machinery and other commodities bought on credit are swept away, and even where whole factories, serving as collateral, have vanished in the waves.<sup>8</sup> Dispossessed, often jobless and traumatised, victims find themselves in the desperate position of seeking new loans to restart their lives, while being unable to meet their previous obligations or offer any security. Companies that have made capital investments and are willing to restore their productive assets are facing similar issues and, eventually, bankruptcy.

In Japanese, both the terms “double-loan” (*nijū rōn*; *daburu rōn*) and “double-debt” (*nijū saimu*) are in use, distinguishing the phenomenon from common forms of personal over-indebtedness (*tajū saimu mondai*), a widespread issue in post-bubble Japan. Further to the broad definition above, it must be noted that, in many cases, a second (i. e. double) loan is not even available, when indebted victims are rejected outright by financial institutions. It follows that double-loan problems are twofold, with some disaster victims facing double-indebtedness and others denied access to credit. Moreover, new loans are rarely equivalent to the previous outstanding loans<sup>9</sup>, as the adjective “double” might suggest.

Although forms of post-disaster indebtedness constitute a phenomenon observable world-wide and residential property-ownership is a crucial substitute for social security not only in Japan,<sup>10</sup> certain aggravating

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<sup>7</sup> Japan Times (2013).

<sup>8</sup> See e. g. Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, p. 126).

<sup>9</sup> See e. g. Ranghieri and Ishiwatari (2014, p. 274); JFBA (2011c).

<sup>10</sup> On Japan, see Hirayama and Hayakawa (1995, p. 230); Hirayama (2010); similar problems occurred, for example, in New Orleans in the wake of Hurricane Katrina, although not referred to with a special term.



Figure 1:  
Due to the high cost of land and construction of buildings in Japan, many of the 200,000 buildings destroyed by the 3/11 disaster still had mortgages on them. Image courtesy of and published by Iwaki meisei daigaku shinsai akaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no ki'oku 2 [Memories from Hamadōri 2] (2015, p. 13).

factors make the case at hand particularly stark and instructive. This is not only due to the unprecedented amount of damage done by the 3/11 tsunami. It is also due to the exceptional scarcity of inhabitable land in mountainous Japan and a general lack of homes (*jūtaku busoku*), increased by new building restrictions in the ravaged areas, and paired with some of the world's highest real estate prices.<sup>11</sup> The mortgage market, with a volume of around JPY 180 billion, which is crucial to Japan's financial economy and was widely regarded as threatened by a domino effect from the financial institutions, some of whose "operational bases were almost entirely destroyed by the disaster."<sup>12</sup>

As we will show, double-loans harm disaster victims, delay reconstruction, and accelerate depopulation. They play a major role in disaster-induced defaults, denial of new credit, insolvency, foreclosure, and promoted various forms of homelessness as well as long-term, long-distance displacement. Due to the absence of sufficient private insurance and public compensation, double-loan problems have come to be regarded as entrenching social inequality, constituting a significant threat to regional financial institutions, and posing considerable obstacles to overall disaster recovery, for which even the Japanese Prime Minister has acknowledged an urgent "need for some creative ideas."<sup>13</sup> Double-debt disasters recur, and worse, are likely to increase in frequency, magnitude, and spread – far beyond Japan.

Double loans as a Compound  
Social and Financial Crisis

Double-loan (二重ローン) or double-debt (二重債務題) problems are:

- issues of post-disaster indebtedness and access to credit,
- affecting individuals, companies and their creditors,
- rooted in uninsured risks to disaster-prone collaterals.

They can affect:

- mortgaged homes, shops, factories, ships,
- instalment-bought vehicles, consumer goods, and
- pledged commodities or industrial equipment.

They regularly lead to:

- denial of access to new loans for repairs or rebuilding,
- delaying demolition, reconstruction, and relocation,
- promoting joblessness, homelessness, social inequality,
- triggering defaults, bankruptcies, and threatening financial institutions,

... thereby prolonging disaster impact and jeopardizing economic recovery.

Figure 2: Synopsis of the causes and consequences of double-Loan issues

<sup>11</sup> While a new home is said to cost the equivalent of three years' salary in the USA, the figure is five to eight years in Japan, for figures, see part 2.9; see also generally Hirayama and Hayakawa (1995, p. 215).

<sup>12</sup> Ranghieri and Ishiwatari (2014, p. 275).

<sup>13</sup> Prime Minister Naoto Kan, as cited by Shozaburo Jimi, Minister of Financial Services, see Financial Services Agency (2011b).



## 1.2 AN UNDEREXAMINED PHENOMENON

Despite its seriousness and an abundance of Japanese scholarship and media coverage, this pressing issue has not been investigated in western scholarly writing.<sup>14</sup> Not only the wide range of law and policy measures deployed, but also the complexities of addressing the crisis in a socially just, yet feasible manner, remain unexamined.

Therefore, we follow three research questions: Firstly, from a practical perspective, we investigate the case of Japan's double-loan crisis to help tackle future disaster-related indebtedness and homelessness. This is equally important in developed countries with high home-ownership rates, such as the USA and in most of the EU, as well as in developing countries, such as in South Asia, where micro-credit is in use.<sup>15</sup> Secondly, and from a descriptive perspective, we strive to identify and analyse the moral concepts and ideological notions of distributive and rectificatory justice that underlie Japanese governance of catastrophic risk. Thirdly, from a prescriptive perspective and most intriguingly, we address the challenges of disaster justice surrounding this crisis, such as whether the Government should indemnify victims who failed to take precautionary measures, e. g. earthquake insurance, at the expense of other victims who were more risk-averse, or society at large. These questions are truly interdisciplinary in nature, falling between law, moral philosophy, economics, sociology, and the cross-cutting fields of disaster studies, as well as the planning, building and housing literature, and we seek to address them by drawing upon all of these fields.

As a study of disaster response directed at the financial recovery of private households, this short book also contributes to the literature covering the fiscal or corporate dimensions of disaster risk financing.<sup>16</sup> At first, it will introduce the difficult situation of double-loan victims from a social and economic perspective, focussing on residential loans (parts 1.1

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<sup>14</sup>The only exception being Weitzdörfer and Beard (2019) and Weitzdörfer (2020, pp. 315–317), which contain pre-published / translated segments of this book. Indeed, some Japanese commentators point out that the issue has not been fully grasped even in Japan. As the only examples of Japanese scholarship in English, see Kabashima (2012, pp. 13–15); two paragraphs in Wakabayashi et al. (2011); one paragraph in Umeda (2013, pp. 18–19); one paragraph in Cho (2014, p. 171); a box in Ranghieri and Ishiwatari (2014, pp. 274–275); and Matsui (2020, 125–127, 144–146). Through the lens of insolvency law, guidelines stipulated for out-of-court settlements with double-loan victims have been analysed in detail by Steele and Jin (2012). For a first overview in Japanese, see Adachi (2011).

<sup>15</sup>See Kumar, T. S. Anand and Newport (2005); comparatively on the law of debt around the world, see Niemi-Kiesiläinen et al. (2009).

<sup>16</sup>For a recent example, see Kamesaka and Waldenberger (2019).

and 1.3). By way of doctrinal analysis, it then sets out the broad array of law and policy solutions tackling disaster-induced debt and homelessness launched by governmental and non-governmental actors (parts 2.1 to 2.9). On this basis, and to answer the first research question, it seeks to assess the strengths and weaknesses of the countermeasures in terms of their practical adequacy to prevent and mitigate hardship, namely by means of providing housing and debt relief (3.1 and 3.2). To answer the second research question, we critically examine disaster debt in Japan's law-, finance- and policy-oriented discourses (3.3), particularly on the degree to which society should accept financial responsibility for disaster victims in the world's most earthquake-prone country. The way in which burdens of disaster risk and recovery are shared between debtors, creditors and the government lays bare contradicting normative concepts of disaster justice, disaster capitalism, and social values towards victims (3.4). Addressing the third research question, we demonstrate the impossibility of achieving disaster justice through retrospective, victim-centred approaches in the wake of a complex disaster (3.5, 3.6). We conclude by arguing that an alternative, prospective approach, based on preventing the snowballing of disaster damages hampering reconstruction and recovery, may represent a better way forward in allocating resources following major disasters (3.7).

### 1.3 ASPECTS OF DOUBLE-DEBT DESPAIR

As a basic fact, rebuilding requires financing, and as such is often shied away from by victims already in debt.<sup>17</sup> According to estimations by the Financial Services Agency (*Kin'yū-chō*, FSA), "disaster-hit firms and individuals have around \$7.2 billion in loans outstanding."<sup>18</sup> As a result, many of those affected are reportedly "forced to relinquish self-help rebuilding projects because of 'double-loan' problems."<sup>19</sup> This also constitutes a difficult issue in the process of moving back to permanent housing in line with community relocation plans,<sup>20</sup> increasing the challenge for local authorities to provide affordable residences<sup>21</sup> and contributing to the outflow of population.<sup>22</sup> In other words, "the crushing burden of

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<sup>17</sup> Ohira and Chiba (2011); on rebuilding, see generally Daly and Feener (2016).

<sup>18</sup> Wakabayashi et al. (2011).

<sup>19</sup> Cho (2014, p. 171).

<sup>20</sup> Kitamura (2011, p. 57, authors' transl.); Kabashima (2012, p. 13).

<sup>21</sup> See generally Gill et al. (2013b, pp. 9–11); Godzik (2013); Ueda and Shaw (2014).

<sup>22</sup> See e.g. Cho (2014, p. 170).

debts, along with damage from the quake, (...) result in a vicious circle that will further exhaust affected areas.”<sup>23</sup>

At the heart of the crisis in Japan lay the ruinous loss of home-ownership, “which, against a background of continually rising land prices and inadequacies in the country’s social-security system, [had] taken on the character of wealth formation and a substitute for social security”.<sup>24</sup> Here, collateralised debt in tsunami-prone areas constituted a specific kind of pre-disaster vulnerability of physical assets, crystallising into social vulnerabilities of homelessness and over-indebtedness for borrowers, as well as economic loss in terms of credit defaults for lenders.

Accordingly, Japanese politicians and scholars agreed that “an adequate measure against this issue is necessary for reviving the economic and social life (...) economic revival and city reconstruction.”<sup>25</sup> Equally, the Japan Federation of Bar Associations (*nichiben-ren*, JFBA), representing the country’s licensed attorneys, expressed increasing concerns that “the loan problem not only forces disaster victims to restart in the red, it is also a serious problem influencing the business of regional financial institutions.”<sup>26</sup> It can therefore be concluded that, three decades after the bad-loan problems of the burst bubble, the collapse of the *jūsen* mortgage lending companies, the economic shock of 3/11, and in addition to ever-growing sovereign debt, double-loans presented yet another kind of domestic financial crisis for Japan.

Double-loan issues re-emerged after the 2016 Kumamoto Earthquake,<sup>27</sup> and had already been observed in the aftermath of the devastating Great Hanshin Awaji (Kobe) Earthquake of 1995 and the Chūetsu (Niigata) Earthquake of 2005, where many of the more than 300,000 homeless faced difficulties relocating from damaged homes and unsafe areas due to financial hardships attributed to double-loans.<sup>28</sup> In Kobe, where housing

<sup>23</sup> Katō (2013). On the economic problem and some solutions, see Tohoku University Graduate School of Economics Regional Industry Reconstruction Research Project (2012, pp. 288–310).

<sup>24</sup> Hirayama and Hayakawa (1995, p. 230); see also Hirayama (2010).

<sup>25</sup> Kabashima (2012, p. 8, p. 13); see also Japan Press Weekly (2011b); Wakabayashi et al. (2011).

<sup>26</sup> JFBA (2011a, p. 63, authors’ transl.); see also the detailed qualitative and quantitative analyses of the resulting problems and solutions for regional financial institutions by Torihata (2012, pp. 201–207) and Uchida et al. (2012), using company- and bank-level micro-data.

<sup>27</sup> Chiba (2016).

<sup>28</sup> Ōno (1996, p. 27); Hirayama (2000, p. 125); Ishikawa et al. (2007); Murosaki (2013, p. 110); on the damaged buildings and outstanding housing loans see also West and Morris (2003); Sawada and Shimizutani (2008).



Figure 3:

The replacement of thousands of instalment-bought vehicles caused double-loan issues just as any other lost assets purchased on credit. Where trucks were essential for business, or where rural commuting required private cars, denial of access to credit for new means of transportation can easily lead to economic ruin. Image courtesy of and published by Iwaki meisei daigaku shinsai ākaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no ki'oku [Memories from Hamadōri] (2014, cover page).

represented over 95 % of the total damage to buildings,<sup>29</sup> and where an estimated 15,000 homes were lost with a mortgage still on them, the reconstruction of condominiums was often hindered by outstanding loans, further exacerbated by the loss of asset value after the burst of the Japanese economic bubble.<sup>30</sup> At the time, in cases where loans were secured by hypothecs (*teitō-ken*), the common means of real property security,<sup>31</sup> their deletion from the register, today pursuant to art. 57 of the Real Property Registration Act,<sup>32</sup> required strict observance of formalities.<sup>33</sup> Thus, double-loans not only caused deadlocks in reconstruction,<sup>34</sup> but also made demolition and clearing enormously cumbersome.<sup>35</sup>

In the aftermath of the 2011 tsunami, victims facing double-loans were a vulnerable group “unable to rebuild their lives through their own efforts”.<sup>36</sup> Many, but not all the double-loan victims were among those evacuated (*hinan-sha*), a bigger group also including those evacuated due to the nuclear accident at the *Fukushima Dai’ichi* Nuclear Power Station (*higai-sha*), which is distinct from the group of those exclusively affected by the natural disaster (*hisai-sha*).

The diversity of double-loan scenarios and victims makes calculating the number of affected victims anything but easy: Over 300,000 people remained evacuees by the end of 2012, and according to surveys, nearly one in five sought advice on loans.<sup>37</sup> Out of these, according to the *Wall Street Journal*, “20,000 individuals [are calculated to be so highly indebted that they] are at risk of bankruptcy.”<sup>38</sup> With regards to defaulting home

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<sup>29</sup> Hirayama (2000, p. 115); Johnson (2007, p. 444).

<sup>30</sup> Ōno (1996, p. 27); Murosaki (2013, p. 110); and Hirayama (2012), who concludes that “almost all households that purchased a dwelling within at least the past two decades have experienced devaluation in their properties, and an increasing number of homeowners have been trapped in negative equity.” In addition, in the highly urbanised areas affected, disagreements on the disposition of land between multiple owners of damaged condominium complexes had to be overcome legally, West and Morris (2003).

<sup>31</sup> See Matsuoka (2011, p. 627).

<sup>32</sup> Law No. 123/2004 (*Fu-dōsan tōki-hō*).

<sup>33</sup> Ōno (1996, p. 27); Yamanome (2012).

<sup>34</sup> Murosaki (2013, p. 110).

<sup>35</sup> Ōno (1996, p. 27); Yamanome (2012).

<sup>36</sup> Also Cho (2014, p. 171).

<sup>37</sup> Surveys cited in part 2.2; though most elderly Japanese have high savings, according to national statistics of the same year, 53.5 % of workers’ households were in debt, see Ministry of Internal Affairs and Communications, Statistics Bureau (2013, p. 149). Hence, the number of evacuees suffering from pre-disaster debt may have been as high as 100,000.

<sup>38</sup> This is an unsourced estimation cited from Wakabayashi et al. (2011).



Figure 4:  
Double-loan issues not only hamper repair or relocation, but also demolition. A building in Toyoma, Iwaki City, marked for demolition, with the word “destroy!” (*kowashite*). Image courtesy of and published by Iwaki meisei daigaku shinsai akaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no k’oku [Memories from Hamadōri] (2014, p. 24).

loans, an estimated 8,000 to 10,000 estates concentrated in the tsunami-stricken coastal strips are said to have defaulted on loans.<sup>39</sup>

Given that 66 % of all Japanese were homeowners in 2011, 80 % of units were owner-occupied in rural areas, assumedly each housing the national average of 2.5 people,<sup>40</sup> up to 30,000 people are likely to have been affected in the area. This implied a population of “latent homeless”, “hidden homeless”,<sup>41</sup> and internally displaced people (IDP) in temporary accommodation without the financial means of moving onwards, which was greater than Japan’s official total number of homeless people prior to the disaster.<sup>42</sup>

Another manifestation of the double-loans crisis is that, according to media reports, Japan’s notorious consumer finance companies (*sarakin*) and unregistered black-market moneylenders (*yami-kin’yū*) have been actively taking advantage of disaster victims unable to obtain further loans from legal financial institutions.<sup>43</sup> This has further increased the financial burden of these victims, as evidenced by surveys of debtors,<sup>44</sup> and there has been a surge of complaints to the National Consumer Affairs Centre (*Kokumin seikatsu sentā*, NCAC). By June 2011, large-scale black-market unsecured moneylending had become apparent in the disaster zone, at usurious interest rates exceeding the statutory cap of 15 % to 20 %, art. 1 para. 1 Interest Limitation Act,<sup>45</sup> punishable with imprisonment under art. 5 Capital Subscription Act<sup>46</sup> and under various provisions of the Money Lending Business Act.<sup>47</sup>

As high-interest loans of this kind are illegal in Japan and provided outside of the law, they are also more dangerous, traditionally involving strong-arm debt-collection and often conducted by organised crime groups (*bōryoku-dan*) or persons related to them. Well into 2012, there

<sup>39</sup> Japan Times (2012); Japan Times (2013).

<sup>40</sup> Ministry of Internal Affairs and Communications, Statistics Bureau (2013, p. 13).

<sup>41</sup> Okamoto and Bretherton (2012); implying a functional definition relying on a more literal and thus wider definition of “homelessness” than the one used by the Government. This definition is adopted for this book.

<sup>42</sup> Okamoto and Bretherton (2012) cite government figures suggesting that in Japan’s major cities, 16,000 people “sleep rough.” For a different number (25,000) and various categories of homelessness, see Iwata (2007, pp. 142–144); more broadly on the ways of social exclusion of the poor in contemporary Japan, see Iwata and Nishizawa (2008); see also Sapat and Esnard (2017).

<sup>43</sup> See e.g. Mainichi Daily News (2011).

<sup>44</sup> Dōshita (2012, p. 4).

<sup>45</sup> Law No. 100/1954 (*Risoku seigen-hō*).

<sup>46</sup> Law No. 195/1954 (*Shusshi no ukeire, azukari-kin oyobi kinri-tō no torishimari ni kansuru hōritsu*).

<sup>47</sup> Law No. 32/1983 (*Kashikin-gyō-hō*).



were reports of loan sharks misleading disaster victims by disguising their activities as disaster relief in Iwate Prefecture, while others targeted financially struggling small and medium enterprises (SMEs) with usurious lending practices commonly known as *shōkō rōn*.<sup>48</sup> Worsening the situation, some victims “erroneously [used] their insurance coverage or relief money to repay debts or take out new loans,”<sup>49</sup> even though claims for excessive interest may be deemed void under the laws outlined above.

As in Kobe, post-disaster inequalities, widening social disparities and polarisation due to debt and homelessness are recurring phenomena.<sup>50</sup> Elderly victims, often referred to as the most numerous vulnerable social group in Japan, find themselves in the least fortunate position. This is due to both their reluctance to take financial risks in the absence of successors to their businesses<sup>51</sup> and the reluctance of credit institutions to advance further credit in light of their age.<sup>52</sup> One case introduced on national television exemplifies this situation as follows:<sup>53</sup>

*One couple in their 60s interviewed by NHK lost their coffee shop to the tsunami in Kama’ishi, [Iwate] Prefecture. They need JPY 30 million to rebuild and though [in theory] they can get a loan because they’re disaster victims, first they would have to pay off the remaining balance on the loan they took out for the first coffee shop. One of the show’s hosts asked the financial planner if a bank would really lend money under such circumstances. It was obviously a rhetorical question because she didn’t answer it.*

For some, this deadlock was indeed deadly: as one author noted, “the elderly were forced to continue with self-recovery efforts because they were unable to obtain additional loans from banks because of their age. The disaster-related deaths of 1,632 people suggest that many victims simply lost hope.”<sup>54</sup> Other authorities have also noted high rates of debt-

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<sup>48</sup> See Dōshita (2012, p. 5). Inter alia, such activities may constitute violations of art. 16 para. 2 nos. 2, 4 of the Money Lending Business Act, which ban solicitations that target persons lacking repayment capacity and that induce recipients of public benefits to borrow.

<sup>49</sup> Japan Times (2012); see also Mainichi Daily News (2011).

<sup>50</sup> See Hirayama (2000, pp. 117–118); Johnson (2007, p. 445).

<sup>51</sup> Wilhelm and Delaney (2013, p. 114, p. 122).

<sup>52</sup> Cho (2014, p. 171).

