

### Legitimacy or Legitimation? Intensive Analysis of Informal Decision-Making Processes of Disaster Response after 3.11 Earthquake

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# Legitimacy or Legitimation? Intensive Analysis of Informal Decision-Making Processes of Disaster Response after 3.11 Earthquake

Taro Hirai\*

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**Abstract:** »Legitimität oder Legitimation? Intensive Analyse von informellen Entscheidungsprozessen in Katastrophenhilfe nach dem Fukushima-Erdbeben 2011«. In this paper, based on my research about the mutual aids between local governments after the Great East Japan Disaster (3.11), I try to describe the process in which I have collected data based on typical theories and through the interaction with informants belonging to local governments in order to discuss the possible relationship between data and theories. First of all, I evaluate two recent empirical studies both of which reached one similar conclusion on one of the typical theoretical perspective shared by most researchers on Japanese society after 3.11. I name this perspective "divergent theory" because that perspective should generally point out the divergence of two incompatible forms of norm or narratives on political responses to that disaster. Secondly, I describe the data-producing process in which I have collected the data about the decision-making of mutual aid implementation initially through structured questionnaires which were planned based on those static theories and then I modified these data through face-to-face interviews. Consequently, I have come to interpret these political responses to disaster as convergence rather than divergence referring not only to my own process-produced data but to Luhmann's sociological theory which was produced by comparative observation of interactions within political processes. Finally, I describe reactions of my informants who were introduced to my theoretical interpretation as part of the open-ended process of a reflexive relationship between data and theories in my research, which should be called "action research."

**Keywords:** Great East Japan earthquake, decision-making process, open-ended data, legitimation, Luhmann, action research, Japan, disaster management, emergency response, Fukushima.

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## 1. Introduction

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In this paper, based on my research about the mutual aids between local governments after the Great East Japan Disaster (3.11),<sup>1</sup> I try to describe the pro-

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cess in which I have related data with theories and to discuss the possible relationship between data and theories. First of all, I introduce two recent empirical studies as typical cases of “static description of the status quo” (Baur and Ernst 2011, 122): one establishing general theory about public management in disaster situations based on case studies about the governmental response to disaster in the United States since 1990; the other testing through historical and comparative analysis the hypothesis that the Japanese political system transformed after 3.11. In my estimation, one similar conclusion of both studies should be regarded as one of the typical theoretical perspectives shared by most of researchers on Japanese society after 3.11. I name this perspective “divergent theory” because that perspective should generally point out the divergence of two incompatible forms of norm or narratives on the political response to disaster. Secondly, I describe the data-producing process in which I have collected the data about the decision-making of mutual aid implementation initially through structured questionnaires which were planned based on those static theories and then I modified these data through face-to-face interviews. Consequently, I have come to interpret these political responses to disaster as convergence rather than divergence referring not only to my own process-produced data (Onaka 2013, 164) but to Luhmann’s sociological theory which was produced by comparative observation of interactions within political processes. Finally, I describe the reactions of my informants who were introduced to my theoretical interpretation as part of the reflexive process of relationship between data and theories in my research.

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## 2. Divergent Theory

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Years after 3.11, day by day, we – who are to some extent concerned about affected people and areas – cannot but notice the recovery disparities between similarly affected areas which have similar socio-economic conditions. One may regard it as a failure of response to disaster, but how can we distinguish between failure and success?

One answer is given in a recent study entitled “Dealing with Disaster” by Sandra K. Schneider who explores a kind of general evaluation criterion about governmental response to natural disaster based on comparative analysis of recent cases in the United States. In this book, she says as follows:

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<sup>1</sup> This disaster was directly provoked by the magnitude 9.0 undersea megathrust earthquake off the coast of Japan on March 11, 2011. The damages have induced the death of about 16,000 people and caused the loss of over 100 billion US dollars national wealth due to the severe accidents in nuclear power plants. From immediately after the outbreak to today, it was estimated that the damaged area has received over 100,000 public officials of national and local governments and over 1,500,000 volunteers as relief and assistance staff.