<sup>53</sup> Cited from Brador and Tsubuku (2011); on “the debt hurdle” for a farmer who lost his wife, three children, and seeks to replace his wrecked greenhouse and salt-soaked rice paddies, see Wakabayashi et al. (2011).

<sup>54</sup> Cho (2014, p. 171). 638 deaths, the majority of the so-called “disaster-related deaths” (*shinsai kanren-shi*) confirmed, were attributed to “physical or mental fatigue caused by life in evacuation shelters” and temporary housing, namely as “solitary deaths” (*kodoku-shi*) – note that this number excludes several



suicide amongst people living in temporary housing,<sup>55</sup> which have been causally attributed to both cultural and institutional factors, such as insufficient counselling services and formerly deficient insolvency law and lending regulation.<sup>56</sup> National disaster-counselling (*Shinsai hōterasu daiyaru*) was initiated by means of the Act Concerning Special Legal Aid by the Japan Legal Support Center to assist Victims of the Great East Japan Earthquake,<sup>57</sup> designed “to help solve the legal trouble stemming from the earthquake, such as double loans”, officially in an effort “to prevent suicides.”<sup>58</sup>

While public and political attention faded, victims’ hopelessness lasted, and as the elderly lost hope of being able to own a home ever again, many of the younger gave up family plans, leading to break-ups and divorces. Thus, immeasurable “gaps between economic indices and victims’ actual situations” opened up.<sup>59</sup> Double-loan issues persisted<sup>60</sup> for the better half of the decade and still “hinder the rebuilding of people’s lives and businesses in the northeast.”<sup>61</sup> Next, let us explore whether this was in spite or rather because of the government’s responses.

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hundred deaths “caused by moves to evacuation shelters” from the immediate aftermath of the catastrophe, Ichiseki (2013), Inaba (2011, p. 26); Ueda and Shaw (2014, p. 215).

<sup>55</sup> Johnson (2007, 445, 454); see also Edgington (2010, p. 87); on the correlation between post-disaster housing and mental health, see further Sasaki et al. (2018).

<sup>56</sup> See West (2003) and Weitzdörfer (2020), respectively.

<sup>57</sup> Law No. 6/2011 (*Higashi-nihon dai-shinsai no hisai-sha ni tai suru enjo no tame no nihon shihō shi’en sentā no gyōmu no tokurei ni kan suru hōritsu*).

<sup>58</sup> Government of Japan, Cabinet Office (2012), chapter 3, sections 7–8.

<sup>59</sup> Cho (2014, p. 171).

<sup>60</sup> Cho (2014, p. 171).

<sup>61</sup> Japan Times (2012); Japan Times (2013).

## 2. LAW AND POLICY RESPONSES

The Great East Japan Disaster confronted Japan, a country under a firmly-established rule of law, with the need to resolve numerous legal issues.<sup>62</sup> Surveys with 3/11 victims by legal professionals suggest that 40 % of those affected encountered disaster-related legal problems within 18 months,<sup>63</sup> and disaster laws and regulations are a particularly important practical concern for victims.<sup>64</sup> Already before the disaster struck, the country had at least 52 pieces of national legislation in place solely for managing natural disasters,<sup>65</sup> likely constituting the world's most detailed national disaster law.<sup>66</sup> Within the first three months following the disaster, an additional 20 relevant bills (*hō'an*) were introduced, and 39 cabinet orders (*seirei*) were passed by the Central Government alone.<sup>67</sup>

Problems in need of resolution ranged from specific questions such as the applicability of force majeure, the quantification of insurance claims,<sup>68</sup> tracking evacuees' residences and facilitating formal requirements (e.g. in respect of lost documents, the death of missing persons or the termination of lease contracts on destroyed estates), the extension of statutes of limitation (e.g. for renouncing debt-burdened inheritances, administrative or civil actions),<sup>69</sup> the measurement of boundaries of land after the crustal shift, the deletion of destroyed real property from registers,<sup>70</sup> to broader policy and fiscal questions, such as cutting taxes to spur economic recovery while raising national impositions to offset recovery bud-

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<sup>62</sup>On the Government's legislative, organisational, administrative, and fiscal responses, see generally Inaba (2011); and in English, Umeda (2013).

<sup>63</sup>Nihon shihō shi'en senta hōterasu [Japan Legal Support Center Hōterasu] (2013, p. 5), based on interviews at home, with 1,598 out of 1,650 responding. The rate of disaster victims encountering legal problems went up by 14 % in comparison with 2008.

<sup>64</sup>JFBA (2011a, p. 60) and the results reproduced in Figure 7 below; Leflar et al. (2012).

<sup>65</sup>See the timeline and list in Government of Japan, Cabinet Office (2011a, pp. 4–7).

<sup>66</sup>On disaster law, see generally Lauts (2016).

<sup>67</sup>See Inaba (2011, p. 25 for numerous examples and further references).

<sup>68</sup>See Kozuka (2012); Yamamoto (2011).

<sup>69</sup>See Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 95–98); Umeda (2013, pp. 16–17; p. 24).

<sup>70</sup>Yamanome (2012).

gets,<sup>71</sup> reviewing the earthquake insurance system,<sup>72</sup> and overall reconstruction planning.<sup>73</sup> All these issues emerged alongside the legal resolution of the nuclear crisis at the *Fukushima Dai'ichi* Nuclear Power Station, compensation for victims of which, legally understood as the “largest civil liability case in ... history,”<sup>74</sup> follows its own rules of tort law and will be dealt with later for purposes of comparison.

Both governmental and non-governmental actors, national and regional, had soon become well aware<sup>75</sup> of the scope of the challenges relating to housing, asset replacement and financial recovery regarding indebted and homeless tsunami victims. As only few of the government's measures of disaster response and recovery were exclusively directed at double-loan victims, in the following subsections, we will consider how the government responded to directly or indirectly, materially or immaterially support disaster victims facing double-loans, across the areas of: disaster management, real property-, debtor-creditor- and insolvency-law, banking regulation, state aid, social welfare, and charity.<sup>76</sup> All approaches are summarized in Figure 5.

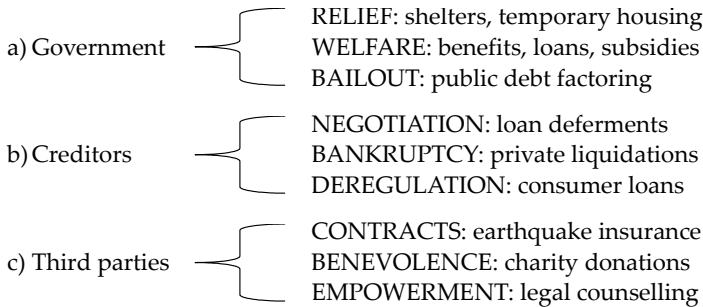


Figure 5:  
Pathways to resolving debtors' double-loan problems and stakeholders involved.

<sup>71</sup> Cho (2014, pp. 165–166); Umeda (2013, p. 20).

<sup>72</sup> Kozuka (2012)

<sup>73</sup> See e. g. Kabashima (2012, pp. 10–13).

<sup>74</sup> Weitzdörfer (2014); see also Feldman (2013).

<sup>75</sup> Dōjima hōritsu jimusho [Dōjima Law Office] (2011, p. 128).

<sup>76</sup> Note that the implementation of numerous special laws and measures (*tokubetsu rippō*, *tokubetsu sochi*) is still ongoing; part of them are addressed at all disaster victims indiscriminately and included for comprehensiveness, while, in light of regional differences, this overview does not claim to be exhaustive.

## 2.1 EMERGENCY RELIEF: SHELTERS AND TEMPORARY HOUSING

To aid victims of the triple disaster, the Central Government (*chūō seifu*) and the local public entities (*chiho kōkyō dantai*), according to their responsibilities set forth in the Disaster Countermeasures Basic Act,<sup>77</sup> implemented emergency measures, some of which can be categorized as one of the relief activities listed in art. 23 para. 1 No. 1–10 of the Disaster Relief Act.<sup>78</sup> After immediate search and rescue, evacuation, medical treatment, and the provision of basic goods for life,<sup>79</sup> accommodation became paramount for the victims in the chilly climate of north-eastern Japan.

Survivors rendered homeless by the tsunami or the earthquake assembled in emergency shelters and evacuation centres (*shinsai hinan-jo*).<sup>80</sup> Though the maximum statutory seven-day duration of stay in the often-overcrowded shelters could not be met in practice, gradually, accommodation was provided by the government,<sup>81</sup> in accordance with arts. 2; 23 para. 1 No. 1 of the act.<sup>82</sup>

Such accommodation included the procurement and erection of over 52,000 prefabricated (*purehabu*), trailer-like units of emergency temporary housing (*ōkyū kasetsu jūtaku*) as well as provisional relocation to private rental apartments, government employees' housing, local governmental public housing, employment promotion housing, hotels and even hot-spring (*onsen*) inns. These were allocated to over 72,000 occupants, partly by lottery, by way of group relocation (*shūdan iten*), and according to tough eligibility requirements, very much dependent on the municipality in charge (see also Figure 13 far below).<sup>83</sup> Inter alia, this was fiscally

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<sup>77</sup> Law No. 223/1961 (*Saigai taisaku kihon-hō*); see Inaba (2011, pp. 22–23); Umeda (2013, pp. 4–6).

<sup>78</sup> Law No. 118/1947 (*Saigai kyūjo-hō*); see Umeda (2013, pp. 6–7); for a recent critical analysis of the act, see Tsukui (2019).

<sup>79</sup> Government of Japan, Cabinet Office (2011b, pp. 3–6); critically Kabashima (2012, pp. 8–10).

<sup>80</sup> These are usually schools or community centres. For captivating accounts, see e.g. Gill et al. (2013a); on the distinction between emergency and temporary shelters, temporary housing, and permanent housing, see e.g. Johnson (2007, pp. 436–437); Matsui (2020, pp. 121–123).

<sup>81</sup> On the selection of victims and the process of relocation, see Kitamura (2011, p. 55).

<sup>82</sup> See Kitamura (2011, pp. 46–51) for legal details and eligibility requirements.

<sup>83</sup> Government of Japan, Cabinet Office (2011b, p. 7); see again Kitamura (2011, pp. 53–57). Due to vague national criteria, eligibility for temporary housing significantly differed among the municipalities, whereas after the Kobe Earthquake, priority for placement was explicitly given to the elderly, the disabled, single parents, and low-income households, Johnson (2007, p. 445); on Japan's shelter strategy, see also Faure Walker and Crawford (2017).



Figure 6:  
Managing long-term, wide-area coastal mass-displacement in a fair, efficient, and effective way is one of the many challenges which make Japan's experiences with the 3/11 disaster instructive globally – especially considering the increase of climate migration and coastal resettlement necessitated by rising sea levels and storm surges expected over the 21st century. A shelter in Ōkuma Town, Fukushima prefecture, image courtesy of the town of Ōkuma, as published by Iwaki Meisei Archive Project, *Hamadōri no ki'oku 3* [Memories from Hamadōri 3] (2015, p. 19).

achieved by the first of three supplementary budgets,<sup>84</sup> accepted by the Diet on 2 May 2011 amounting to JPY 4.15 trillion.

In addition, equipment, materials, and funding to maintain livelihoods was distributed pursuant to No. 7 of said paragraph, and ad hoc support was granted by the municipalities for emergency repairs to housing, pursuant to No. 6 of said paragraph. As in Kobe, a reconstruction fund set up after the catastrophe allows for support for the reconstruction of housing (*jūtaku saiken shi'en*) by providing subsidised low-interest loans for reconstruction, lease, etc.,<sup>85</sup> accompanied by very limited relief for repairs, reconstruction, and rent. This was provided for in new legislation known as the Act on Support for Reconstructing Livelihoods of Disaster Victims.<sup>86</sup> Yet in practice, money for repairs was limited to a mere JPY 520,000, only to be used for rooms indispensable for daily life, e. g. living rooms, kitchens and bathrooms, subject to household income as well as damage sustained, and what is more, unavailable to all those seeking to occupy temporary housing.<sup>87</sup>

In any case, the dull and lonely life in cramped temporary housing,<sup>88</sup> only up to 29.7 m<sup>2</sup> in size for a family (see Figure 12 far below), often remotely located,<sup>89</sup> and in theory limited to two years pursuant to the Disaster Relief Act and an ordinance by the Ministry of Health, Labour, and Welfare (*Kōsei rōdō-shō*),<sup>90</sup> could not continue forever. Victims sooner or later had to turn to an assessment of their remaining assets and legal rights.

## 2.2 EMPOWERMENT: LEGAL COUNSELLING AND PUBLIC INFORMATION

Despite there being fewer lawyers in Japan than in most comparably developed countries, several organisations and many legal professionals offered legal counselling to disaster victims free-of-charge or at reduced rates. At

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<sup>84</sup> For an overview, see OECD (2013, p. 64).

<sup>85</sup> Aota et al. (2010, p. 34); Edgington (2010, p. 87); Aota (2011, pp. 91–92); Ōno (1996, p. 27); Murosaki (2013, p. 110).

<sup>86</sup> Law No. 66/1998 (*Hisai-sha seikatsu saiken shi'en-hō*); on the enactment and subsequent amendments, see Yagi (2007); Deguchi (2014); and part 2.9.

<sup>87</sup> For critical remarks, see part 3.1.

<sup>88</sup> See e. g. Ueda and Shaw (2014).

<sup>89</sup> Gill et al. (2013b, p. 10); on similar, recurring problems related to temporary housing after the Hanshin Earthquake and other disasters, see comparatively Johnson (2007, p. 435, pp. 444–445).

<sup>90</sup> Kitamura (2011, p. 49); Umeda (2013, p. 24). As was the case in Kobe, this period has been extended, see also Figure 13.

the forefront were NPOs and civic associations such as the Japanese Bar<sup>91</sup> and the Japan Legal Support Center (*Hōterasu*) with a free-dial service.

The practical relevance of double-loans in such consultations is supported and illustrated by field data gathered in the aftermath of 3/11.<sup>92</sup> Statistics compiled from the subject matter of 17,300 pro bono consultations with lawyers in onsite evacuation centres and through free telephone helplines by the JFBA (*denwa hōritsu sōdan*) demonstrate that among 24 identified legal concerns of disaster-victims, “the prevalence of consultations related to home loans, etc., is a common feature in all three disaster-affected prefectures of the Tōhoku region.”<sup>93</sup> This applies to Iwate Prefecture in particular, where the proportion of persons with lost homes was reported as high, and where one in five persons seeking advice inquired about residential and other loans (cf. Figure 7). Specifically, the association contends that, according to the surveys, “double-loan problems have been the second most important topic of consultation in evacuation centres in Miyagi Prefecture, where 65 % of debtors suffer from residential mortgages exceeding JPY ten million, and among the top five in the other prefectures.”<sup>94</sup>

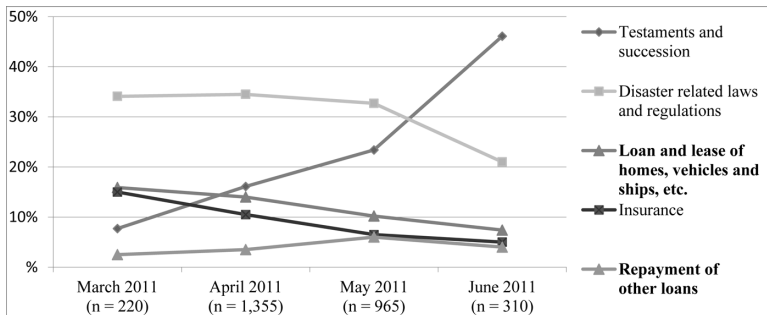


Figure 7: Topics of free legal consultations (*muryō hōritsu sōdan*; n) with disaster victims from Iwate Prefecture conducted by the JFBA in 2011, by the top five out of 24 topics, multiple topics possible.<sup>95</sup>

<sup>91</sup> Over 38,000 cases of free legal counselling relating to the earthquake were provided by attorneys at law as of March 2012, Okamoto (2012). For further statistics relating to free legal counselling, see Okamoto (2016).

<sup>92</sup> e.g. Leflar et al. (2012, p. 77, where double-loans are listed as two out of nine major concerns).

<sup>93</sup> JFBA (2011a, p. 59, authors' transl.)

<sup>94</sup> JFBA (2011a, p. 63, authors' transl.); for evidence of thousands of consultations on loans in Iwate Prefecture, see also Figure 5 in Okamoto (2012, p. 58).

<sup>95</sup> Reproduced in part from JFBA (2011a, p. 60, authors' visualisation and transl.).

The “repayment of other loans” also demonstrated in Figure 7, such as uncollateralized consumer credit, traditionally attributing substantially to private household debt in Japan, was of less immediate concern to victims, yet still outnumbered inquiries on rent, real estate, tax and most other matters. In absolute numbers, consultations on loans were highest in Miyagi Prefecture, with over 550 consultations in April 2011 alone, lower in Fukushima Prefecture, where negotiations with the nuclear power plant operator and its dispute resolution centre on nuclear damage played a distinctive role,<sup>96</sup> and lowest in Ibaraki Prefecture, where tsunami damage was lowest.<sup>97</sup> In summary however, the over 2000 individual loan-related consultations reported in total between March and June of 2011 fail to show the full scale of loan-related problems.<sup>98</sup>

As disaster victims were evacuated to sites all over the country, thousands have sought advice elsewhere, e.g. through the *Hōterasu* helpline (*Higashi-nihon dai-shinsai denwa sōdan*),<sup>99</sup> at the NCAC’s multiple debt counselling service (*Tajū saimu sōdan madoguchi*), at prefectural Consumer Affairs Centres (*Shōhi-sha seikatsu sentā*), at centres of the Japan Credit Counselling Organisation (*Nihon kurejitto kaunseringu kyōkai*), in pro-bono consultations with judicial scriveners (*shihō shoshī*), at ordinary law offices (*bengo-shi jimu-sho*), with public officials at regional finance bureaus (*zaimu-kyōku*), or even the Money Lending Industry Counselling and Dispute Resolution Centre (*Kashikin-gyō sōdan funsō kaiketsu sentā*).<sup>100</sup>

Due to the serious strains on the victims, however, legal counselling alone was insufficient to meet the extensive needs of double-loan victims. Many may have relied on self-help, resorting to the numerous leaflets and guidebooks published, e.g. by judicial scriveners,<sup>101</sup> law-

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<sup>96</sup> See e.g. Feldman (2013, pp. 350–354); for critical remarks, see part 3.5 and part 3.6 a).

<sup>97</sup> JFBA (2011a, pp. 59–61). In Ibaraki, the southernmost of the four affected coastal prefectures, the tsunami inflicted less devastation, and no similar statistics are available.

<sup>98</sup> This is not only due to their limited timeframe, as specific inquiries about public benefits and relief for home-owners may have been attributed to the share of consultations on “laws and regulations.” In addition, a large proportion of the cases is likely not among those surveyed by the JFBA.

<sup>99</sup> Government of Japan, Cabinet Office (2012, chapter 3, p. 8). According to a survey of five telephone counselling services country-wide, carried out by *Hōterasu*, ten percent of a total of 12,646 legal inquiries involved loans or leases, *Nihon shihō shi’en senta hōterasu* [Japan Legal Support Center *Hōterasu*] (2011b, p. 4).

<sup>100</sup> See also Financial Services Agency (2011d).

<sup>101</sup> See *Nihon shihō shi’en senta hōterasu* [Japan Legal Support Center *Hōterasu*] (2011a, pp. 90–116).



yers,<sup>102</sup> the Bar<sup>103</sup> and the government, namely the FSA on consumer-credit and the National Police Agency (*Keisatsu-chō*, NPA) on loan-sharking.<sup>104</sup>

## 2.3 PRIVATE AUTONOMY: LOAN DEFERMENTS

Double-loans primarily are problems in debtor-creditor relationships. Although such matters are best handled by a lawyer, possibly due to a lack of time and money, or due to the lack of legal practitioners, thousands of debtors reportedly entered negotiations with their financial institutions directly.<sup>105</sup> This took place with or without the help of a special management committee on private liquidations. What were the reactions to such inquiries?

On the one hand, it can be said that the national financial institutions generally reacted swiftly and flexibly to assist disaster victims.<sup>106</sup> Citibank Japan, for instance, established special procedures and a toll free telephone line for customers in disaster areas, including a housing loan counter, and offered cash withdrawals and free replacements where cash cards or the traditional personal seals (*hanko*) were lost, as long as some kind of identification could be provided.<sup>107</sup> Consultations regarding mortgages were widely welcomed by banks. As the Minister of Finance noted with satisfaction, life-insurance companies were similarly proactive and flexible with their customers.<sup>108</sup> Within two months, eight regional banks in the three disaster-hit Tōhoku prefectures alone were reported to have granted over 10,000 loan deferments to illiquid disaster victims, amounting to several hundred billion yen.<sup>109</sup> The number of loans outstanding in this way was expected to grow once fisheries and agricultural cooperatives would be added – most affecting regional banks.<sup>110</sup>

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<sup>102</sup> E. g. Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011); Tsukui (2011).

<sup>103</sup> JFBA (2012a, p. 28 refers to an example).

<sup>104</sup> See Mainichi Daily News (2011); for an example of government advice for disaster-victims on home loans and loan-sharking, see Government of Japan, Government Advertising (2011, pp. 12–13, p. 15).

<sup>105</sup> See Ohira and Chiba (2011).

<sup>106</sup> For an overview of financial issues in the wake of the tsunami, see Sugisaka (2016).

<sup>107</sup> Citibank Japan (2011).

<sup>108</sup> See Kozuka (2012, pp. 7–8); Financial Services Agency (2011b).

<sup>109</sup> Ohira and Chiba (2011).

<sup>110</sup> Ohira and Chiba (2011).

Explicitly to mitigate double-loan problems, loans taken out by individuals as well as companies and stores in roughly equal proportions, were deferred, i. e. voluntarily and virtually unconditionally put under a state of forbearance. Repayment deadlines were rescheduled and postponed upon borrowers' requests after the FSA and the Governor of the Bank of Japan had called on lenders accordingly.<sup>111</sup> By extending the (post-Lehman) Act Concerning Temporary Measures to Facilitate Financing for SMEs, etc.,<sup>112</sup> the government created incentives for financial institutions by enhancing its credit guarantee system, also covering home-loans. Not left with many other choices, institutions were reported to have complied upon receiving a mere telephone call by borrowers, also refraining from charging default interest.<sup>113</sup> Finally, and to be fair, it has to be noted that Japan's regional banks had been offering very attractive interest rates to debtors already in the first place.<sup>114</sup>

On the other hand, most regional institutions and creditors were themselves direct or indirect victims of the disaster and overwhelmed by the situation.<sup>115</sup> It follows that many were hardly in an economic position to grant infinite debt freezes or interest concessions to affected individuals and corporations, let alone benevolent and generous acquittals of debt. The legality of voluntary write-offs would have been highly questionable considering the banks' fiduciary duties to their shareholders and depositors. As loan deferments help with old loans rather than with new loans, they had limited potential to solve double-loan problems. Lowering the credit standards for disaster-affected borrowers could have been an option, but would have required government support by guarantees or allowing high interest rates to offset the increased risk of default.

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<sup>111</sup> Ohira and Chiba (2011); Financial Services Agency (2011b); see also Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 116–119).

<sup>112</sup> Law No. 96/2009, which has now expired.

<sup>113</sup> Ohira and Chiba (2011). Such penalties are significant, as they may be as high as 40 % of the principal, or twice the maximum annual interest, art. 4 para. 1 of the Interest Limitation Act. Institutions might have similarly waived contractual rights to demand immediate repair of damaged real property from mortgagees.

<sup>114</sup> Serving predominantly local corporations, individuals, and public sector bodies, these 41 institutions offered long-term actual interest rates as low as 2.5 and 2.0 % on average in 2011 and 2012. The Shinkin banks, a total of 270 co-operative regional financial institutions, primarily serving SMEs and local residents, operated at similarly moderate rates of 2.8 and 2.4 %, respectively, see OECD (2013).

<sup>115</sup> See Steele and Jin (2012, pp. 47–48).

## 2.4 BAILOUT: DEBT FACTORING

Following public demands and political mobilisation for relief to companies affected by disaster-debt (*hisai saimu no kaihō*) by the Japanese Bar,<sup>116</sup> a regulatory package on double-loans for indebted companies was proposed by Ministers of the ruling Democratic Party of Japan (DPJ), backed even by the Communist Party (JCP),<sup>117</sup> establishing organisations for corporate debt factoring.<sup>118</sup> These public Industrial Reconstruction Organizations set up a second supplementary budget in five affected prefectures (*Sangyō fukkō kikō*), which was approved on 25 July 2011. It was funded by local financial institutions and the prefectures (*todō fuken*).<sup>119</sup> It offers partial or full waivers on pre-disaster obligations, yet exclusively for corporate, not personal, debts. Furthermore, such waivers are only available if the creditor is a financial institution or leasing corporation.<sup>120</sup> As a part of this first regulatory package, the government also asked the Japan Housing Finance Agency (*Jūtaku kin'yū shi'en kikō*) to waive mortgage repayments and to reduce its interest rates.

Due to a breakdown of deliberations between the DPJ and opposing parties, costing time across three diet sessions from May to November, a second system was started in March 2012, backed mainly by MPs of the conservative 'Liberal Democratic Party of Japan' (LDP)<sup>121</sup> and the FSA by means of the Double Loan Relief Act, mirrored in the wake of the 2016 Kumamoto Earthquake<sup>122</sup> and last revised in 2018.<sup>123</sup> Under the new law, a private corporation was established,<sup>124</sup> now competing with the prefectural public entities in winning clients and recruiting personnel.<sup>125</sup> Under

<sup>116</sup>JFBA (2011a, p. 64, 2011d, p. 11).

<sup>117</sup>Japan Press Weekly (2011b).

<sup>118</sup>See also Ohira and Chiba (2011); Ranghieri and Ishiwatari (2014, p. 275).

<sup>119</sup>Japan Times (2011).

<sup>120</sup>See also Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 127–128).

<sup>121</sup>To those unfamiliar with politics in Japan, it should be remarked that the LDP's name is potentially misleading, as it is neither very liberal (rather interventionist and conservative), nor democratic to the bone (rather relying on top-down decisions), nor a "party" in the European sense (rather its factions compete for power within). On differences in the crisis-management by the DPJ and the LDP, see generally Krauss (2013).

<sup>122</sup>Chiba (2016).

<sup>123</sup>The Great East Japan Earthquake Enterprise Revitalisation Support Organisation K. K. Act, Law No. 113/2011 (*Nijū rōn kyūsai-hō* or *Kabushiki gaisha higashinihon dai-shinsai jigyo-sha saisei shi'en kikō-hō*), last revised by Law No. 26/2018; see Claremont (2014, p. 86, p. 96) on how political tensions in the National Diet impeded relief efforts.

<sup>124</sup>For a comparison, see e. g. JFBA (2012a, p. 31).

<sup>125</sup>Japan Times (2013).

the scheme of the corporation, managed by bankers, lawyers and accountants, debtor companies are expected to repay reduced sums to a support organisation after it has purchased the outstanding loan claims against them.<sup>126</sup>

Since the easier corporate debt cases had already been dealt with, this politically-induced rivalry caused inefficiency, and rendered municipalities and banks “caught between requests from both sides to introduce new clients.”<sup>127</sup> As a result, debt purchases were “not advancing smoothly” and affected companies were unable to secure adequate funds for recovery.<sup>128</sup> The redundancies created, e. g. with different consultation centres and procedures, dampened reconstruction efforts, resulting in fierce criticism and calls for integration into a single entity.<sup>129</sup> However, and in contradiction to other comments,<sup>130</sup> even if these schemes had succeeded, they would still have excluded important classes of disaster-affected debtors, such as home owners, and only helped SMEs (and thus their banks).<sup>131</sup>

## 2.5 BANKRUPTCY: PRIVATE LIQUIDATIONS

Perhaps the most promising strategy forged for personal debtors was the stipulation of the Guidelines for Individual Debtor Private Liquidation,<sup>132</sup> creating a system of debt workouts referred to as allegedly “the first of its kind in Japan and (...) unprecedented even in the world.”<sup>133</sup> The guidelines constitute a procedural remedy put underway by legal practitioners and financial institutions: Under the auspices of the FSA and the Japanese Bankers Association, and again as a consequence of the JFBA’s swift and continuous mobilisation for a system of voluntary liquidations, non-judicial guidelines for private debt reorganisations (*saimu seiri*) were put in force in August 2011. The idea behind them was to avoid further bank-

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<sup>126</sup> See also Kabashima (2012, p. 13).

<sup>127</sup> Japan Times (2013).

<sup>128</sup> See Ando et al. (2013, p. 9).

<sup>129</sup> Japan Times (2013).

<sup>130</sup> See e. g. Ranghieri and Ishiwatari (2014, p. 275).

<sup>131</sup> For critical remarks, see part 3.6 c).

<sup>132</sup> Kojin saimu-sha no shiteki seiri ni kan suru gaidorain kenkyū-kai [Study group of the guidelines for individual debtor out-of-court workouts] (2011), for a detailed description and a translation, see Steele and Jin (2012); in Japanese, see Adachi (2011).

<sup>133</sup> Ranghieri and Ishiwatari (2014, p. 275).



Figure 8:

The loss of fishing boats, rafts, and industrial equipment, if instalment-purchased or serving as collateral, also caused double-loan issues. As ownership tends to be corporate and fishery is an important source of employment, more ambitious financial solutions were made available for big businesses than for smaller businesses and homeowners. Fishing vessel pushed atop a wharf pier in Onahama, Iwaki-City, Fukushima prefecture, image by Kunio Kaji, dated 26 March 2011, courtesy of and published by Iwaki meisei daigaku shinsai ākaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no ki'oku [Memories from Hamadōri] (2014, p. 10–11).

ruptcies,<sup>134</sup> also of individual entrepreneurs, beyond the 644 of such cases recorded in the first year alone.<sup>135</sup> In this way, the guidelines serve as a complement to the ordinary proceedings of bankruptcy (*hasan*) and civil rehabilitation (*minji saisei*),<sup>136</sup> from which they had been derived.

Accordingly, banks were expected to “partly or entirely give up their claims on housing and automobile loans if borrowers in disaster areas work out appropriate payment plans.”<sup>137</sup> For this, a so-called “Steering committee for the guidelines for individual debtor out-of-court workouts” and registered experts mediate between debtors and financial institutions to draw up a repayment plan upon debtor’s request and creditor’s consent.<sup>138</sup> The speed and flexibility,<sup>139</sup> the fact that such arrangements would not be recorded in debtors’ credit histories (*shin’yō jōhō*), thus they would not be black-listed, and the principle of the exclusion of guarantors’ debts were repeatedly praised as merits of the guidelines.<sup>140</sup> In addition, the rather hefty regular scale of legal fees is not applied, debtors may retain a cash allowance of JPY 5 million (over five times higher than in cases of insolvency), charity donations are exempt from seizure, and interest payments on loans may be subsidised by the prefectures under certain conditions.<sup>141</sup>

Nevertheless, problems were soon identified in relation to the ‘user-friendliness’ of the guidelines, such as the possibility of proceedings near the debtor’s residence<sup>142</sup> and a continuing lack of publicity. The procedure under the guidelines has also been criticised as overwhelmingly complicated and often misunderstood, resulting in victims having difficulty being approved as eligible.<sup>143</sup> Not surprising to many, public explanatory “seminars in rural areas attract few participants, apparently due to concerns about looking bad” and thus less shameful, direct contacts with debtors were demanded.<sup>144</sup> The guidelines have also been criticised for their ambiguity about whether debtors can be entirely exempt from their debt, in that they were designed with the purpose of preventing bank-

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<sup>134</sup> For practical advice, see Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 115–142).

<sup>135</sup> Katō (2013).

<sup>136</sup> For their role in relation to the disaster, see generally Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 143–185); Katō (2013).

<sup>137</sup> Japan Times (2013).

<sup>138</sup> See also Kabashima (2012, pp. 14–15).

<sup>139</sup> Katō (2013).

<sup>140</sup> JFBA (2011a, p. 64, 2011b, 2011d, p. 11); JFBA (2012a, p. 28).

<sup>141</sup> See also Kabashima (2012, p. 14).

<sup>142</sup> JFBA (2011a, p. 64); JFBA (2011d, p. 11).

<sup>143</sup> Japan Times (2012), Japan Times (2013); Cho (2014, p. 171).

<sup>144</sup> See Japan Times (2013).

ruptcies, instead of permanently releasing debtors from their debts.<sup>145</sup> As a consequence, one panel involved has been accused “of improperly forcing bailout applicants to promise to repay a portion of their loans” and subsequently refusing to allow lawyers to supervise and screen panel meetings on bailout applications,<sup>146</sup> raising concerns of partiality and opacity.

In response, advertisements have been placed in the media, the FSA has issued a communication to financial institutions<sup>147</sup> and calls for amendments have been addressed by means of partial revisions. Despite this, and again contradictorily to more favourable comments in academic scholarship,<sup>148</sup> the carefully-drafted guidelines are far from a success – as the association itself admits.<sup>149</sup> Financial institutions often simply seem unwilling to concede more than a mere rescheduled repayment (*hensai no risukejūru*) to debtors.<sup>150</sup>

This regrettable situation is reflected in the number of cases officially filed for debt workouts, which, despite momentum by relocations and mortgage cancellations in 2013 and a broadening of the scope of application in 2016, totalled only 1,373 as of 30 December 2020,<sup>151</sup> a figure that is dwarfed by the banks’ estimations of a potential demand “close to 5,000 to 6,000” and the 200,000 homes lost.<sup>152</sup> More importantly, the count of almost 8,300 initial inquiries suggests a significant unmet demand from victims.

Although the guidelines are to be phased-out by 31 March 2021, a new, permanent version has been drafted and become applicable since 2015, entitled Guidelines for Debt Consolidation of Victims of Natural Disasters, so far opened for victims of 18 subsequent disasters.<sup>153</sup>

<sup>145</sup> Kabashima (2012, p. 14); see also Adachi (2011, p. 9).

<sup>146</sup> Japan Times (2013).

<sup>147</sup> JFBA (2012a, p. 28).

<sup>148</sup> See Steele and Jin (2012, p. 44, pp. 66–68); Katō (2013).

<sup>149</sup> See e. g. JFBA (2012b) (updated regularly).

<sup>150</sup> See JFBA (2012a, p. 28).

<sup>151</sup> Kojin-ban shiteki seiri gaidorain un’ei i’in-kai [Steering committee for the guidelines for individual debtor out-of-court workouts] (2020). The prefectural figures mirror Miyagi as the most affected prefecture, with two thirds of the filings, followed by Iwate with one fourth. Cho (2014, p. 171) is apparently confusing the number of applications with mere inquiries.

<sup>152</sup> Japan Times (2012).

<sup>153</sup> For a more recent study, see Tominaga (2018).

## 2.6 CONTRACTS: EARTHQUAKE INSURANCE

Private insurance for earthquakes, tsunamis and volcanic eruptions is heavily subsidised by the government, but not intended to cover entire losses.<sup>154</sup> In light of the enormous catastrophic risk in Japan, this market would not exist without subsidies and restrictions on insurers' exposure. Thus, only 30 % to 50 % of the net value of a property can be insured, and this is capped at JPY 50 million for homes and JPY ten million for household property under art. 2 para. 2 No. 4 of the Act on Earthquake Insurance.<sup>155</sup> As a means of simplifying the claims process, payments are either the full amount, half, or 5 % of the amount insured.<sup>156</sup>

Neither creditors nor debtors appear to have been very risk averse with regard to insurance. Creditors did not frequently insist on the conclusion of insurance contracts for mortgaged property, whilst most debtors did not take it out.<sup>157</sup> Home-owners were and still are fatally reluctant to insure earthquake risks.<sup>158</sup> The reasons for this are disputed,<sup>159</sup> but include insurance coverage not being mandatory, only being available as a supplement to fire insurance, and the fact that premiums are fixed for each prefecture and perceived as costly relative to incomes.<sup>160</sup> Whatever the reasons behind it, the penetration rate of earthquake insurance was as low as one third in the tsunami-prone prefecture of Miyagi.<sup>161</sup> Nevertheless, after the disaster, insurance was one of the major legal concerns discussed at counselling centres (see Figure 7),<sup>162</sup> and within only eight months, JPY 1.18 trillion had been paid out on over 718,000 policies in Japan.<sup>163</sup>

Yet even if insurance has been taken out, it is likely that debtors lose their already reduced claims to creditors. This is because the mortgagor of a hypothec is subrogated to the claims, i. e. they receive the mortgagee's

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<sup>154</sup> See e. g. Yamamoto (2011, p. 74) and General Insurance Rating Organisation of Japan (2014). For this purpose, the Government operates a re-insurance (*sai-hoken*) mechanism, the funds from which again are capped per earthquake. For the latest allocated budget, see Government of Japan, Cabinet Office Policy Office, Disaster Management (2020).

<sup>155</sup> Law No. 73/1966 (*Jishin hōken ni kan suru hōritsu*).

<sup>156</sup> Kozuka (2012, p. 5).

<sup>157</sup> For critical remarks, see parts 3.6 b) and c).

<sup>158</sup> For details, see Waldenberger (2013); Kozuka (2012, p. 7); Feldman (2013, p. 339).

<sup>159</sup> For an overview, see Waldenberger (2013).

<sup>160</sup> See e. g. Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 218–220).

<sup>161</sup> Kozuka (2012, p. 7).

<sup>162</sup> See JFBA (2011a, p. 60).

<sup>163</sup> Kozuka (2012, p. 7).



insurance compensation claim in exchange for the loss of or damage to the security, arts. 304 paras. 1 and 2, 372 of the Civil Code.<sup>164</sup> Although this has the effect of reducing the mortgaged debt by the amount of the insurance claim, victims are instantaneously deprived of a means to rebuild and restart their lives and businesses. Subrogation, *butsujō dai'i-sei* in Japanese, can only be avoided if the claimant can obtain pay-out in cash before the mortgagor seizes the respective claim against the insurer.<sup>165</sup>

## 2.7 DEREGULATION: CONSUMER CREDIT

A vicious circle of excessive borrowing had long been understood as a major cause of so-called “multiple debt problems” (*tajū saimu mondai*) of consumers in Japan since the 1970s and had been addressed by lowering interest rate ceilings, introducing credit checks, a total amount control, and supervisory credit record institutes by a major reform that had only come into force in 2010.<sup>166</sup> Although restricting access to credit, these safeguards had been effective against grey-market predatory lending, well-known across Japan by company names such as *Aiful*, *Acom* and *Promise* had put most of the loan sharks, already referred to above, out of business.<sup>167</sup>

Less than three weeks after the catastrophe, however, politicians of the DPJ took unexpected action to revive these consumer finance companies – in an effort to provide means of financial relief to disaster victims. Doing away with serious concerns about the integrity of this sector and the impact of interest as high as 20 % annually on the financial situation of already hopelessly indebted victims, the DPJ demanded to allow further lending previously deemed illegal. Even the Bar asked the government to establish a framework that enables indebted, disaster-affected households to take out additional loans.<sup>168</sup>

<sup>164</sup> Law No. 89/1896 (*Minpō*).

<sup>165</sup> For details, see Matsuoka (2011, pp. 640–641, p. 655); for practical advice, see Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 23–26).

<sup>166</sup> Accordingly, art. 13 *et seq.* of the Money Lending Business Act imposed a duty on lenders to assess the financial situation of prospective borrowers, banned loans leading to indebtedness disproportionate in relation to the borrower's income, and imposed fines and up to one year of imprisonment upon violation in art. 48 *et seq.* of the act, see e.g. Kozuka and Nottage (2007) and Weitzdörfer (2020, p. 144, pp. 146–149, p. 155, p. 162, p. 248, p. 252, pp. 281–283, p. 285, p. 287, pp. 293–294, pp. 315–317).

<sup>167</sup> Flynn and Taniguchi (2010); see already part 1.2.

<sup>168</sup> See Ohira and Chiba (2011); Japan Press Weekly (2011a).

The FSA was receptive to this and lifted restrictions by amending the relevant Cabinet Ordinance, which partly, but effectively, invalidated provisions of consumer protection, deemed a key element of the previous reform.<sup>169</sup> By easing conditions stipulating, *inter alia*, a so-called duty of responsible lending (*sōryō kisei*), lenders were again allowed to advance loans beyond amounts borrowers would reasonably be able to repay (*hensai nōryoku*) given their annual income without renewed borrowing.<sup>170</sup> Furthermore, apparently by way of administrative guidance (*gyōsei-shidō*), the government called on “the public and private sectors to provide consultation services for disaster victims, subsidise loan interest for disaster-hit businesses and offer credit guarantees for firms.”<sup>171</sup> Despite the political controversy and renewed criticism by NPOs, the FSA’s “sudden deregulation” even bypassed the usual procedure of inviting public comment (*iken kōbo tetsuzuki*), art. 39 para. 4 No. 1 of the Administrative Procedure Act.<sup>172</sup>

In spite of the allegedly good intentions to remove “inconveniences in borrowing” in the disaster area<sup>173</sup> and considering the financial sector’s strong backing, it remains doubtful whether the liberalisation actually was implemented to help victims of double-loans, as financing real estate and vehicles had already been exempt from credit checks from the outset, art. 12–2 Money Lending Business Act. At least the speed of deregulating consumer finance was remarkable, as not even charity money had been distributed to most victims at the time.