Stated simply, the size of the gap ultimately determines whether the public perceives the government's disaster relief efforts to be successes or failures. [...] It is no exaggeration to say that the gap between bureaucratic norms and emergent norms provides an accurate mechanism for identifying and explaining the success or failure of governmental disaster relief efforts. (Schneider 2011, 78-9)

During disasters, our regular modes of behaviour are so severely disrupted that we not only question the legitimacy of established governmental norms (basis of policies and administrative procedures) but also develop new norms and behaviour patterns to guide our actions. Schneider names the former "bureaucratic norm" and the latter "emergent norm" and she notices the gap between these two norms which has been generated inevitably in disaster response. We should be careful that this gap never vanishes even if it could diminish infinitely. In other words, bureaucratic norm never changes even though it overlaps with emergent norms, and vice versa. In Schneider's general theory, the legitimacy of governmental policies and procedures has never been renewed or reconstructed even though fundamentally suspected.

As Schneider tells, "[n]atural disasters provide a real-world laboratory for dealing with extremely trying circumstances. If the government can improve its performance here, it may be able to do so elsewhere as well" (Schneider 2011, 245). Most Japanese are interested in the political response not merely to natural disaster but also to general issues. In this view point, Richard J. Samuels' "3.11: Disaster and Change in Japan" explores whether the Japanese political system could have shifted without a response to 3.11, through the historical analysis of the relationships between natural disasters and political-social reforms in Japan and the comparative study of recent cases in U.S., China, and Japan. Consequently, he exposes the rhetoric of crisis which have infused democratic politics, empowered new actors, and stimulated long-awaited if piecemeal reforms, aroused considerable public protest, and may have pushed the policy process in the direction of transparency in many studied cases. Furthermore, he distinguished three narratives in the rhetoric of crisis in Japanese political disputes and conflicts after 3.11 as follows:

As in security and energy, so expectations for post-3.11 change in local administration come in three narrative models: one that posits accelerated forward (put it in gear), one that argues for a deepening of extant trends (stay the course), and a third that suggests Japan should return to better times past (reverse course). (Samuels 2013, 159-60)

According to Samuels' analysis of documents and his own interviews about the lessons of 3.11 for Japan's local public administration, the first narrative would

be “put it in gear,” either by expanding municipalities<sup>2</sup> in the legitimacy of efficiency (Samuels names this “supersize me” narrative) or else by focusing on local strengths or capacity and building institutions that generate growth from the bottom up (he names this “localize me” narrative). In the second narrative, “stay the course,” that local governments had been following for several decades, their mutual dependence and solidarity deepen and the centre draws back in ways that enhance both local autonomy and policy innovation. The final narrative would “reverse course” in order to preserve the local characteristics of the affected areas that 3.11 threatened to destroy. This narrative of change builds on, and resonates with, themes of community and vulnerability more than with leadership. However, there are so many differences about which the local characteristics to preserve that the post-3.11 discourse on local government is oriented toward putting it in gear and staying the course.

In Samuels’ distinction of normative and legitimated narratives, we should be attentive to the fact that these rhetoric models are considered as exclusive and independent as the distinction of political response norms by Schneider. At a closer look, we can point out that these two distinctions are completely contrary. But what is important is that when we try to check up on the recent empirical and theoretical study of the relationship between natural disaster and social system, we often find that social response to disaster could expose the incompatibility of two or three logics or narratives of legitimacy. In my opinion, “divergent theory,” as a type of logic, should be regarded as one of the typical case of “theoretical and personal perspectivity” (Baur and Ernst 2011, 134) of researchers on Japanese society after 3.11.

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### 3. Divergence or Convergence?

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Certainly, we feel we can ascribe various and complicated behaviours and statements within decisions and plans responding to 3.11, to several exclusive logics or narratives of legitimacy, and that is why most researchers working on the social situation after 3.11 have adopted the “divergent theory.” However, we should not ignore that in respective decisions and plans single option has been selected. Namely, it is certain that policy makers have decided and planned by overcoming the incompatibility of the several legitimacies. In retrospect, that is the reason why I have come to focus the data-producing process in these decision-making processes.