## 2.8 CHARITY: PRIVATE BENEVOLENCE AND PUBLIC DISTRIBUTION

Although privately raised, charity money was also subject to government intervention – by way of selective distribution to victims. Donations to the Japan Red Cross and other charities<sup>174</sup> all over the world (*gi'en-kin*), al-

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<sup>169</sup> This is the Order for Enforcement of the Money Lending Business Act, Ordinance No. 40/1983 (*Kashikin gyōhō sekō kisoku*), as amended by Cabinet Ordinance No. 35/2011; Mainichi Daily News (2011); on the earlier laws, see Shimizu (2007, pp. 189–220); for critical remarks, see part 3.6 d) and Weitzdörfer (2020, pp. 316–317).

<sup>170</sup> For a summary of the amendments, see Financial Services Agency (2011a).

<sup>171</sup> See Japan Times (2011).

<sup>172</sup> Law No. 88/1993 (*Gyōsei tetsuzuki-hō*); the quotation is from Japan Press Weekly (2011a).

<sup>173</sup> Financial Services Agency (2011a).

<sup>174</sup> On Japanese welfare charities, see Yamashita (2013).

ready exceeding JPY 250 billion as of May 2011,<sup>175</sup> started to be distributed by municipalities seven weeks after the catastrophe.<sup>176</sup> These initial payments to affected households generally amounted to a lump sum of JPY 350,000 in cash.<sup>177</sup>

- for any family member found dead or declared missing and deemed deceased (pursuant to art. 30 of the Civil Code; arts. 86, 89 of the Family Registration Act),<sup>178</sup>
- if the family had been evacuated from the crescent-shaped evacuation zones around the crippled Fukushima Dai'ichi Nuclear Power Station,
- and for any home lost in its entirety.<sup>179</sup>

Families with a partially destroyed home were eligible for half of this sum.<sup>180</sup> This suggests that in relation to the allocation of charity money, the government framed home-owners rendered homeless by the disaster as among those in greatest need of assistance.

In addition to this private charity, the government also distributed disaster condolence money (*saigai chō'i-kin*, colloquially *mimai-kin*) of up to JPY five million to those who had lost close relatives in the disaster, pursuant to art. 3 of the Act on Provision of Disaster Condolence Grants etc.<sup>181</sup> and municipal ordinances.<sup>182</sup> As additional measures, following calls for protection by the Bar, condolence grants and relief donations were exempted from seizure by creditors (*sashi'osae kinshi*, art. 5–2 of said act) and the scope of property not falling under bankrupt estates in cases of individual bankruptcy of disaster victims pursuant to art. 34 of the Bankruptcy Act,<sup>183</sup> was to be expanded.<sup>184</sup>

<sup>175</sup> Government of Japan, Cabinet Office (2011b, p. 7).

<sup>176</sup> On the role of donations, see Aota (2011).

<sup>177</sup> Brasor and Tsubuku (2011); this was not much more than in Kobe, Feldman (2013, p. 338).

<sup>178</sup> Law No. 224/1947 (*Koseki-hō*).

<sup>179</sup> For critical remarks, see part 3.6 e).

<sup>180</sup> Brasor and Tsubuku (2011).

<sup>181</sup> Law No. 82/1973 (*Saigai chō'i-kin no shikyū-tō ni kansuru hōritsu*).

<sup>182</sup> Umeda (2013, p. 18).

<sup>183</sup> Law No. 75/2004 (*Hasan-hō*).

<sup>184</sup> JFBA (2011a, p. 64; 2011d, p. 12); Yamanome (2012); Katō (2013).

## 2.9 SOCIAL WELFARE: HOUSING AID, GOVERNMENT LOANS AND SUBSIDIES

As for lost homes, the Act on Support for Reconstructing Livelihoods of Disaster Victims provides for two different grants by the central and prefectural governments of up to JPY three million per household, art. 3 sec. 4, from a designated public corporation, art. 6.<sup>185</sup>

The first, fundamental grant depends on the degree of damage to the respective residence, which, in quickened procedures, was distributed in lump sums of JPY one or half a million on an alternative basis, art. 3 para. 2 of the act. The decisive test was essentially whether the respective building was either “completely destroyed” (*zenkai*, art. 2 para. 2 No. 1) or suffered at least “large-scale partial damage” (*dai-kibō hankai*, art. 2 para. 2 No. 2) – arbitrary standards difficult to construe in a non-discriminatory way.<sup>186</sup> The assessment of eligibility, the so-called damage certification (*higai nintei*, see Figure 9), is conducted by land and house investigators, who, as a consequence, are now following revised guidelines, which operate on a percentage system to assess the extent of damage to walls, roof and foundation, granting aid if the total damage is deemed to exceed 40 % (see the official forms reproduced as Figure 9).

The second, additional grant mostly depends on whether the victims purchase a new home (JPY two million), repair their home (one million) or rent private accommodation (half a million), art. 3 para. 2 nos. 1, 2, 3. Such a scheme clearly incentivises relocation and it can be argued that, considering the relatively low grant for renting, the poorest end up receiving the least.<sup>187</sup> On the other hand, as a means of disaster housing assistance, public guarantees that rents are “reimbursed for two years, typically up to a maximum of JPY 90,000” per month were granted initially, causing “anxiety as to how long these subsidies will last.”<sup>188</sup>

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<sup>185</sup> See generally Tsukui (2011).

<sup>186</sup> For details, see Brasor and Tsubuku (2011).

<sup>187</sup> According to the results of a comparative study of housing-problems after six earthquakes world-wide, renters generally “cannot afford the increase in market rents after the disaster and do not qualify for the permanent-housing subsidies aimed at homeowners” Johnson (2007, p. 454). For critical remarks, see part 3.6 e).

<sup>188</sup> Gill et al. (2013b, p. 10).

※平成23年関東地方太平洋沖地震に伴う津波による住宅被害に限り適用  
 ■計12の区分で被害の程度を判定し、被害の程度に応じた補償を受けることができる。

区分	被害の程度	補償の割合	補償の額
1. 全壊	全壊	100%	100%
2. 大半壊	大半壊	80%	80%
3. 半壊	半壊	50%	50%
4. 一部損壊	一部損壊	10%	10%

※1. 全壊：全壊、大半壊、半壊、一部損壊のいずれかであること。  
 ※2. 大半壊：大半壊、半壊、一部損壊のいずれかであること。  
 ※3. 半壊：半壊、一部損壊のいずれかであること。  
 ※4. 一部損壊：一部損壊であること。

※5. 被害の程度を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※6. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※7. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※8. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※9. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※10. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※11. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

※12. 被災建築物の被害状況を判定する際の基準は、国土交通省の定める「被災建築物被害程度判定基準」に基づき、被災建築物の被害状況を写真、図面、現地調査の結果に基づき判定する。

Figure 9: Assessment of eligibility for governmental compensation for damaged residential buildings by means of full or partial damage (left) and by percentage (right); official government forms.<sup>189</sup>

Thirdly, subsidies for participation in voluntary group relocations were introduced in the Act on Special Financial Support for Promoting Group Relocation for Disaster Mitigation.<sup>190</sup> Under this scheme, some 75 % to 85 % of pre-disaster property values are reimbursed upon agreement to relocate to safer, yet often remote areas far inland, complemented by interest subsidies.<sup>191</sup> However, accepting the subsidies excludes the grants for repairs outlined above, and thus entails the tough choice between onsite restoration, onsite reconstruction, or relocation and new construction, particularly for double-loan victims.<sup>192</sup> Relocation is slowed down by the reluctance of “double debtors” to abandon and sell their former estates, who often would be better advised “to rebuild a simple house on their own land” in the absence of sufficient financial incentives to participate in group relocation.

<sup>189</sup> Cabinet Office, Government of Japan, official forms issued on 31 March 2011, on file with the authors.

<sup>190</sup> Law No. 132/1972 (*Bōsai no tame ni shūdan iten sokushin jigō ni kakawaru kuni no zaisei-jō no tokubetsu sochi-tō ni kansuru hōritsu*); on the specific subsidies in Sendai, see Kabashima (2012, p. 11).

<sup>191</sup> For criticism, however, see Kabashima (2012, p. 11, p. 15).

<sup>192</sup> See Torihata (2012, pp. 195–200) on further aspects of these problems in Miyagi and Iwate Prefectures.

tions.<sup>193</sup> In such cases, “agreement among stakeholders is time consuming, which prolongs residents’ stays in temporary housing (...) well past the scheduled two-year period.”<sup>194</sup> As relocation planning is in part marginalising the interests of double debtors, further assistance is deemed necessary for smooth implementation of the relocation.<sup>195</sup>

Other financial benefits were provided by the Central Government on an emergency basis (arts. 23 para. 1 No. 7; 2 Disaster Relief Act) and at the discretion of the prefectural governments (arts. 23 para. 2; 2 Disaster Relief Act).<sup>196</sup> These include public disbursements for overdue earned wages to save an estimated 30,000 jobs by use of JPY 700 billion of the first supplementary budget for subsidising salaries. Ordinary unemployment benefits were increased from 50 % to 80 % (normally 60 %) for 90 to a maximum of 330 days (normally 150), depending on age and individual entitlements under the national unemployment scheme of arts. 13–22 Employment Insurance Act.<sup>197</sup> In addition to general public benefits pursuant to, *inter alia*, the Livelihood Protection Act,<sup>198</sup> victims may apply for specific disaster benefits, such as exemptions from income tax for disaster-losses and from vehicle acquisition tax for replaced cars,<sup>199</sup> public health insurance payments, nursing care, high school fees, and special payments to farmers and fishermen.<sup>200</sup> As necessary documents had often been lost, victims were provided with special identification certificates (*risai shōmei-sho*). However, these financial recourses for victims must be applied for and filed separately, and with the municipal offices in the pre-disaster places of residence, which poses time-consuming practical hurdles.<sup>201</sup>

Government loan schemes are numerous and vary depending on their purpose and the municipalities in charge. In theory, any Japanese may obtain loans from the Japan Housing Finance Agency (JHFA), currently

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<sup>193</sup> For details, see Kabashima (2012, pp. 10–11, pp. 13–14).

<sup>194</sup> Cho (2014, pp. 168–169); see also Claremont (2014, p. 96).

<sup>195</sup> Kabashima (2012, pp. 14–15); or metaphorically put: “The people who really need to move now are the politicians and administrators who hold the purse strings for aid,” Wilhelm and Delaney (2013, p. 122)

<sup>196</sup> For an overview, see Matsui (2020, pp. 123–126), Iwata and Nishizawa (2008); on welfare in Japan, see Iwata and Nishizawa (2008).

<sup>197</sup> Law No. 116/1974 (*Koyō hoken-hō*); for details, see Umeda (2013, p. 21).

<sup>198</sup> Law No. 144/1950 (*Seikatsu hogo-hō*); for a critical overview of the laws and social policies for homeless people, see Iwata (2007, pp. 152–162).

<sup>199</sup> For statutory details, see Umeda (2013, p. 20); for more recent measures, see Umeda (2014).

<sup>200</sup> Brasor and Tsubuku (2011), Government of Japan, Cabinet Office (2011a, p. 23); Government of Japan, Cabinet Office (2011b, p. 8).

<sup>201</sup> See Brasor and Tsubuku (2011); on some legal solutions, see Umeda (2013, pp. 16–17).

at a mere 1.47 % for 35 years and 0 % for disaster-affected homeowners – but this requires collateral. Disaster victim support loans are provided for persons below certain income levels by means of interest-free governmental and institutionalised loans or interest subsidies, see arts. 23 para. 1 No. 7, 2 Disaster Relief Act; art. 10 Act on Provision of Disaster Condo-lence Grants etc. Exceptions for the disaster of 2011 stretch the repayment period to 13 years.<sup>202</sup> Over 30 municipal councils providing social welfare pay up to JPY 200,000 per month in no-interest loans to victims who have lost their jobs, as well as households who have lost a family member.<sup>203</sup> These so-called “life and welfare loans” do not require a guarantor or any repayment within the first year but fall due after the second year.

Single mothers, widows and orphans are eligible for other no-interest loans from a fund for moving, repairs, medical care, and education.<sup>204</sup> Specific low-interest loans are available to persons engaged in agricultural or fisheries industries.<sup>205</sup> In Sendai, for example, five-year no-interest housing loans of JPY 11.6 million are available from the local government for people working in agriculture of fisheries<sup>206</sup> – short in comparison to the 20 years usually necessary to pay off a home in Japan. It is highly questionable as to whether all this is sufficient for a new home, as in Tōhoku, a home constructed on one’s own land can cost up to an estimated JPY 30 million or JPY 10 million on rented land – between three and ten times more than the value of the two grants.<sup>207</sup> Another alleged problem is that, even if double-loan debtors receive governmental loan guarantees, they are still obliged to secure the loan with property.<sup>208</sup> This has led some to conclude that neither the government loans nor the relocation subsidies cater adequately for the specific and exacerbated situation of home-owners,<sup>209</sup> leaving their situation largely unremedied.<sup>210</sup>

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<sup>202</sup> JPY 640.7 billion was allocated for this in the first supplementary budget alone. see also Japan Press Weekly (2011a); Umeda (2013, p. 19).

<sup>203</sup> See also Mainichi Daily News (2011).

<sup>204</sup> Umeda (2013, p. 19).

<sup>205</sup> Government of Japan, Cabinet Office (2011a, p. 23).

<sup>206</sup> Kabashima (2012, p. 11, p. 13).

<sup>207</sup> The average price of a Japanese condominium (*manshon*) was JPY 51 million in 2014, and although property in the rural Tōhoku region is much cheaper, typical two-bedroom apartments with a kitchen, living and dining room (2LDK) are only available for around JPY 700,000 in coastal Ishinomaki City, for example; on the costs of housing reconstruction, see Government of Japan, Cabinet Office Policy Office, Disaster Management (2017).

<sup>208</sup> Brasor and Tsubuku (2011).

<sup>209</sup> See Kabashima (2012, p. 14).

<sup>210</sup> On the importance of widening the social safety net for disaster relief, see Der-yugina (2017) as well as part 3.1 and part 3.4 below.



Figure 10:

A poster advertising financial support regarding double-home-loans issued by the Miyagi prefectural government's civil engineering department's housing division (attached to the wall of a prefabricated housing unit in the complex depicted in Figure 12). It offers subsidies of the equivalent of 5 years of interest as support for debtors otherwise unable to get access to new credit for rebuilding homes. The fact that such information was still produced for evacuees at the poster's time of publication (June 2016) is a strong indicator that double-loan problems persisted for well over five years after the disaster. Ōmiya Town, Ishinomaki City, image by the authors, August 2016.



### 3. DISASTER RECOVERY AND SOCIAL JUSTICE

To summarise, despite the trillions of yen spent on recovery, tireless statutory activity and an impressive array of law and policy measures directly or indirectly mitigating damage from the disaster, a truly helpful solution for double-loans remains missing. Except for emergency relief for repairs, insufficient housing grants conflicting with relocation subsidies, counselling, and unsuccessful guidelines for liquidation, little is in place to keep double-loan debtors from slipping through the wide-meshed safety net of inadequate earthquake insurance and restrained social security. Double-loans, being at the intersection of disaster management, debtor-creditor- and real property-law, financial regulation, and social welfare, pose a significant test for social justice in Japan, and the degree to which society accepts financial responsibility for victims of natural disasters.

Having started with a largely descriptive approach to our socio-economic analysis (parts 1.1, 1.2 and 1.3) and to our legal analysis (parts 2.1 to 2.9), we next turn to a more critical and normative assessment of the results of the laws enacted and policies adopted. Whilst the need for the government to provide housing and reconstruction aid following disasters is now generally accepted, a failure to address the social disaster of lost homes and double-loans as well as the need for additional debt relief have produced instances of evident social injustice (parts 3.1, 3.2). We identify three competing ways in which this unfairness, and the appropriate response to it, can be conceptualised: as undeserved harm in need of rectification, as social vulnerability in need of benevolence, or as a threat to future welfare in need of prevention. The outspoken public debate on how to frame indebted victims of the Great East Japan Disaster exposes these contradicting framings (parts 3.3, 3.4) and their underlying political attitudes on how to share the burdens of disaster-related risk as regards social justice in Japan (parts 3.5 to 3.6). By way of conclusion, we argue that too much focus in these debates has been put on issues of pre-disaster vulnerability and responsibility. Finally, and adopting a prescriptive approach, we contend that not enough concern has been paid to individuals' post-disaster circumstances and the threats these pose to their ability to function in society, leading to the unfolding social disaster of double-loans (part 3.7).

### 3.1 SUCCESS AND FAILURE IN PROVIDING HOUSING

Japan has made considerable progress in rehousing that half a million people left without homes in March 2011 – victims have found shelter, rubble has been cleared, roads have been rebuilt, and public services have resumed.<sup>211</sup> Yet, in construing articles 1 and 2 of the Basic Act on Reconstruction in Response to the Great East Japan Earthquake,<sup>212</sup> the legislators' ultimate intent was, rather explicitly, "the revitalisation of Japan, not the restoration of victims' lives," so that national economic growth was prioritized over disaster recovery. As for prefectural recovery plans, similar priority was observed to be given to economic growth in favour of community reconstruction.<sup>213</sup> In this way, a dichotomy between the physical concept of "reconstruction" (*fukkō*) and a more anthropocentric concept of "rebuilding" people's lives (*saiken*) becomes apparent: In contrast to the swift restoration of public physical infrastructure – roads, bridges, gas and power lines – progress and implementation of onsite reconstruction housing (*fukkō jūtaku*) or permanent relocation of coastal communities has been criticised as slow.<sup>214</sup>

This slowness has not always resulted from market failures. For instance, housing reconstruction in Tōhoku was generally driven much more by the government than by the market or charity; meaning that government policies are largely responsible for delayed or failed recovery.<sup>215</sup> For example, the principle that "accelerated reconstruction of permanent housing is preferable to the use of temporary housing" as stipulated by the United Nations Disaster Relief Organisation (UNDRO) has hardly been observed: Temporary housing is not only less sustainable compared to cost and lifespan of permanent housing,<sup>216</sup> but also entails the danger of reconstructing vulnerability through "permanent" temporary housing.<sup>217</sup> In this way, Japan seems to have repeated old mistakes from Kobe,<sup>218</sup> in that large-scale procurement of temporary housing came at the expense of permanent housing.<sup>219</sup>

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<sup>211</sup> See generally Wakabayashi et al. (2011); Shiozaki et al. (2012, pp. 86–117).

<sup>212</sup> Law No. 76/2011 (*Higashi-nihon dai-shinsai fukkō kihon-hō*); English transl. available online: <[http://www.reconstruction.go.jp/english/topics/Basic\\_Act\\_on\\_Reconstruction.pdf](http://www.reconstruction.go.jp/english/topics/Basic_Act_on_Reconstruction.pdf)>.

<sup>213</sup> Cho (2014, p. 172).

<sup>214</sup> Cho (2014, pp. 161–163, p. 165, p. 173), Gill et al. (2013b, pp. 9–11); Claremont (2014, p. 95); see also Santiago-Fandiño et al. (2014).

<sup>215</sup> See Kennedy et al. (2008); Cho (2014, p. 173); Maly (2018); Davis and Alexander (2015); and Mannakkara et al. (2018) on how to "build back better" after a tsunami.

<sup>216</sup> Johnson (2007, p. 451); for further issues with temporary housing, see Félix et al. (2013).

<sup>217</sup> See also recently Finucane et al. (2020).

<sup>218</sup> Re-reading the detailed investigations of urban policy and local governance after 1995 in Kobe by Edgington (2010), concluding that "Japan's particular style of

Delays in reconstruction have not only been caused by the financial and practical difficulties caused by the sheer magnitude of destruction and amount of debris. They have also been attributed to institutional factors, such as political gridlock and bureaucratic resistance due to disagreements between ministries and between administrations of local and national level, organisational inefficiencies, excessive centralisation, and inflexible top-down planning of disaster response.<sup>220</sup>

From a fiscal perspective, many victims who lost their homes were also not able to benefit from national reconstruction grants (*fukkō kōfukin*) to a large extent, due to their delayed and limited allocation to the municipalities and their prevalent use for public infrastructure.<sup>221</sup> To the outrage of many, it was revealed that “one quarter of the reconstruction budget has been spent on projects that arguably have little or nothing to do with reconstruction of the affected areas.”<sup>222</sup> Finally, it was prolonged budgetary uncertainty about the provision of grants to municipalities,<sup>223</sup> subsidies to companies, and aid to victims that left reconstruction in partial limbo.

As a result of these institutional weaknesses, 89,000 evacuees still remained in temporary accommodation across the three most affected prefectures as of August 2014, long after the end of the two-year maximum stay prescribed by law, while 90,000 lived in units rented temporarily by local governments.<sup>224</sup> Such long-term displacement not only raises questions of “mobility justice”,<sup>225</sup> but also represented little improvement over the situation following the Kobe earthquake, when only half of temporary housing had been vacated within three years.<sup>226</sup>

All prefabricated housing complexes have since been vacated and dismantled in Miyagi prefecture, where a mere nine government-rented

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urban redevelopment hindered rather than hastened its ability to rebuild a devastated city,” seems irritatingly familiar in light of the Tōhoku earthquake. For detailed comparisons, see Maly (2015) and Mikuriya and Iokibe (2016, pp. 89–108).

<sup>219</sup> Johnson (2007, p. 435, pp. 451–452 with further references).

<sup>220</sup> See Cho (2014, p. 159, pp. 162–167, p. 169, pp. 172–173 for further references); Wakabayashi et al. (2011); see generally Suzuki and Kaneko (2013); and Inaba (2011, pp. 23–25) on the Government’s organisational responses; on recurring policy dilemmas of post-disaster housing assistance, see Pezzica et al. (2021).

<sup>221</sup> Cho (2014, pp. 165–166); Claremont (2014, p. 95).

<sup>222</sup> Claremont (2014, p. 95). Nevertheless, partial use of the grants for clearance and disposal of debris, reallocation of land to relocate housing and so forth might have at least helped the victims indirectly.

<sup>223</sup> Cho (2014, pp. 164–165).

<sup>224</sup> Ishibashi (2014).

<sup>225</sup> See generally Cook and Butz (2016).

<sup>226</sup> Johnson (2007, p. 445); and generally Hirayama (2000).

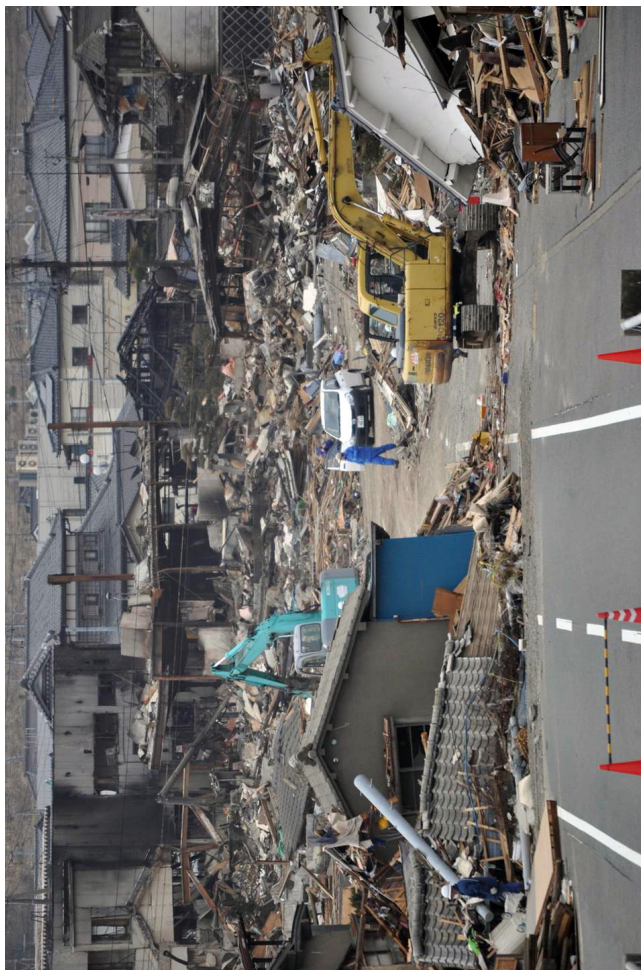


Figure 11:

Despite the essential involvement of contractors and all branches of the private sector, as part of an inevitable bonanza of lucrative business in waste management, demolition, construction, and public procurement; disaster recovery is largely publicly driven in Japan. This contrasts with tendencies in other liberal capitalist economies (and notably the aftermath of Hurricane Katrina 2008), where crises and disasters are alleged to have provided pretexts for rolling out small-government, market-based solutions. Rubble from the tsunami and subsequent fires in Hisanohama, Iwaki-City, Fukushima prefecture, image by Hiroshi Ishikawa, dated 20 March 2011, courtesy of and published by Iwaki meisei daigaku shinsai ākaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no ki'oku 2 [Memories from Hamadōri 2] (2015, p. 8).



Figure 12:

A small complex of prefabricated housing units for evacuees, less than 30 m<sup>2</sup> in size for a family. Over 50,000 of such units were procured by the government. It took seven to eight years until almost all of them would be vacated again. Ōmiya Town, Ishinomaki City, image by the authors, August 2016.

houses are still occupied by thirteen disaster victims as of December 2020 (see Figure 13). In Fukushima prefecture, where 86,250 people once occupied a total of 80,086 emergency shelters (as of August 2011), the number of registered (nuclear) evacuees still amounted to ca. 40,000, while it has declined to 1,126 people in shelters as of March 2020.<sup>227</sup>

However, when we had last visited the Tōhoku region for fieldwork in late 2016, we still observed unresolved cases of double-loan-induced homelessness, evidenced e. g. by a family of five in the fishing town of Yuri'age, Natori City.<sup>228</sup> Some elderly evacuees in temporary housing remained reluctant to move out of their containers at all, as rents on the private market seemed too high, or moving into reconstruction housing would have perpetuated the loss of communal ties. Vulnerability and resilience vary from community to community, and between urban and rural regions, but most of the tsunami victims in temporary housing that long were completely unable to afford the rents and simply waited for public social housing, finalisation of which was not expected before the end of 2017.<sup>229</sup> While an all-time low in mortgage rates might have spurred construction in 2015 (after a drop due to the increased consumption tax), the market had been unable to supply homes affordable to indebted disaster victims.

Year-end	Prefabricated housing		Rental market housing		Other temporary housing	
	Units	Occupants	Units	Occupants	Units	Occupants
2011	42,975	52,736	24,815	67,977	925	2139
2012	42,978	50,427	21,479	57,098	1052	2431
2013	41,176	43,664	17,216	43,209	1,000	2,257
2014	38,364	36,014	13,739	33,088	625	1,375
2015	33,226	24,746	9,281	21,630	337	700
2016	23,601	13,762	4,186	9,983	114	246
2017	14,318	4,144	1,882	4,258	32	67
2018	4,519	519	174	399	7	19
2019	926	22	36	67	0	0
2020	0	0	9	13	0	0

Figure 13:  
Temporary housing occupancy in Miyagi prefecture from 2011 to 2020<sup>230</sup>

<sup>227</sup> Fukushima Prefectural Government (2021).

<sup>228</sup> The family's property was bought by the municipality at a price seven times lower than the original value, as prices had been set based on the property value after the decision to change the zoning after the tsunami.

<sup>229</sup> Ishibashi (2014).

<sup>230</sup> Miyagi Prefectural Government (2020).

### 3.2 REFUSAL OF LOAN WRITE-OFFS, ASSISTANCE TO CREDITORS, AND HALF-HEARTED DEBT RELIEF

The government offered no holistic legal approach to tackling issues of debt relief<sup>231</sup>, and as we saw in part 2, the impressively numerous, yet partial solutions to these problems often failed to work as intended. The loans and disbursements could not provide a substitute for disaster insurance, let alone full compensation for lost homes. On the one hand, the affected financial institutions have been supported with billions of yen and disaster-hit companies have been bailed out by the government whilst, on the other hand, public short-term and private high-interest loans, temporary debt-freezes and charity donations postpone rather than prevent insolvencies of the private double-loan victims. Given the insufficiency of the housing grants, instead, a system that can financially and sustainably cover evacuee life was demanded.<sup>232</sup>

In June 2011, the Cabinet Office had vaguely communicated a planned policy regarding double-loans to financial institutions in which “the national and local governments, lenders and borrowers [must] share the pain.”<sup>233</sup> What this was to mean in practice, however, was that in addition to bailing out companies as “gifts” to creditor institutions, the government did more to mitigate or offset the lenders’ losses than to help the borrowers. The reluctance to tackle double-loan problems head-on was explained by the Minister of Finance, highlighting legal concerns about debt relief in light of the protection of property under the Japanese Constitution: As “private-sector financial institutions use private deposits (...) as source of funds for the provision of loans”, in granting debt release, the government, he implied, would infringe upon depositors’ property rights.<sup>234</sup> While post-disaster debt release has also been portrayed as difficult from the perspective of private and public financial discipline,<sup>235</sup> some scholars have been

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<sup>231</sup> The multi-faceted crisis has also been dealt with by different ministries, which took different stances on the way to respond: For example, the ministries responsible for government-affiliated financial institutions, such as the Ministry of Economy, Trade and Industry, the Ministry of Land, Infrastructure, Transport and Tourism, and the Ministry of Agriculture, Forestry and Fisheries, unlike the Ministry of Finance, which does not have authority over policy-based finance, could arrange for public zero-interest loan schemes, see Financial Services Agency (2011c).

<sup>232</sup> See e. g. Yamasaki (2003, p. 91).

<sup>233</sup> Transl. by Umeda (2013, p. 19).

<sup>234</sup> This legal line of argument invokes that a “haircut” to the creditor’s claims would constitute an outright expropriation of their property rights, see Financial Services Agency (2011b).

<sup>235</sup> See Financial Services Agency (2011b).

equally restrictive, contending that “loan write-off shall never be used” as this may jeopardize the affected institutions’ viability and would “not benefit non-borrowing victims.”<sup>236</sup> It is highly probable that the government’s decision to actively support affected financial institutions rather than their debtors was rooted in similar considerations.<sup>237</sup>

For example, the FSA introduced exceptions to the Act on Special Measures for Strengthening Financial Functions,<sup>238</sup> *inter alia* making affected credit cooperatives (*shin’yō kyōdō kumi’ai*), Shinkin Banks (*shin’yō kinko*), and regional banks (*chihō ginkō*) eligible for public subsidies to offset losses incurred as a result of personal and corporate borrowers’ defaults.<sup>239</sup> Accordingly, the government decided to inject the impressive sum of JPY 191 billion, as of March 30, 2012 “under very favourable conditions,” into ten of these institutions, and has continued to advance more until 2017.<sup>240</sup>

Another example of assistance to the financial sector – the deregulation of further lending described above – drew heavy criticism. Instead of attempting to resurrect the loan sharks by means of eradicating consumer protection, NPOs and the left-wing media mobilised for loan forgiveness and an increase in financial disaster aid under the Act on Support for Reconstructing Livelihoods of Disaster Victims.<sup>241</sup> As criticised with regard to other Japanese post-disaster legislation, “adjustments (...) need to be made on a temporary basis for the true good of the people in rebuilding, and not as a backdoor way to change the law for the benefit of a few (...).”<sup>242</sup> After prolonging the FSA’s exceptional rules once, which would well support Naomi Klein’s controversial theory that disasters are often used as pretexts for deregulation,<sup>243</sup> it is noteworthy that the lending de-

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<sup>236</sup> See Kumar, T. S. Anand and Newport (2005, p. 178).

<sup>237</sup> Japan’s previous financial crises demonstrate a long history of bank bailouts for bad-loan problems, from the rescues by the Ministry of Finance after the steep drop in real estate prices of 1991 and 1993, followed by the 1995 total collapse of *jūsen* companies – mortgage lending institutions created by banks in the 1970s.

<sup>238</sup> Law No. 128/2004 (*Kin’yū kinō no kyōka no tame no tokubetsu sochi ni kan suru hōritsu*); the amendment partially revising this act was by Law No. 80/2011.

<sup>239</sup> Ohira and Chiba (2011); Ranghieri and Ishiwatari (2014, p. 275); for details, see Torihata (2012, pp. 204–206).

<sup>240</sup> Ranghieri and Ishiwatari (2014, p. 275).

<sup>241</sup> See Japan Press Weekly (2011a).

<sup>242</sup> Wilhelm and Delaney (2013, p. 122).

<sup>243</sup> In “The Shock Doctrine: The Rise of Disaster Capitalism,” Klein critically observes that disasters are regularly followed by imposing deregulation, privatisation, and cuts to social spending so swiftly that victims and other stakeholders have no chance to oppose. In this way, crises are seen to be exploited to push through controversial, exploitative policies while citizens are too emotionally and physically distracted, see Klein (2008).



regulation has indeed been withdrawn as of 31 March 2012. It remains unclear for whom exactly the amendments had been thought necessary in the first place, and whether the FSA subsequently backpedalled in belated comprehension that facilitating lending to over-indebted disaster victims is little different from throwing oil on the fire.

That “many with lower incomes and skills were pushed into poverty” by double-loans,<sup>244</sup> however unique the circumstances may be, is part of similar phenomena recurring world-wide: Disasters create and reveal injustice because “marginalised people in society suffer the worst impacts (...) as disadvantage that is expressed in housing becomes amplified,”<sup>245</sup> meaning that the poor “have been most at risk from natural hazards.”<sup>246</sup> In this respect, the government’s half-hearted reactions to double-loans and debt relief can be seen to follow what has been distilled as general rationales of financial disaster relief in Japan: “compensate if the law requires, but not otherwise; compensate symbolically, but not enough to truly cover losses; compensate uniformly, but not tailored to individual loss.”<sup>247</sup>

In spite of broad discussions in Japanese media, politics and academic scholarship, it has not yet been fully determined how to improve institutional structures to holistically enhance resilience against future post-disaster indebtedness, let alone how to assist those affected in a feasible way. In one of the world’s wealthiest countries, part of what makes agreement on financial relief difficult is rooted in questions of disaster justice.

### 3.3 A JAPANESE DISCOURSE ON DISASTER JUSTICE

In theory, there are three competing ways in which disaster-related injustice can be framed, and we illustrate them using the example of double-loans. On the first, distributive framing, the victims are seen as vulnerable persons, many of whom being amongst the worst-off groups in Japan, unable to take responsibility for recovering from the disaster without external assistance. Under this framing, relief is owed as a means of responding to a general duty of benevolence, to promote equity and alleviate suffering in society. On the second, rectificatory framing, the ‘victims’ of the double-loan crisis can be said to have been specifically harmed by

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<sup>244</sup>Verchick (2012, p. 24).

<sup>245</sup>Williams and Jacobs (2011, pp. 185–186), with further references.

<sup>246</sup>Adger (2006, p. 271).

<sup>247</sup>Feldman (2013, pp. 336–340; p. 355); “compensation”, here, does not refer to tort law.

government failure and inaction, from a failure to prevent the damage caused by the disaster by adequate coastal zoning laws or coastal protection and a failure to provide reconstruction and rehabilitation in a timely manner to a failure to provide functional opportunities for them to achieve financial and social security. Relief is then said to be owed by the state as a matter of rectification for this past injustice. On the final, precautionary framing, people are the victims of two disasters, the first of which having been caused by the earthquake and tsunami, and the second, social disaster, being caused by the preventable economic and social consequences of this first disaster. On this framing, relief should be given as a means of avoiding the second disaster, just as tsunami walls and other measures were taken in order to try and prevent the first, natural disaster, and hence preventing this avoidable harm.<sup>248</sup>

Thus, the Japanese political debate about public responsibility to the victims of the Great East Japan Disaster<sup>249</sup> quickly turned to discussions on the issue of double-loans. This discourse, on the whole, considered double-loans mostly from a distributive perspective, without implying responsibility by the government for causing the disaster or considering ways of preventing it. Despite a Japanese tradition of downplaying victims' social differences and stressing the generality of misery in the wake of disasters, calls for appropriate policies to allocate resources to certain vulnerable groups<sup>250</sup> were soon to be heard. Scholars from the Tōhoku region have been demanding public corrective interventions for double-loan victims, going beyond solutions between creditors and debtors, in that "financial support for those people is one of the public tasks to be fulfilled in view of the ideal of distributive justice."<sup>251</sup> Yet the question

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<sup>248</sup> Our three-fold division reflects other, similar divisions within the domain of justice, for instance, the distinction between the purposes of tort law, or between the moral duties of fidelity, beneficence and care.

<sup>249</sup> See Feldman (2013, p. 339). When Feldman contends that, in contrast, the case of "Fukushima did not spark a moral political discussion about whether victims of mass tragedies should benefit from government action to compensate," Feldman (2013, p. 337), it should be added that at least the question of whether the state should be held additionally liable, as in the mercury poisoning cases of Minamata, pursuant to the State Liability Law (*Kokka-baishō-hō*), Law No. 125/1947, for insufficient nuclear oversight and failure to ensure adequate safety measures was debated among legal academics. Looking closer, there is also evidence of a political discussion in the spring of 2011 on whether the Government, and not the private power plant operator, would bear the sole responsibility for the victims of the accident, if its cause was to be deemed a "natural disaster of exceptional magnitude," see e.g. Weitzdörfer (2014, pp. 129–133 for further references).

<sup>250</sup> See e.g. Cho (2014, p. 174).

<sup>251</sup> Kabashima (2012, p. 8).

remains as to whom exactly and on what grounds the government should assist – if at all?

Although widely unnoticed outside of Japan, a discourse of national scale unfolded, turning – in the words of the Minister of Finance – “the double loan problem” into “a major political issue” and “a major issue in the Diet,” involving all stakeholders, i.e. disaster-affected debtors, creditors and the treasury.<sup>252</sup> Politicians such as the Mayor of Minami-Sanriku City, two consecutive Ministers of Finance, the Governor of the Bank of Japan and the Prime Minister equally expressed their concerns over double-loans,<sup>253</sup> but disagreement arose over who was most affected, what weight was to be attached to their losses, and thus who was to be deemed in need and worthy of financial assistance. In the disaster zone, victims of double-loans were certainly not the only ones in need.<sup>254</sup> Social inequality affected various groups framed as vulnerable (*zeijaku*),<sup>255</sup> ranging from the poor, elderly, isolated, and disabled, to precarious contract workers at the crippled nuclear power plant.<sup>256</sup> Particularly “weak groups” among disaster victims<sup>257</sup> are framed by the term *saigai jakusha*, officially used in plans for persons requiring assistance at times of disaster (*saigai-ji yō-engo-sha*), such as women and children, which are explicitly listed in the Basic Act on Reconstruction in Response to the Great East Japan Earthquake.

Most notably, the Japanese Bar, in a series of public recommendations,<sup>258</sup> called on the government, namely the FSA and the Small and Medium Enterprise Agency (*Chūshō kigyō-chō*), to take a number of appropriate countermeasures: disaster victim’s “release from unreasonable debt” (*fu-gōri na saiken kara no kaihō*) and “workarounds for double loans” (*nijū rōn no kaihi*) by recommendations aiming at debt write-offs (14 and 22 April 2011), legal emergency measures in support of reconstruction (19 May), and the instalment of a “debt factoring institution” (*saiken kaitori kikan*, 13 July) to eliminate corporate double-loans. The JFBA’s president even went as far as meeting the Cabinet Secretary in person to discuss “particularly double-loans” (19 April).<sup>259</sup>

<sup>252</sup> Minister of Finance Shozaburo Jimi, 6 May and 10 June 2011, Financial Services Agency (2011b); Financial Services Agency (2011c); on the public discourse, see Shūkan Kin’yū Zaisei Jijō (2011).

<sup>253</sup> See Financial Services Agency (2011b); Shūkan Kin’yū Zaisei Jijō (2011).

<sup>254</sup> See already the distinction between the victim groups of *higai-sha*, *hisai-sha*, and *hinan-sha* in part 1.

<sup>255</sup> See generally Chiavacci and Hommerich (2017) and Amelung et al. (2018).

<sup>256</sup> See Cho (2014, pp. 169–171, p. 173, p. 174); Claremont (2014, p. 96).

<sup>257</sup> See generally Shiozaki et al. (2012, pp. 86–89, pp. 206–209) and Amelung et al. (2018).

<sup>258</sup> JFBA (2011a, pp. 63–64, 2011b, 2011c); JFBA (2012a, p. 28).

<sup>259</sup> JFBA (2012a, p. 28, authors’ transl.)