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<sup>2</sup> Japanese local governments consist of 47 prefectures as the first level and 1,718 municipalities as the second level of jurisdiction and administrative division. The jurisdictions of prefectures and municipalities are attributed according to the principle of subsidiarity.

### 3.1 The Mutual Aid between Local Governments

This consideration of policy-making processes has been confirmed in the process of my investigation about the mutual aid after 3.11 between local governments. As Larson (2013, 46) says, except in the rarest cases, contemporary local governments across the world will require the assistance of their neighbouring local governments when faced with major disasters and catastrophic incidents. This assistance, designated as “mutual aid,” belongs to the classic process of cost containment decision making. Typically, contiguous local governments develop a process for sharing emergency response assets, thereby avoiding the expenses associated with acquiring and maintaining a full-time response capacity. Legal agreements should be established between the various authorities and private organizations specifying the types of emergency services to be provided, and the procedure for requirements.

Especially, mutual aid has been evaluated as the most innovative form of assistance to affected local governments after 3.11 and possibly the most innovative policy initiative to emerge from the crisis overall (Samuels 2013, 157). The mutual aid agreement enshrined in the 1961 Disaster response Basic Law<sup>3</sup> was reinvented after the Hanshin/Awaji disaster<sup>4</sup> in January 1995. Afterward, the central government established a system for sharing fire departments, and in 2006, the National Association of Governors<sup>5</sup> developed a mechanism for the transfer of officials to disaster-stricken areas. After 3.11, initially based on the 1961 agreement and later with central government funding, local governments that were not affected would house displaced persons, bundle and ship relief supplies, provide grants for local volunteer groups and nongovernmental organizations (NGOs), and dispatch large units of their own employees to fill in for overwhelmed and, in some cases, missing officials in the affected areas.

However, as time goes by, the assisting local governments were confronted with severe problems. Some local governments found themselves already shorthanded at home because of structural fiscal difficulties caused by shifts in industrial structure, fiscal capacity gap, population aging and depopulation. Citizens of some local governments occasionally resisted the use of their tax money to help elsewhere. These problems, aggravated with time, could also be

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<sup>3</sup> This law changed fundamentally the legal and financial responsibility of disaster response from local governments (municipalities and prefectures) to the central government.

<sup>4</sup> By this disaster caused by the 6.9 magnitude earthquake, which damaged one of the biggest metropolitan areas of Japan for the first time after the World War II, over 6,000 people lost their lives and the long-term economic recession of Japan was triggered beyond recall. From the point of view of sociology, it was regarded as the turning point of the emergence of volunteerism and charities in contemporary Japanese society on the basis of over 1,300,000 voluntary staff and about 1.8 billion US dollars donation.

<sup>5</sup> In Japan, after World War II, the Governor is the highest ranking executive of the prefecture government. The National Association of Governors is known as one of the most powerful lobbying group.



considered as latent problems since local governments decided the first implementation of mutual aid. Hence we should explore the legitimation process of mutual aid decisions, rather than estimate the excellent results of mutual aid as the evidence of a type of legitimate narrative of political and social reform.

### 3.2 Reconstruction of the Researcher's Perspectives

First of all, as a member of the nationwide investigation team, in spring of 2012, I tried to design a questionnaire which inquired nation-wide public officials of local governments (17/47 prefectures and 496/1718 municipalities) about both achievements and resources of the mutual aid. According to the “divergent theory,” I set up fundamental distinctions between law-based disaster relief, agreement-based mutual aid, and others, funded by national government reimbursement (subsidy), local government’s own tax, donation to local government, and so forth, because through these analytical distinctions of legal basis and revenue sources, I guessed that we could identify the conflict between two norms and two or three narratives. In other words, as the first step of data-producing about mutual aid, I framed my research question following the “divergent theory” as my own perspective.

However, in winter of 2012, I was struck speechless, as I received from those local government officials a bundle of the questionnaires filled in with the message “we cannot distinguish legal basis or revenue sources between the sequential mutual aids.” This message meant that the “divergent theory” could not help sufficiently to approach the decision-making process of the mutual aid and also it could not produce the effective data. In a moment I began to interview the officials of several local governments which are situated in Tohoku region<sup>6</sup> but have been relatively unaffected. Most local governments have requested assistance that was guided to such an extent by constantly and individually varying emergent needs in the process of disaster relief response, that they have encountered the bureaucratic limits of legal basis and revenue sources. After my repeated interviews of local government officials, I gradually grasped various ways in which they worked their way out between emergent norm and bureaucratic one, which could be distinguished theoretically.

Informal accounts of some public officials given to me reveal that to overcome these bureaucratic obstacles, of which the officials have been aware due to their emergent norms, the one local government had attributed national government subsidies for other purposes (for example, unemployment policy funds were redirected to disaster response) and the other supplemented its original tax-revenue shortfall with the donation from the public. At the same time, the

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<sup>6</sup> This region consists of the northeastern part of the largest island of Japan. The eastern coast of this region was swept by the huge tsunami of 3.11 and nowadays the coastal area is still suffering from the difficulty to recover from the disastrous damages.

informants told me about the context in which they had found out about the convergent way of mutual aids. As it were, in Japan, those alternative quasi-governmental revenue sources as well as monetary charities have been expanding and becoming more visible since the 2000s, when the Japanese could not but confront the endless economic decline and liquidation of the stable, regular long-term employment, and at the same time notice the necessity and possibility of enhancing policies for volunteer activities and monetary charities. In other words, some officials have satisfied “the request of emergent norm or ‘stay the course’ narrative” in disaster response with “the bureaucratic norm or ‘put in in gear’ narrative” by enhancing policy of employment (even if it were unstable) and public charity. In respective policies, certainly the gap has remained between logics and narratives of legitimacy, but on the whole, we can notice their convergences or reconciliations.

To sum up, at first, I designed questionnaires which asked the informants to add up the mutual aids they had received from each legal basis and revenue source, consequently the results of mutual aids themselves were given as dark figures by most of the informants who could not indicate formally their various informal ways of appropriation and supplement. Based on this failure to produce data following my own theoretical and personal perspective, through some repeated and open-ended interviews with several informants, I could produce the data on the mutual aid and grasp the new perspectivity that should be called “convergent theory” for the description of decision-making processes of mutual aids.

### 3.3 Informal Data Collection

Well then, why cannot we help observing the gap and divergence, as well as the successes and failures about 3.11 disaster responses? It is certain that the convergences which I was noticed are ad hoc, at a risk of being misunderstood, banal (“stay the course”). In other words, the partial and segmental scenes of decision-making processes could be seen as divergent situations, but on the whole, it should be described as convergent.

Through my limited and few comparative interviews, it seemed to me that these ad hoc convergences would be derived from the local government officials’ feeling they could legitimise their actions through their experiences or careers, having rotated across plural and relevant policy positions and due to their contacts with activists involved in the local governments. In short, it seems to me that local government officials’ empirical or implicit knowledge is crucial.

Methodologically, I noticed the orientation of theoretical modification, owing to reaching – after many complications – these inside stories or “data” about implicit and informal processes of legitimation. I have tried repeatedly, perhaps sometimes irritatingly to point out contradictions in the records and

explanations of those officials, while cultivating with the utmost attention a relationship of trust with them. In essence, if we pay attention to those informal and latent decision-making processes, or if we try to produce data through the trust-based interactions with these informants, we can find out that after 3.11 most Japanese local government officials have tried to reconcile “bureaucratic norm” with “emergent norm” or “stay the course narrative” with “put it in gear narrative” without awareness of reconciling legitimation.