While Japan's ruling political parties, the DPJ and subsequently the LDP, rivalled in bailing out corporations and in supporting financial institutions, passing over private debtors, opinions of economists and legal academics were mixed: Whereas local politicians and some scholars seem to frame the crisis as presenting the most serious danger for companies,<sup>260</sup> some understand it rather in terms of nonperforming loans (*furyō saiken*) affecting the liquidity of creditor institutions, as they are confronted with falling repayment rates, heavy withdrawals, no fresh savings and a surge in demand for reconstruction loans at the same time.<sup>261</sup> In other sources, corporate debt is excluded and the focus is laid on individuals who "lost their assets (...) and need to rebuild their properties."<sup>262</sup> Emphasis is often put on collateralised debt where "assets which were mortgaged for the loans had been destroyed",<sup>263</sup> and particularly, as in this book, home loans, where victims must "pay off mortgages on houses that were destroyed in the disaster while simultaneously borrowing additional funds to rebuild."<sup>264</sup>

The government's costly disaster-response also raises questions on distributive justice, i. e. notions of "fair" allocation of costs and resources for disaster recovery among the members of society.<sup>265</sup> Whilst there are many differing notions of distributive justice, it is generally recognised that the distribution of goods should be both egalitarian and responsible to individual choices and decisions.<sup>266</sup> On one famous account, these competing desiderata are brought together in the view that "It is bad – unjust and unfair – for some to be worse off than others through no fault [or choice] of their own."<sup>267</sup> Distributional injustice after a disaster, in this abstract, arises if one group of victims is perceived to have received too little benefit, relative to their need, or to bear too much burden, relative to what they deserve. Justice, being "the first virtue of social institutions,"<sup>268</sup> thus depends on the conception of how to compare those affected by a disaster, so that all stakeholders receive their fair shares of government aid. Criteria for distribution fundamentally differ in the way in which they

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<sup>260</sup> See Financial Services Agency (2011b); Uchida et al. (2012); Umeda (2013, p. 19).

<sup>261</sup> See e. g. Nakamura (2011); Takahashi (2012); Torihata (2012); Kumar, T. S. Anand and Newport (2005, p. 179); Ranghieri and Ishiwatari (2014, p. 275).

<sup>262</sup> Kabashima (2012, p. 8, p. 13); for another example, see Wakabayashi et al. (2011).

<sup>263</sup> JFBA (2011b).

<sup>264</sup> Cho (2014, p. 171), see also JFBA (2011b); Kabashima (2012, pp. 13–15).

<sup>265</sup> See generally Kabashima (2012) and more generally Jerolleman (2019).

<sup>266</sup> Dworkin (2000, p. 451) states: "a fair distribution of risks and benefits is one that is sensitive to different people's choices, but insensitive to their brute bad luck."

<sup>267</sup> Temkin (1993, p. 13).

<sup>268</sup> Rawls (1999, p. 3).

construe fairness, depending on the respective “substantive values underlying the distribution,” such as merit and equity, equality, or individual need.<sup>269</sup>

The political issue of whether the government should intervene in double-loan problems<sup>270</sup> thus relates to fundamental dilemmas of ethics, burden-sharing, the financing and governance of risk, and resourcing challenges that each require value judgments and inevitable contingencies for framing certain victims as deserving special government attention. While interest in the topic of “disaster justice”<sup>271</sup> is growing globally, concepts of vulnerability, referring to “states of susceptibility to harm, powerlessness, and marginality of both physical and social systems,” guide the resulting normative actions for disaster victims.<sup>272</sup> The Japanese government’s half-hearted, selective responses to double-loans mirror conflicting normative concepts underlying disaster response in Japan. Next, and in the final four parts of this book, we will explore key features of these underlying concepts by critically examining the first two and then proposing a third framing of disaster justice, as introduced above.

### 3.4 DOMAIN-CONTINGENCY OF DISTRIBUTIVE DISASTER JUSTICE

Comparative studies in disaster justice have highlighted that “the decision about how and why to provide temporary housing [or any disaster relief], reflect the particular social, economic and political situation of the country in question.”<sup>273</sup> As for Japan, it has been suggested that factors such as “a disregard for public welfare, an overemphasis on fiscal conservatism, a subservience to private interests, a deep commitment to individual autonomy, or others clearly disincline the state to distribute financial compensation.”<sup>274</sup> However, such generalisations often hide a more nuanced political discourse on victimhood and recovery in Japan.

Even before the enactment of the so-called Relief Regulations (*Jukkyū kisoku*) in 1874, feudal Japan had a tradition of providing relief for the indigent and poor (*kyūmin kyūsai*), just as payments of ad-hoc charitable disaster aid were common after earthquakes in imperial Japan, collected

<sup>269</sup> See fundamentally Deutsch (1985, pp. 2–3, pp. 38–45) and Kaplow and Shavell (2001); or the contributions in Fourie et al. (2015).

<sup>270</sup> See e.g. Financial Services Agency (2011b); Shūkan Kin’yū Zaisei Jijō (2011).

<sup>271</sup> For an authoritative overview, see Verchick (2012); on disaster justice and ethics after 3/11, see Shiozaki et al. (2012).

<sup>272</sup> Adger (2006, p. 268).

<sup>273</sup> Johnson (2007, p. 449).

<sup>274</sup> Feldman (2013, p. 340).

by the public and the imperial family.<sup>275</sup> As regards financial disaster aid from the modern Japanese welfare state, the tradition of condolence money, codified into national legislation in 1973, constituted the first example of statutory relief, albeit “as an expression of sympathy rather than an effort to make the victim whole.”<sup>276</sup> While it would be an exaggeration to characterise Japan as “disregarding” public welfare, its post-war system of social security is much less developed than, for instance, in many European countries.<sup>277</sup> A fundamental right to welfare is not explicitly set out in the Japanese Constitution and has rarely been invoked successfully in courts, although overwhelming legal scholarship advocates for its recognition as more than a mere principle under article 25.<sup>278</sup>

In his brief, yet compelling overview of cases from the post-war era, Eric Feldman concludes that the “history of natural disasters in Japan reveals little appetite for compensation,” and that “compensation schemes justified on political grounds are also rare.”<sup>279</sup> All the way to the Great East Japan Earthquake, despite a public emphasis on “social bonds, or *kizuna*, which was so heavily promoted by the government (...), a history of state entanglement in the lives of citizens (...), one is hard-pressed to find (...) some notion of solidarity,” he finds, as “few in Japan framed their expressions of sympathy in the language of recompense.”<sup>280</sup> Existing cases of government compensation, namely for acts of terrorism, are persuasively categorised as mere “exceptions to the general norm in Japan of leaving disaster victims to fend for themselves,” leading to the conclusion that a “non-compensation norm” defines the Japanese state’s response to disasters.<sup>281</sup> However, this norm against compensation does not appear to extend across all domains of government intervention, and where interventions can be framed in terms of reconstruction, rather than compensation per se, there is an increasing trend towards government intervention. A noteworthy example are housing grants:

After the Kobe earthquake of 1995, special financial aid was denied due to considerations of fairness in the sense of equality (*kōhei-sei*) in line with the Japanese norm against discrimination between disaster victims. As regards reconstruction, the public sentiment was notably that “all Ja-

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<sup>275</sup> See Clancey (2006, pp. 131–134).

<sup>276</sup> Feldman (2013, p. 338).

<sup>277</sup> See generally Estévez-Abe (2008); Miyamoto (2008); Takegawa (2010).

<sup>278</sup> On the constitutional welfare right in Japan, see Matsui (2011, 222–224, 229–230); on the political discourses, see generally Miyamoto (2008).

<sup>279</sup> Feldman (2013, p. 337); on the history and justification of post-disaster cash disbursements, see Mikuriya and Iokibe (2016, pp. 109–128).

<sup>280</sup> Feldman (2013, p. 337, p. 341).

<sup>281</sup> Feldman (2013, p. 340).

pan[ese] people should be treated equally in the provision of government services and support.”<sup>282</sup> Whilst recognisably egalitarian in one sense, such thinking is strikingly different from western notions of equality, such as those described above. It is predicated on assumptions that the government does not owe a “‘special’ duty for communities or individuals with extraordinary needs [or a] special obligation to correct social inequality simply for the sake of hazard mitigation (...) freedom requires that the government treat individuals in equal ways; but it does not require that the government ensure equal outcomes.”<sup>283</sup>

However, three years later, and after a massive petition campaign, the above-mentioned Act on Support for Reconstructing Livelihoods of Disaster Victims was passed – the second step in the direction of financial disaster aid beyond charity. When the Act was put to debate for amendments during the 159<sup>th</sup> session of the Lower House of the Diet in March 2004, the commission members were careful not to set a precedent for general compensation:<sup>284</sup>

*There had been arguments as to whether public money should be granted for personal property losses caused by natural disasters. The Diet reached the conclusion that it is permissible to provide such payments because houses are one of the basics of people’s lives, it is important to promote recovery from the loss of houses, and reconstruction of houses is important for the area.*

Home-ownership and support for middle-class housing had long been at the heart of Japanese post-war housing policy, namely through low-interest loans provided by the Government Housing Loan Corporation.<sup>285</sup> Thus, despite “the resistance in Japan to ideas of individualism and privatism,”<sup>286</sup> and despite the described insufficiency of the grants to fully compensate for all losses, namely of poorer home-owners,<sup>287</sup> the House of Representatives had created an important normative exception to the principle of non-compensation after disasters.

In the spring after 3/11, the question of financial relief for disaster victims returned to the Lower House, when its budget committees were confronted with finding solutions for the double-loan problem.<sup>288</sup> This time,

<sup>282</sup> Edgington (2010, p. 86); see also Feldman (2013, p. 340).

<sup>283</sup> See critically Verchick (2012, p. 53); for an analysis of public sentiment on welfare politics, see Nagayoshi and Sato (2014).

<sup>284</sup> Yagi (2007, p. 46); transl. by Umeda (2013, p. 18).

<sup>285</sup> Hirayama and Hayakawa (1995, p. 230); Hirayama and Ronald (2007); Hirayama (2010); Hirayama and Ronald (2007).

<sup>286</sup> Ronald (2004, p. 55).

<sup>287</sup> Murosaki (2013, p. 110).

<sup>288</sup> Financial Services Agency (2011b).

the promptly enacted art. 2 para. 3 of the Basic Act on Reconstruction in Response to the Great East Japan Earthquake invoked “solidarity and co-operation among people, including those affected by the disaster, the people, entrepreneurs and diverse actors in the private sector”. Art. 5 further stressed “the spirit of mutual support and solidarity.” By July, the government decided that, in order to maintain liquidity, funds for the housing grants under the Act needed to be boosted by means of exceptionally increasing the Central Government’s contributions from 50 % to 80 % (in art. 18) through a quick amendment to the Act on Special Financial Support and Grants in Order to Deal with the Great East Japan Earthquake,<sup>289</sup> another measure implemented upon recommendation by the JFBA.<sup>290</sup> Accordingly, the major burden of housing grants to the victims is now borne by the Central Government.<sup>291</sup> In this way, housing grants were supported by way of an exception to the principle of non-compensation. We conclude that, in Japan, not only the framing of disaster victimhood has been contingent over time,<sup>292</sup> but also that the normative concepts of disaster justice are domain-contingent.

### 3.5 AVOIDANCE OF BLAMEWORTHINESS AND LIMITATIONS OF RECTIFICATORY DISASTER JUSTICE

While the Japanese government has not evaded widening discussions about distributive justice after the Great East Japan Disaster, albeit with limited implementation, it has been more resistant to discourses on the topics of disaster responsibility, blame, and the possibility that relief is owed as a means of rectification for avoidable government failures.<sup>293</sup>

The public discourse about rectification however was complicated by the coincidence of the fact that 3.11 saw at least two different, yet simultaneous, disasters. While the occurrence of earthquakes and tsunamis had been constantly present in the lives of each Japanese generation, the Great East Japan disaster also triggered a nuclear meltdown, which was a new experience.

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<sup>289</sup> Law No. 40/2011 (*Higashi-nihon dai-shinsai ni taisho suru tame no tokubetsu no zaisei enjo oyobi josei ni kan suru hōritsu*); the amendment partially revising this act was by Law No. 87/2011; on financial assistance to the prefectures, see also Umeda (2013, pp. 5–7).

<sup>290</sup> JFBA (2011a, p. 64, 2011d, p. 11).

<sup>291</sup> In other words, the taxpayers, see also Brasor and Tsubuku (2011).

<sup>292</sup> Clancey (2011, pp. 399–400)

<sup>293</sup> The following three paragraphs are based on Hörhager and Weitzdörfer (2018), where further references can be found.



Accordingly, in the public discourse on the consequences of the geo-physical trigger-event, on the one hand, the tsunami was generally regarded as a natural and recurring phenomenon of the Sanriku coastline.<sup>294</sup> On the other hand, the nuclear accident largely emerged as being man-made,<sup>295</sup> with its agency being attributed to the private operator of the power station, which was inadequately controlled by the Nuclear and Industrial Safety Agency, the Japan Nuclear Energy Safety Organisation, and to the so-called “nuclear village” (*genshi-ryoku mura*) in general. This dual perception was exemplified in both the public media and the government of Prime Minister Naoto Kan, who, after having tried desperately to guide and collaborate with the operator, Tokyo Electric Power Company (*Tōkyō denryoku kabushiki gaisha*, TEPCO) in handling the situation, resorted to blaming when it became apparent that the company withheld information, misinformed the public, and was unable to overcome the crisis in a swift manner. While the government itself did not admit disaster agency in the words of legal liability under the State Liability Law of 1947,<sup>296</sup> it can be regarded as having partially accepted political responsibility by open-ended payments to be used for the costly compensation of the nuclear evacuees.<sup>297</sup>

It must be noted, however, that the narrative of government blamelessness over the death and destruction caused by the natural disaster was not uncontested. This means that the tsunami was also sometimes framed as a “man-made” catastrophe in part, for instance regarding the underinsurance of homeowners, inadequate urban planning, the failure to evacuate children on time, and the insufficient tsunami walls in several coastal municipalities.

As victims gradually shifted their attention from loss and urgent needs to the politics of the reconstruction priorities, they voiced strong criticism about radiation safety levels and the selective plans for the permanent relocation of communities away from the shore and the crippled power plant.<sup>298</sup>

Albeit, such discourses in relation to the tsunami were limited to local cases and did not reach a national scale, just as they also did not trigger large demonstrations in Tokyo or blaming as in the case of TEPCO's nuclear accident. As Japan had already been “one of the world's most prepared nations in dealing with natural disasters, experts and policy mak-

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<sup>294</sup> See e. g. Gill et al. (2013b).

<sup>295</sup> See generally Funabashi (2012) and Hörhager and Weitzdörfer (2018).

<sup>296</sup> See already *supra* note 249.

<sup>297</sup> For an overview with further references, see Weitzdörfer (2014).

<sup>298</sup> Again, see Cho (2014).



Figure 14:

A clear attribution of human political, economic, or legal responsibility for damage caused by “natural” disasters is impossible, as it typically results from varying degrees of vulnerability and exposure created by lack of foresight, lack of action, and negligent or even intended risk-taking behaviour on all levels of private and public decision-making. This does not mean, however, that an ex-post-facto search for “disaster justice”, the designation of victims deserving special support, and the identification of market and policy failures are futile, especially if corresponding responses are more than merely retrospective. Breakwater collapsed over several hundred metres in Nakoso, Iwaki City, image by Kunio Kaji, dated 14 July 2011, courtesy of and published by Iwaki meisei daigaku shinsai ākaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no ki’oku [Memories from Hamadōri] (2014, p. 13).

ers have been struggling to answer” how it could have been more resilient and better prepared.<sup>299</sup> Thus, even if one accepted the notion that some of the victims of the earthquake and the tsunami were harmed by government failure, it was much harder to identify these victims, or how the government could have served them better, than it was with regard to the Fukushima Dai’ichi Nuclear Disaster.

### 3.6 CHALLENGES FOR VICTIM-CENTRED APPROACHES TO SOCIAL DISASTER JUSTICE

Whilst it is easy to blame the government for not taking sufficient action to prevent or resolve the double-loan crisis, both the discourses on distributive and rectificatory justice were not supportive of significantly stronger actions on the part of the government. The fact that equality can be seen as demanding equal treatment of all disaster victims, while agency in natural disasters is hard to prove, indicates the difficulty in forming a robust conception of justice that can protect people from such disasters. In particular, both discourses on social justice required the framing of a class of victims deserving of relief, and, as we will see, such framings tended to undermine the case for more robust action on behalf of the government.

To see this further, let us turn to five practical dilemmas of disaster aid (part 3.6 a) – e)), making disaster justice a practically unachievable goal. They are to demonstrate and exemplify the challenges for achieving social justice in the wake of complex disasters – in this case, history’s costliest disaster. The compound nature of the 3/11 disaster created particular complexities of victimhood, leading to different framings and, although overlapping in part, different legal classes of victims, which emerged and created social conflict, frictions, and envy, described by the sociological concepts of “negative classification” and “relative deprivation.”<sup>300</sup> In other words, the government’s sophisticated, generally well-intended and often well-justified differentiation of categories and statuses of victims in consequence rather reinforced questions of their respective desert and merit.

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<sup>299</sup>For suggestions to improve resilience, see Shimizu (2012, p. 40); Ranghieri and Ishiwatari (2014).

<sup>300</sup>For a sociological case study from Iwaki City, see Kawazoe (2014); for a closely related conceptual study on social inequality in Fukushima, relying on considerable input from one of us, see Holbig and Neckel (2016).

*a) Tsunami Victims vs. Nuclear Victims*

Among the groups outspokenly competing for government attention were those affected by the open-ended nuclear crisis and the survivors of the deadly tsunami.<sup>301</sup> Victims harmed by the nuclear accident, namely those who had to leave their properties pursuant to evacuation orders, can claim significant amounts of (heavily state-subsidised) compensation in tort from TEPCO under art. 3 of the Nuclear Damages Act<sup>302</sup> and related legislation on nuclear accidents. Although this redress involves numerous problems of its own,<sup>303</sup> and many people are similarly “unable to return to their contaminated homes, but lack the financial means to start new lives elsewhere,”<sup>304</sup> nuclear victims have enjoyed the benefits of actual legal rights in tort, at least in theory covering the full value of the real property before contamination. This is a result of their victimhood clearly falling within the sphere of responsibility of TEPCO under the principles of unlimited liability and liability channelling to the operator under Japanese nuclear law.<sup>305</sup>

*b) Insured Victims vs. Uninsured Victims*

The public costs of double-loans in a post-disaster context can be understood to at least partly stem from un- or underinsured private risk.<sup>306</sup> Earthquake insurance, owing to state subsidies incentivising insurers, was available to everyone in Japan, yet optional. Famously, “the decision to buy or reject (...) insurance is a calculated gamble.”<sup>307</sup> Thus, coastal home-owners were given the option to transform the uncontrollable and unbearable costs associated with being the victim of a tsunami into regular instalments that they can afford to bear. However, in the world’s most earthquake-prone country, individuals faced significant barriers to achieving this kind of autonomy. In addition to the lack of financial resources to pay premiums, lack of information on tsunami risk, ignorance, deliberate risk-taking or mere recklessness of

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<sup>301</sup> Even the term “nuclear nouveau riche,” referring to villagers financially profiting from nearby nuclear power plants, coined already long before the Fukushima accident, has been re-invoked when comparing “better-off” nuclear evacuees with tsunami evacuees in post-3/11 discourses of disaster justice.

<sup>302</sup> Law No. 147/1961 (*Genshi-ryoku songai no baisho ni kan suru hōritsu*).

<sup>303</sup> For up-to-date details, see Weitzdörfer and Lauta (forthcoming, 2021).

<sup>304</sup> Feldman (2013, p. 355); for the 2020 figures from Fukushima prefecture, see part 3.1 above.

<sup>305</sup> On these principles, and the practical challenges of nuclear liability, see e.g. Weitzdörfer (2014).

<sup>306</sup> See generally Grislain-Létrémy (2018).

<sup>307</sup> Dworkin (p. 74).

home-owners,<sup>308</sup> the institutional barriers described above include the fact that indemnity insurance for natural disaster cannot be taken out against the full cost of disaster damage, was not sensitive to risk at the sub-prefecture level, is only available when packaged with fire insurance, and is vulnerable to seizure by mortgagees, without mortgagees placing any obligation to insure. Because of these barriers, the insurance products were unpopular and achieved fatally low penetration rates across affected prefectures. However, the question remains whether the availability of insurance made it acceptable for disaster relief funds to be used to indemnify uninsured debtors at the expense of those victims who were policyholders, or more risk-averse by living in higher locations or by borrowing less.

From the viewpoint of economics, as location within flood zones is generally said to lower property value,<sup>309</sup> it is widely argued that coastal homeowners who first saved on property prices, took out burdensome loans, and then free-rode the insurance system provided by the government, had limited merit to deserve special aid through taxpayer money. However, before blaming residents, it is important to take into consideration the social reality of farmers and fishermen in Japan, where labour and housing markets do not encourage mobility, and geology, topography and climate make it nearly impossible to move away from all potential disaster hazards. Therefore, whilst insurance may have allowed individuals to spread some of the cost of disaster damage over time, the pricing effects of insurance markets cannot meaningfully be said to have allowed them to make choices about how much risk they wished to face. Indeed, some moral philosophers have argued that even individuals who chose to accept certain risks should not face the full costs associated with particularly negative outcomes associated with these risks, if these costs are unbearably high or if it can be established as being in everyone's interest that such outcomes be avoided.<sup>310</sup>

Furthermore, while 'self-inflicted' vulnerability from the risk of not having taken out any disaster insurance may provide moral grounds for denying financial aid to double-loan victims, part of the responsibility for the low market coverage and the inbuilt deficiency of under-

<sup>308</sup> In general, "although residents are aware of the risk of living in flood areas, these risks are subjugated to other desires such as living in an attractive area and in a home that fulfils their needs (...) despite the (...) experts (...), assessment of risk is marginal [to lay people] in decision making about housing" and often "insurance schemes were not taken up because of the lack of knowledge about their availability," Williams and Jacobs (2011, pp. 190–191).

<sup>309</sup> See generally Bin et al. (2008); Williams and Jacobs (2011, p. 191).

<sup>310</sup> See e.g. Fleurbaey (2008, pp. 153–198); Barry (2008).

insurance due to statutory caps lies with the government. It is arguable that only “if some form of disaster insurance *was* the norm, it might explain the state’s blanket refusal to compensate [italics added].”<sup>311</sup> Therefore, by citing the lack of insurance coverage as a reason for not responding to double-loans as a case of distributive injustice, the government may be laying itself open to the claim that they are instead a case of rectificatory injustice.

However, as unattractive as the insurance system may be, considerations of merit and governance do render it difficult to privilege double-loan victims over those who have paid costly premiums for decades and would further disincentivise taking out insurance in the future. A convincing line of argument derives from a restorative approach: When comparing the situation of uninsured mortgagors with that before the disaster, providing them with both permanent housing and debt relief would seem to constitute, so to say, over-relief.

*c) Large, Corporate Debt vs. Small, Private Debt*

The government also drew criticism in that financial assistance and incentives were directed at major local companies rather than individuals or owners of SMEs.<sup>312</sup> As described above, this holds true especially for the selectivity shown by the government in debt-factoring only corporate debt. Certainly, it is evident that if larger “enterprises go bankrupt and fail, local industries will be irreparably damaged and many local workers will lose their jobs.”<sup>313</sup> This policy therefore reflects the governments focus on regional economic recovery over and above the needs of individuals.

150,000 long-term, low-interest and even no-interest “Great East Japan Earthquake Special Loans” and “Great East Japan Earthquake Emergency Guarantees for Recovery” were granted to SMEs sustaining significant direct or indirect damage from the disaster between May and October 2011 alone.<sup>314</sup> Other examples were the public encouragement of lenders to modify loan terms for SMEs by the Minister of Finance and the Governor of the Bank of Japan, or restoration assistance and projects for makeshift storefronts etc. by the Organization for SMEs and Regional Innovation from supplementary budgets.

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<sup>311</sup> Feldman (2013, p. 339 (italics added)).

<sup>312</sup> Cho (2014, p. 164).

<sup>313</sup> Katō (2013).

<sup>314</sup> On exceptions to corporate bankruptcy proceedings and civil rehabilitations after the disaster, see Katō (2013).

*d) Debtors vs. Creditors*

Perhaps the most sensitive aspect of disaster justice has been whether the government intended to assist debtors or rather placed priority on the interests of affected creditors. For this, one must bear in mind that double-loan problems were predictable for creditors as well as for debtors. On the one hand, the general, well-established principle of law is that in contractual relationships, the party to bear the burden of insurance is or should have been the party that is best able to control the risk, which in this case would be the debtors in so far as they decide where to acquire real estate and what type of building materials to use, e. g. wood (*mokuzō*) or ferro-concrete (*tekkin konkurīto*).

On the other hand, for a long time, Japanese institutional lenders had been aware that in relation to mortgaged loans, “the highest risk is the condemnation through physical damages caused by earthquake, typhoon or other acts of god.”<sup>315</sup> They also knew that in the absence of a system of full governmental compensation and guarantees by surety companies, “one must rely on earthquake insurance, which is said to be inadequate.”<sup>316</sup> As it is well-documented that low-income populations are less likely to hold earthquake or flood insurance,<sup>317</sup> at least in hindsight, it must be noted that creditors should have acted more prudently to insist on insurance for disaster-prone collateral. What is more, there is a strong economic argument that creditors have little excuse for not having insisted on insurance, since they would not have borne these costs, while at the same time benefitting from a lower risk of default and the right to subrogate insurance claims if necessary. In conclusion, the lenders’ negligence would appear at least as morally culpable as the failure of debtors to insure their mortgaged property.

However, balancing out the financial burdens of disaster-induced bad debt between borrowers and lenders is also a decision with considerable macroeconomic implications. Firstly, would the Government force creditors to write off disaster-affected loans of coastal homeowners, this could, again, create moral hazards to efforts of precaution by residents of tsunami-prone communities, who would be disincentivised to take out insurance or to buy property in safer areas away from the sea, anticipating post-disaster government intervention. Secondly, it is only too familiar that “the unfolding of the global financial crisis, which has special relevance here in this context of housing and disaster, was itself triggered by

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<sup>315</sup> AES Ltd. (2005).

<sup>316</sup> AES Ltd. (2005); on disaster-related loss of or damage to collaterals, see Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 20–22).

<sup>317</sup> See Verchick (2012, p. 42).

mortgage-backed securities.”<sup>318</sup> In this way, regional financial institutions were supposedly deemed “system-relevant” for regional disaster recovery, and the viability of credit markets more important to “national interest” than the insolvency of a debt-ridden shopkeeper or a family’s mortgage ending in foreclosure.

*e) Home-owners vs. Renters*

Finally, home-owners in some respects have been treated more favourably and more generously than renters, namely regarding the distribution of charity money and housing grants described above, where renters received only one quarter as much as home owners. Home-owners were also reported to be in an advantageous legal position in comparison to shopkeepers.<sup>319</sup> Also comparatively speaking, disaster aid does tend “to favour middle-class homeowners over less affluent renters.”<sup>320</sup> However, in disaster research it is often the tenants that are framed as a population more vulnerable and as “most in need of temporary housing”.<sup>321</sup> Hence, it can be argued that the allocation of post-disaster funding to housing, “much of which is captured by the economic and social elite, seems a misallocation of scarce resources”, and that funds might better be used for high economic return projects, such as public infrastructure, and to meet the needs of the poor.<sup>322</sup>

Such criticism, on the one hand, may be questionable in the case of Japan, one of the world’s wealthiest countries, for being predicated on the false assumption that resources for reconstruction were scarce. On the other hand, since the 1970s, increasing emphasis was put on expanding ownership of residential property and the owner-occupied housing-sector, while “housing supply was entrusted to market principles and low-income housing policy became very restricted.”<sup>323</sup> Public housing construction also rapidly declined, and after the collapse of the bubble economy in the early 1990s, the environment of property ownership in Japan’s “homeowner society” worsened dramatically, aggravating socioeconomic inequalities and exclusion,<sup>324</sup> and giving rise to concerns about the extent to which a home ownership-oriented society can be maintained.<sup>325</sup> Thus, justice in post-disaster housing has

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<sup>318</sup> Williams and Jacobs (2011, p. 189); see also Peterson (2009).

<sup>319</sup> See Brasor and Tsubuku (2011).

<sup>320</sup> Verchick (2012, p. 44).

<sup>321</sup> Johnson (2007, p. 456).

<sup>322</sup> Freeman (2004).

<sup>323</sup> Hirayama (2000, p. 119); Hirayama (2012).

<sup>324</sup> Hirayama (2010).

<sup>325</sup> Hirayama (2012).



to be discussed bearing in mind Japan's widening gap between "those who own (...) a home and those that do not, giving rise to new social inequality."<sup>326</sup>

Competing classes of victims created by differentiated disaster laws

nuclear (原発事故被害者) vs. tsunami victims (津波被災者)

leavers (避難者) vs. stayers (滞在者)

insured (保険加入者) vs. uninsured homeowners (無保険者)

homeowners (建物所有者) vs. renters (入居者)

landlords (賃貸人) vs. tenants (賃借人)

debtors (債務者) vs. creditors (債権者)

private (個人) vs. corporate debtors (法人)

small & medium (中小) vs. large enterprises (大手企業)

Figure 15:

Synopsis of categories of disaster victims, according to legal classification and status

### 3.7 PROSPECTS: A VICTIMLESS APPROACH TO DISASTER JUSTICE

The first author visited Japan not long after the 1995 Great Hanshin Earthquake (M 7.2, causing 6,434 fatalities), experienced the 2004 Chūetsu Earthquake first-hand (M 6.9, 40 fatalities) while on a trip to the area, was shaken in the 2007 Chūetsu Offshore Earthquake while working on the twelfth floor of a law-office in Tokyo (M 6.6, causing 11 fatalities and a minor nuclear accident at *Kashiwazaki-Kariwa*), and returned in 2011 to conduct legal research after the Great East Japan Earthquake (M 9.0, almost 19,000 fatalities). Literally on the day this paragraph was first drafted in 2014, landslides in Hiroshima Prefecture claimed the lives of more than 70 people. Only weeks later, volcanic eruptions on Mount Ontake killed at least 57. Just before a field visit to reconstructed Ishinomaki in 2016, another 50 were killed by the Kumamoto earthquakes (M 7.0), and eventually this short book was finished during the second wave of the Coronavirus pandemic. Such a recurrence of cataclysm demonstrates that in the "Earthquake Nation"<sup>327</sup> of Japan (*jishin-koku de aru nihon*), society will always have to face disasters – and law will always be needed to cope with them.

<sup>326</sup> Hirayama and Hayakawa (1995, p. 229, see also p. 216).

<sup>327</sup> In English, this term was also coined by Clancey (2006, p. 6, pp. 226 et seq.)



Figure 16:

The outlook for inevitable large-scale disasters in the 21st century is that they will increase in frequency, variety, and magnitude, warranting far-sighted and long-term public disaster-financing policies. Japan's experience with the world's costliest natural disaster before the coronavirus pandemic, especially dealing with the threat of double-loan issues to economic recovery, have never been more relevant. Image courtesy of and published by Iwaki meisei daigaku shinsai ākaibu-shitsu [Iwaki Meisei University Earthquake Archive], Hamadōri no ki'oku [Memories from Hamadōri] (2014, p. 4).

Yet, neither legal claims nor charity can substitute for the loss of a family home or birthplace. They cannot compensate for the support of human ties and community, let alone a lost relative or friend.<sup>328</sup> Along Japan's narrow coastlines, there is – literally speaking – limited room left for stricter zoning rules<sup>329</sup> or for providing higher standards in the built infrastructure. New gigantic seawalls, up to 15 metres high and planned to cover over 400 kilometres of shore, are known to have failed previously, create false perceptions of safety, and obstruct tourism and fishery. As with the costly coastal defences, it will be for experts to decide whether three first and newly enacted laws on tsunamis, among them the Act on the Promotion of Tsunami Countermeasures<sup>330</sup> (its bill previously abandoned in 2010), will improve resilience through enhanced zoning, research, education and evacuation training.<sup>331</sup> Certainly, it is often more efficient to reduce risk by addressing socioeconomic vulnerability instead of pouring concrete.<sup>332</sup>

Whilst criticising governments for insufficient or unjust disaster response is a simple exercise, it is important to consider the enormous challenges a compound mega-disaster like 3/11 brings about. In addition, a complex socioeconomic problem like the double-loan crisis, given the unchangeable geological conditions of Japan, can hardly be addressed with simple solutions, and most schemes in place will have to be retained and incrementally improved to best combine ex-ante and ex-post measures of disaster risk governance and financing.

In the absence of a full-fledged social welfare system, few better legal remedies than insurance,<sup>333</sup> a well-tried, yet increasingly challenging risk-sharing arrangement, with Japan already hovering between a privately and publicly funded system,<sup>334</sup> seem to be at hand. Certainly, earthquake insurance has proven vastly unpopular, even with those living along tsunami-prone shores. As premiums are mainly set on an average risk level based on the prefecture, simply put, the premiums are almost the same amount for a concrete house built on rock as for a wooden cottage on the slopes of an active volcano, as long as they are in the same prefecture. Due to the resulting moral hazard, those more risk-averse, living in relatively safe locations,

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<sup>328</sup> On a more human-centred recovery in Asian disasters, see the contributions in Kaneko et al. (2016).

<sup>329</sup> For a recent study, see Grislain-Letrémy and Villeneuve (2019).

<sup>330</sup> Law No. 77/2011 (*Tsunami taisaku no suishin ni kansuru hōritsu*).

<sup>331</sup> Umeda (2013, pp. 46–47).

<sup>332</sup> Verchick (2012, p. 51); Aldrich (2012) argues that social capital is the key to building resilience.

<sup>333</sup> Satō (2020) also examines insurance as a key solution for the prevention of double loan problems.

<sup>334</sup> Kozuka (2012, pp. 5–6, pp. 90–93).

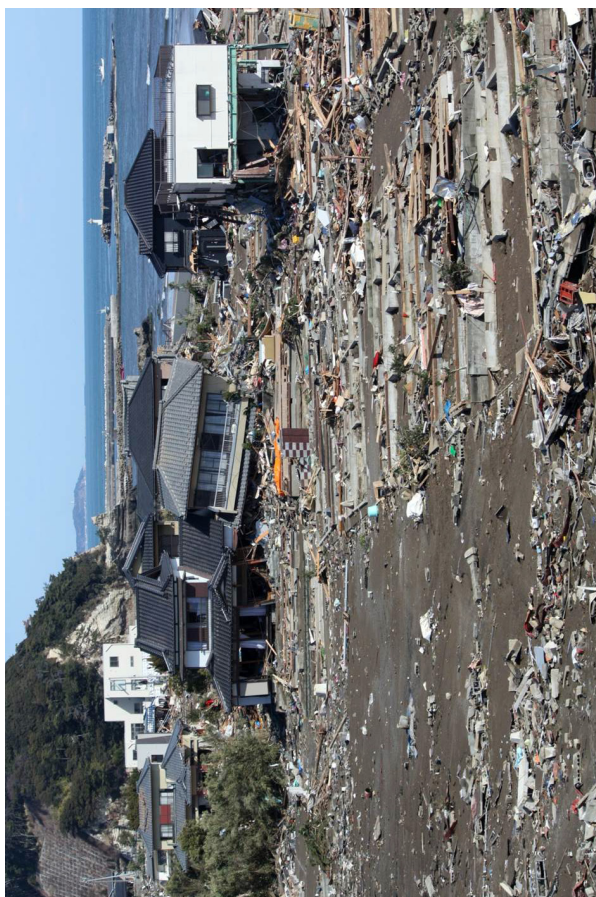


Figure 17:

In the long run, waterside living is becoming increasingly expensive world-wide: not only due to rising land prices driven by urbanisation, population-growth, and economic and recreational development but also due to higher exposure to climate-driven extreme weather events, such as floods and storm surges. This makes Japan's experience with managing tsunami risk globally relevant. A key policy dilemma is whether to reduce exposure by stricter zoning and better planning or by disincentivising development through higher insurance premiums. Mandated insurance for at-risk property bought on credit certainly constitutes a way of increasing private disaster resilience, while it also is a market-based solution that has the potential to hit vulnerable populations hardest. In contrast, public risk financing systems based on income-adjusted contributions might be fairer, yet they lack the geographical incentive effects of risk-adjusted premiums. Image courtesy of and published by Iwaki meisei daigaku shinsai ākaibu-shitsu [Iwaki Meisei University Earthquake Archive], *Hamadōri no ki'oku 2* [Memories from Hamadōri 2] (2015, p. 17).

are in effect forced to subsidise those choosing to procure property in locations more at risk of being impacted by natural disasters.<sup>335</sup> Were insurance companies able to differentiate premiums based on local risk hazard maps, however, residents would be incentivised to choose locations where the danger of damage from natural disasters is lower, thereby reducing the potential burden on the entire system. Economists have shown that “insurance premiums convey risk information to potential buyers in the coastal housing market.”<sup>336</sup> Better using this “signalling function” of the price of premiums, based on increasingly fine-grained and accurate hazard maps, risk from tsunamis could be mitigated by disincentivising life along at-risk coastal areas, which could also mitigate Japan’s overlooked risk of “houses on active faults” (*katsu dansō ni aru jūtaku*).

Increased insurance coverage and the transfer of risks in exchange for premiums would also improve risk management and significantly improve households’ resilience.<sup>337</sup> While private prevention instead of taxpayer-funded disaster response is a slippery slope towards leaving those most in need unprotected from disaster risk, and thus subsidies should be maintained, locally deregulated insurance premiums could signal warnings to the coastal and wooden housing markets, to banks and potential mortgagors in particular, contributing necessary incentives to live in – where available – less popular, but safer locations.

To improve persistently low penetration rates,<sup>338</sup> one might decouple earthquake insurance from fire insurance, make it mandatory, or create an opt-out system, incentivising creditors to insist on insurance by putting future subsidies and bailouts under this condition. Whereas mandating disaster insurance for all homeowners would be a heavy-handed, arguably excessive limitation of the freedom to contract, mandatory insurance for disaster-prone assets serving as housing-loan collaterals seem a pertinent measure to mitigate the risk of other double-loan crises emerging in the wake of future disasters.

Given the clear discrepancy between the constant need for law to respond to disasters, and the ever-present difficulty of harnessing this law

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<sup>335</sup>Critically, however, Frame (2001).

<sup>336</sup>See e.g. Bin et al. (2008). Endeavouring to consider behavioural or cultural factors leading to ignorance of well-documented tsunami risks would go beyond the scope of this short book; for a theoretical explanation, see e.g. Kunreuther and Pauly (2004).

<sup>337</sup>See e.g. Dōjima hōritsu jimu-sho [Dōjima Law Office] (2011, pp. 218–220); Williams and Jacobs (2011, p. 191); Katō (2012); Ōgaki (2013); Waldenberger (2013). Japan’s insurance penetration rate is increasing, particularly since 2011, yet still under 30 % as of 2016; on recent developments, see Tsuda (2019).

<sup>338</sup>Hashizume (2015).



Figure 18:

The 3/11 earthquake, tsunami and nuclear disaster was not only globally unprecedented with regard to its economic magnitude, it also subjected private assets to a multitude of threats from all the elements: earth, water, fire, radioactive fallout in the air and the contamination of plant and animal life. This demonstrates the necessity of comprehensive, all-hazards approaches to private disaster risk financing. Gas fires in Naraha Town, Fukushima prefecture, image courtesy of the town of Naraha, as published by Iwaki Meisei Archive Project, Hamadōri no ki'oku 2 [Memories from Hamadōri 2] (2015, p. 7).



to promote redistributive or rectificatory justice, we conclude by proposing to adopt an alternative, victimless approach to establishing social justice in disaster law. Such an approach starts from the premise that in a complex and interdependent society with mature financial institutions, knock-on effects of disasters on the economy, and in particular on the financial situation of those affected, will be difficult to contain. Victims who are in debt cannot help but either be forced deeper into debt or be denied access to much needed capital, and will either be forced into bankruptcy or prevented from playing a productive role in social and economic reconstruction. Whatever the outcome of such dilemmas, they will only have additional knock-on effects for society at large, prompting the kind of social disaster typified by Japan's double-loan crisis.

Since such knock-on effects may not be easily calculable, but are predictable, we argue that governments are under a duty to seek to avoid them as a precaution to protect their citizens. Such precautionary measures have already been taken very seriously by the Japanese government when it comes to the physical infrastructure and the science of natural disasters ever since the *Nōbi* earthquake of 1891, when it established the world's first interdisciplinary disaster research body, turning Japan into a leader in seismology.<sup>339</sup> Yet, a concern for the predictable and avoidable social consequences of such disasters has remained underdeveloped.

There is a growing body of law based on the prevention and precautionary principles in environmental law, as well as in health and safety law around the world, operating alongside traditional notions of equity, responsibility, and social justice. We contend that the time is ripe to transpose and implement these principles in disaster justice and disaster law, especially when it comes to post-disaster relief. To this extent, we note the adoption of the Sendai Framework for Disaster Risk Reduction in 2015.<sup>340</sup> To strengthen disaster risk governance, article 30 explicitly states the importance

- (j) *To strengthen the design and implementation of inclusive policies and social safety-net mechanisms, including through community involvement, integrated with livelihood enhancement programmes (...), housing and education, towards the eradication of poverty, to find durable solutions in the post-disaster phase and to empower and assist people disproportionately affected by disasters;*

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<sup>339</sup> The Imperial Earthquake Investigation Committee (*Shinsai yobō chōsa-kai*), see Clancey (2006, p. 151).

<sup>340</sup> The Sendai Framework for Disaster Risk Reduction (2015–2030), adopted by 187 UN member states between 14 and 18 March 2015, constitutes the most comprehensive existing international legal risk management framework.



Figure 19:  
New infrastructure, such as tsunami walls or this 13.6m tsunami evacuation tower, erected in March 2015, tangibly symbolizes the government's resolve to "prepare for the next one". Viable and sustainable disaster risk financing policies, however, are arguably more difficult to design. Ōmiya Town, Ishinomaki city, image by the authors, August 2016.



- (m) To promote, as appropriate, the integration of disaster risk reduction considerations and measures in financial and fiscal instruments;*
- (g) To promote and support the development of social safety nets as disaster risk reduction measures linked to and integrated with livelihood enhancement programmes in order to ensure resilience to shocks at the household and community levels; (...).*

Despite its developed economy, legal and scientific sophistication and indeed economic and social equality, Japan has a comparatively underdeveloped public social security system. It therefore seems that meeting these objectives will require developing more robust safety nets for the victims of disasters, based around identifying obstacles to their rehabilitation following a disaster, as well as the need to alleviate immediate, ongoing, and probable future suffering. It is evident that there also is a need to redesign financial mechanisms, particularly disaster insurance, to provide accessible relief for victims and to incentivise, or require, uptake of insurance, or else to render it unnecessary to the effective rehabilitation of individuals following disasters. We acknowledge that such measures will be costly to citizens. However, they will likely prove less costly overall than the consequences of inaction, and they will likely be a very efficient means of allocating resources to promote faster and better recovery of communities and individual lives.

Finally, we note that the scale of the double-loan crisis, and other social costs following the Great East Japan Disaster was, in part, a function of its size, and the difficulty that Japan's economic and social institutions had adapting to such costs. As researchers in the field of global catastrophic and existential risks, we are concerned about what this might imply for potentially even costlier disasters, especially where these occur across national boundaries. Potential socioeconomic consequences of a very large regional or global disaster, such as a super-volcanic eruption, a major global pandemic or extreme climate change would be huge.<sup>341</sup> The projected sea-level rise, in conjunction with waves, tides, and storm surges, is expected to double coastal flooding frequencies by 2050.<sup>342</sup> Therefore, it is vital for all countries to take seriously the lessons of this tsunami disaster and to act so as to prevent and avoid similar snowballing costs in the interests of boosting disaster resilience globally. The costs associated with not doing so, in favour of retaining our concern about attributing victimhood and blame, may be very high indeed.

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<sup>341</sup> See generally Ismail-Zadeh et al. (2014).

<sup>342</sup> Vitousek et al. (2017); on climate change and future disasters, see Lukasiewicz and Baldwin (2020).

## EPILOGUE: DISASTER RISK FINANCING IN THE ANTHROPOCENE

Ten years on from the tsunami, the COVID-19 pandemic has superseded the 3/11 catastrophe as the costliest disaster in human history, shortly to be dwarfed by the expected costs of mitigating the climate crisis. These three crises have already led governments to spend more on disaster relief than at any time in history. Nonetheless, they highlight how our tolerance for uninsured risk and resulting social inequalities is becoming our greatest weakness when it comes to mitigating the economic impact of disasters. This is what we believe makes this book's case study of Japan's "double debt disaster" both universally relevant and uniquely instructive.

It is surely not difficult to identify differences between the crises: one was triggered by a sudden seismic event, primarily affecting a single country and causing most of its damage within hours, while the others are slow-onslaught processes, likely to extend or reoccur over years, decades and across continents. However, we should be aware of their common features from a risk-governance and risk-financing perspective. They all challenge our thinking about the extent to which catastrophes are 'natural' or 'man-made' and whether anyone is to blame for them. Answering these questions requires us to think beyond narrow questions of causation to understand how they were exacerbated by human processes that increased our exposure and vulnerability as well as failures in preparedness for response and recovery.

Unfortunately, the policy dilemmas we analyse in this book still apply, and indeed seem likely to apply ever more over the course of the 21<sup>st</sup> century. What defines risk-financing in the Anthropocene are increasingly global, frequent, disruptive, and costly shocks from disasters against a background of high-speed structural changes in the global economy. To retain effective, feasible and just solutions to prevent mega-disasters from cascading into economic ones (especially in highly interdependent, complex economies), our findings show that:

- economic recovery from ever larger-scale disasters is increasingly difficult to achieve with conventional national, single-generation risk-financing mechanisms,
- ever longer-term public and private investments and accruals are required to spread mitigation costs and benefits temporally (including across generations),

- this, in turn, requires fundamentally rethinking burden-sharing and redistribution to also spread costs and benefits more broadly geographically (including across nations).

Fortunately, the role of inequality as a threat multiplier and intensifier was understood early in the COVID-19 pandemic and has played an important role in recent public discourse. Indeed, discussions about social justice and COVID-19 have often focused on the ethics of responsibility and on providing compensation to those who have lost out in the form of financial relief that seeks to be proportional to these losses. In the United Kingdom, for example, COVID-19 has seen an unprecedented level of government support for those unable to work as a result. However, this has been tailored so as to match people's pre-pandemic income and has tended to exclude certain vulnerable groups (such as those in the early stages of starting a business or whose income was variable). What has still often been missing in such discussions is an awareness of how, in addition to imposing costs in the present, disasters also perpetuate people's vulnerabilities in the future by hampering efforts to rebuild their lives.

Another way in which this study is of global relevance is the concurrence and conflict of general social welfare programs with specific disaster risk financing mechanisms, namely insurance. In conjunction, these tend to cannibalise each other, in that each system creates moral hazards to the development and expansion of the other: Excessive public stimulus of companies during pandemics would disincentivize taking out business continuity insurance or supply-chain hedging. Similarly, agricultural subsidies to farmers for climate-related losses would disincentivize them to take out crop insurance against heat waves and droughts. In all of these areas, further expansion of private resilience measures would reduce the case for public schemes, while the latter would disincentivize private investment in the other. This is not a new dilemma, but in a world facing both extreme inequality and extreme risk, its significance multiplies.

We therefore deem it unquestionable that the world will be facing more problems very similar to Japan's 'double debt disaster' wherever individuals, companies, or nations take on unsustainable burdens in the face of catastrophic losses. This reinforces our insight that the only way to prevent similar scenarios will be for societies and policymakers to start from acknowledging that:

- the costs of a disaster must not be counted in terms of what people have lost, but what they actually need to recover, and thus
- in many cases this will mean providing more relief to those who were worst off to begin with; even if, because of this fact, they actually lost less.

The key observation from 3/11 that we expect to make again in the aftermath of the COVID-19 pandemic is the failure to plan for how to help entire communities that find themselves no longer economically viable, like some of the devastated, decimated, and depopulated coastal villages in Japan. In the wake of COVID-19, it is likely going to be the high degree of uninsured economic losses suffered by certain sectors such as hospitality and tourism, and the deep recessions many countries are experiencing. Whatever the causes, however, it is unlikely that such communities can be restored to what they were before, even more in a century during which economies already undergo structural changes at an unprecedented pace. As in Eastern Japan, for many elsewhere, there will hardly be a normality to return to, so providing relief as restoration of the status quo ante is going to be wasteful. We are unlikely to see whole villages living in containers like in Japan, but we will have communities around the world who find themselves emerging into a post-pandemic world where their former ways of life are simply not viable. So the way to avoid this spiralling into yet another disaster, like in the double debt disaster, is to switch as early as possible to looking at what these communities could be, not what they were.

Recovery from mega-disasters in the 21<sup>st</sup> century thus requires far more creative approaches to understanding what opportunities remain in a given locality or sector, how these can be balanced against future risk and what change needs to happen at the personal, social, and legal level to allow people to transition towards post-disaster ways of living and working. Admittedly, this can entail tough and politically unpopular decisions to refrain from compensating in certain cases, to reallocate funds to support more future-proof and less risk-prone localities, activities, and sectors.

## JAPANESE STATUTES (IN ORDER OF ENACTMENT)

Civil Code (民法 *Minpō*), Law No. 89/1896

Disaster Relief Act (災害救助法 *Saigai kyūjo-hō*), Law No. 118/1947

State Liability Law (国家賠償法 *Kokka-baishō-hō*), Law No. 125/1947

Family Registration Act (戸籍法 *Koseki-hō*), Law No. 224/1947

Livelihood Protection Act (生活保護法 *Seikatsu hogo-hō*), Law No. 144/1950

Interest Limitation Act (利息制限法 *Risoku seigen-hō*), Law No. 100/1954

Capital Subscription Act or Law Concerning the Control, etc. of Acceptance of Contributions, Money Deposit and Interest, etc. (出資法 *Shusshi-hō* or 出資の受入れ、預り金及び金利等の取締りに関する法律 *Shusshi no ukeire, azukari-kin oyobi kinri-tō no torishimari ni kansuru hōritsu*), Law No. 195/1954

Nuclear Damages Act or Act on Compensation for Nuclear Damage (原賠法 *Genbai-hō* or 原子力損害の賠償に関する法律 *Genshi-ryoku songai no baisho ni kan suru hōritsu*), Law No. 147/1961

Disaster Countermeasures Basic Act (災害対策基本法 *Saigai taisaku kihon-hō*), Law No. 223/1961

Act on Earthquake Insurance (地震保険に関する法律 *Jishin hōken ni kan suru hōritsu*), Law No. 73/1966

Act on Special Financial Support for Promoting Group Relocation for Disaster Mitigation (防災のための集団移転促進事業に係る国の財政上の特別措置等に関する法律 *Bōsai no tame no shūdan iten sokushin jigyō ni kakawaru kuni no zaisei-jō no tokubetsu sochi-tō ni kansuru hōritsu*), Law No. 132/1972

Act on Provision of Disaster Condolence Grants etc. (災害弔慰金の支給等に関する法律 *Saigai chō'i-kin no shikyū-tō ni kansuru hōritsu*), Law No. 82/1973

Employment Insurance Act (雇用保険法 *Koyō hoken-hō*), Law No. 116/1974

Money Lending Business Act (貸金業法 *Kashikin-gyō-hō*), Law No. 32/1983

Order for Enforcement of the Money Lending Business Act (貸金業法施行規則 *Kashikin gyōhō sekō kisoku*), Ordinance No. 40/1983

Administrative Procedure Act (行政手続法 *Gyōsei tetsuzuki-hō*), Law No. 88/1993

Act on Support for Reconstructing Livelihoods of Disaster Victims (被災者生活再建支援法 *Hisai-sha seikatsu saiken shi'en-hō*), Law No. 66/1998

Bankruptcy Act (破産法 *Hasan-hō*), Law No. 75/2004

Real Property Registration Act (不動産登記法 *Fu-dōsan tōki-hō*), Law No. 123/2004

Act on Special Measures for Strengthening Financial Functions (金融機能の強化のための特別措置に関する法律 *Kin'yū kinō no kyōka no tame no tokubetsu sochi ni kan suru hōritsu*), Law No. 128/2004

Act Concerning Special Legal Aid by the Japan Legal Support Center to assist Victims of the Great East Japan Earthquake (東日本大震災の被災者に対する援助のための日本司法支援センターの業務の特例に関する法律 *Higashi-nihon dai-shinsai no hisai-sha ni tai suru enjo no tame no nihon shihō shi'en sentā no gyōmu no tokurei ni kan suru hōritsu*), Law No. 6/2011

Act on Special Financial Support and Grants in Order to Deal with the Great East Japan Earthquake Law (東日本大震災に対処するための特別の財政援助及び助成に関する法律 *Higashi-nihon dai-shinsai ni taisho suru tame no tokubetsu no zaisei enjo oyobi josei ni kan suru hōritsu*), Law No. 40/2011

Basic Act on Reconstruction in Response to the Great East Japan Earthquake (東日本大震災復興基本法 *Higashi-nihon dai-shinsai fukkō kihon-hō*), Law No. 76/2011

Act on the Promotion of Tsunami Countermeasures (津波対策の推進に関する法律 *Tsunami taisaku no suishin ni kansuru hōritsu*), Law No. 77/2011

Double Loan Relief Act or Great East Japan Earthquake Enterprise Revitalisation Support Organisation K.K. Act (二重ローン救済法 *Nijū rōn kyūsai-hō* or 株式会社東日本大震災事業者再生支援機構法 *Kabushiki gaisha higashi-nihon dai-shinsai jigyō-sha saisei shi'en kikō-hō*), Law No. 113/2011

## JAPANESE TERMINOLOGY

<i>bengo-shi jimu-sho</i>	弁護士事務所	law office
<i>bōryoku-dan</i>	暴力団	organised crime group
<i>butsujiō dai'i-sei</i>	物上代位性	subrogation (of a claim)
<i>chihō ginkō</i>	地方銀行	regional bank
<i>chihō kōkyō dantai</i>	地方公共団体	local public entity
<i>chūō seifu</i>	中央政府	Japan's central government
<i>Chūshō kigyō-chō</i>	中小企業庁	Small and Medium Enterprise Agency
<i>daburu rōn</i>	ダブルローン	double-loans
<i>dai-kibō hankai</i>	大規模半壊	large-scale partial damage (to buildings)
<i>denwa hōritsu sōdan</i>	電話法律相談	legal telephone helpline (by the JFBA)
<i>fu-gōri na saiken kara no kaihō</i>	不合理な債権からの解放	release from unreasonable debt
<i>fukkō</i>	復興	reconstruction
<i>fukkō jūtaku</i>	復興住宅	reconstruction housing
<i>fukkō kōfukin</i>	復興交付金	reconstruction grants
<i>furyō saiken</i>	不良債権	nonperforming loans
<i>genshi-ryoku mura</i>	原子力村	Japan's so-called "nuclear village"
<i>gi'en-kin</i>	義援金	donations
<i>gyōsei-shidō</i>	行政指導	administrative guidance
<i>hanko</i>	判子	personal seal (for signatures)
<i>hasan</i>	破産	bankruptcy
<i>hensai no risukejūru</i>	返済のリスケジュール	rescheduled repayment
<i>hensai nōryoku</i>	返済能力	repayment ability
<i>higai nintei</i>	被害認定	damage certification (for buildings)
<i>higai-sha</i>	被害者	victims of a man-made disaster
<i>hinan-sha</i>	避難者	evacuees
<i>hisai saimu no kaihō</i>	被災債務の解放	relief from disaster-induced debt
<i>hisai-sha</i>	被災者	victims of a natural disaster
<i>hō'an</i>	法案	bill (in parliament)
<i>Hōterasu</i>	法テラス	Japan Legal Support Center
<i>iken kōbo tetsuzuki</i>	意見公募手続き	procedure of seeking public comments
<i>jishin-koku de aru nihon</i>	地震国である日本	the "earthquake nation" of Japan
<i>jukkyū kisoku</i>	恤救規則	relief regulations, rescue rules

<i>jūtaku busoku</i>	住宅不足	lack of housing
<i>Jūtaku kin'yū shi'en kikō</i>	住宅金融支援機構	Housing Finance Agency
<i>jūtaku saiken shi'en</i>	住宅再建支援	support for the reconstruction of housing
<i>Kashikin-gyō sōdan funso kaiketsu sentā</i>	貸金業相談紛争解決センター	Money Lending Industry Counselling and Dispute Resolution Centre
<i>katsu dansō ni aru jūtaku</i>	活断層にある住宅	houses on active fault-lines
<i>Keisatsu-chō</i>	警察庁	National Police Agency, NPA
<i>Kin'yū-chō</i>	金融庁	Financial Services Agency, FSA
<i>kizuna</i>	絆	social bonds
<i>kodoku-shi</i>	孤独死	solitary death (under evacuation)
<i>kōhei-sei</i>	公平性	equality
<i>kokumin seikatsu sentā</i>	国民生活センター	National Consumer Affairs Centre, NCAC
<i>kōsei rōdō-shō</i>	厚生労働省	Ministry of Health, Labour, and Welfare
<i>kyūmin kyūsai</i>	窮民救済	(historical system of) relief for the indigent and poor
<i>manshon</i>	マンション	condominium
<i>mimai-kin</i>	見舞金	disaster condolence money
<i>minji saisei</i>	民事再生	civil rehabilitation
<i>mokuzō</i>	木造	wooden (buildings)
<i>nichiben-ren</i>	日弁連	Japan Federation of Bar Associations, JFBA
<i>Nihon kurejitto kaunseringu kyōkai</i>	日本クレジットカウンセ リング協会	Japan Credit Counselling Organisation
<i>nijū rōn</i>	二重ローン	double-loans
<i>nijū rōn mondai</i>	二重ローン問題	double-loan problem
<i>nijū rōn no kaihi</i>	二重ローンの回避	workarounds for double-loans
<i>nijū saimu</i>	二重債務	double-debt
<i>ōkyū kasetsu jūtaku</i>	応急仮設住宅	emergency temporary housing
<i>onsen</i>	温泉	hot spring (inns)
<i>purehabu</i>	プレハブ	prefabricated (housing)
<i>risai shōmei-sho</i>	罹災証明書	special identification certificate (in lieu of lost documents)
<i>saigai chō'i-kin</i>	災害弔慰金	(public) disaster condolence money
<i>saigai jakusha</i>	災害弱者	weak (vulnerable) groups among disaster victims
<i>sai-hoken</i>	再保険	reinsurance
<i>saigai-ji yō-engo-sha</i>	災害時要援護者	persons requiring assistance at times of di- saster
<i>saiken kaitori kikan</i>	債権買取機関	debt factoring institution



<i>saiken</i>	再建	rebuilding
<i>saimu seiri</i>	債務整理	private debt reorganisation
<i>sangyō fukkō kikō</i>	産業復興機構	Industrial Reconstruction Organization
<i>sarakin</i>	サラ金	(grey-market) consumer finance company, loan shark
<i>sashi'osae kinshi</i>	差し押さえ禁止	amounts exempted from seizure by creditors
<i>seirei</i>	政令	cabinet order
<i>shihō shoshi</i>	司法書士	judicial scrivener (paralegal)
<i>shin'yō jōhō</i>	信用情報	credit history
<i>shin'yō kinko</i>	信用金庫	Shinkin bank, cooperative institution for deposits
<i>shin'yō kyōdō kumi'ai</i>	信用協同組合	credit cooperative
<i>shinsai hinan-jo</i>	震災避難所	disaster evacuation shelter
<i>Shinsai hōterasu daiyaru</i>	震災 法テラスダイヤル	the Japan Legal Support Center's disaster-counselling helpline
<i>shinsai kanren-shi</i>	震災関連死	(indirectly) earthquake-related deaths
<i>Shinsai yobō chōsa-kai</i>	震災予防調査会	(Imperial) Earthquake Investigation Committee
<i>Shōhi-sha seikatsu sentā</i>	消費者生活センター	(prefectural) consumer affairs centres
<i>shōkō rōn</i>	商工ローン	(high-interest) commerce and industry loans
<i>shūdan iten</i>	集団移転	group relocation (following disasters)
<i>sōryō kisei</i>	総量規制	duty of responsible lending
<i>tajū saimu mondai</i>	多重債務問題	multiple debt problem, over-indebtedness
<i>tajū saimu sōdan madoguchi</i>	多重債務相談窓口	multiple debt counselling service
<i>tatemono songai</i>	建物損害	damage to buildings
<i>teitō-ken</i>	抵当権	hypothec (mortgage)
<i>tekkin konkurīto</i>	鉄筋コンクリート	ferro-concrete (construction)
<i>todō fuken</i>	都道府県	prefectures
<i>tokubetsu rippō</i>	特別立法	special law(making)
<i>Tōkyō denryoku kabushiki gaisha</i>	東京電力株式会社	Tokyo Electric Power Company (TEPCO), now Tokyo Electric Power Company Holdings, Inc.
<i>yami-kin'yū</i>	闇金融	(black-market) moneylender, loan shark
<i>zaimu-kyōku</i>	財務局	(regional) finance bureau, treasury
<i>zeijaku-sei</i>	脆弱性	vulnerability
<i>zenkai</i>	全壊	completely destroyed (buildings)

## TABLES AND FIGURES

Figure 1: The high cost of land and construction. ....	11
Figure 2: Synopsis of the causes and consequences .....	12
Figure 3: The replacement of thousands of vehicles .....	16
Figure 4: Double-loan issues also hamper demolition .....	18
Figure 5: Pathways to resolving debtors' double-loan problems ....	23
Figure 6: Managing coastal mass-displacement. ....	25
Figure 7: Topics of free legal consultations. ....	27
Figure 8: The loss of fishing boats, and industrial equipment. ....	33
Figure 9: Assessment of damaged residential buildings .....	41
Figure 10: Poster advertising financial support .....	44
Figure 11: Public vs. private disaster recovery. ....	48
Figure 12: A small complex of prefabricated housing units. ....	49
Figure 13: Temporary housing occupancy in Miyagi prefecture. ....	50
Figure 14: Attribution of responsibility for damage .....	62
Figure 15: Synopsis of categories of disaster victims .....	69
Figure 16: The outlook on large-scale disasters .....	70
Figure 17: Water-side living will be increasingly expensive .....	72
Figure 18: Disaster-threats to private assets .....	74
Figure 19: Designing new infrastructure and disaster-risk financing ...	76

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