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## 4. Reflective Relationship between Informants and Researchers

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### 4.1 Legitimation of Legitimacy

I propose to name these informal and latent reconciling legitimation processes about mutual aid “legitimation of legitimacy” after Niklas Luhmann’s theoretical analysis of politics in “Die Politik der Gesellschaft” (2002). He says as follows:

Therefore, it is not without reason that around the middle of the 19th century public authority, which can in effect be enforced, was designated as legitimate. But that way, too many options remained open, especially in the century of controversial ideologies. Hence, in the hope of finding criteria within the concept of legitimacy, we have tied it to established cultural and institutional value-relationships. (Luhmann 2002, 122-3)<sup>7</sup>

[...] the political system itself must provide its legitimation. This can only take place if decisions are legitimized through values. Also, the expression “civil religion” cannot distract from the fact that the legitimation of legitimacy is a permanent activity of politics nowadays and cannot be shifted on to religion. (Luhmann 2002, 194)<sup>8</sup>

This conceptualization has inspired my reflection on the above-mentioned data-producing process in which I tried to reconstruct my perspectivity and method of the figuration from “divergent theory” to “convergent theory.” As this “legitimation of legitimacy” proposition has been well-known as “legitimation through procedures” (Habermas 1998, 392; Luhmann 2002, 124), Luhmann

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<sup>7</sup> „Deswegen hat man nicht ohne Grund um die Mitte des 19. Jahrhunderts die staatliche Gewalt, die sich faktisch durchsetzen kann, schon deshalb als legitim bezeichnet. Aber damit blieben, besonders im Jahrhundert der kontroversen Ideologien, zu viele Optionen offen. Deshalb hat man den Begriff der Legitimität in der Hoffnung, darin Kriterien zu finden, an kulturell und institutionell etablierte Wertbeziehungen gebunden.“

<sup>8</sup> „[...] das politische System für seine Legitimierung selbst sorgen muß. Das kann nur durch den Wertbezug der Entscheidungen geschehen. Auch die Formel ‚Zivilreligion‘ kann nicht davon ablenken, daß die Legitimierung der Legitimität heute eine Dauerbeschäftigung von Politik ist und nicht auf Religion abgewälzt werden kann.“

also, in a sense, tried to produce the data on decision-making processes not in reference to discourses on legitimacy but to procedures which public officials had kept in mind. At the same time, I would like to remark the other implication of “legitimation of legitimacy” in Luhmann’s descriptions: “rejection of value-fanaticism (intolerance)” (Luhmann 2002, 124). It means the endless process of deliberation for reconciliation between conflict values or value-based narratives. This concept “rejection of value-fanaticism” seems to me more appropriate to the description of informal decision-making of local governments about their mutual aid continuation than the concept “legitimation through procedures” because procedures in bureaucratic organizations are explicit and considered relatively inalterable.

Moreover, reconsidering the inside stories of informal decision-making processes about disaster response, it seems to me that this “rejection of value-fanaticism” could be also derived from the empirical feeling based on careers across the borders of organizational sections or social sectors. In this regard, we can notice that this type of informal coordination with formal legitimacies has been already described through the concept “double (two-way) cycle” in Luhmann’s analysis on the interfaces and interactions between the non-elite public and the elite politicians and administrative officials (Luhmann 2002, 264). By using this concept, Luhmann tried to describe the gradual emergence of informal decision-making processes within the political and administrative organizations in the postwar welfare states. According to his insight, these informal decision-making processes have relieved the excessive load of formal processes in a complementary way rather than being in opposition. If these complementary manifestations of informal decision-making processes can be observed, we should consider that “convergent theory” and process-oriented methodology as effective perspective on the contemporary society which tends to develop the characteristics of welfare states.

## 4.2 Action Research

Lastly, following my understanding of Luhmann’s principle about internal observation of society, we should pursue that “double (two-way) cycle” between political practice and academic thinking. In my opinion, these interactions should be heeded by process-oriented methodology as its fourth step: “reconstructing the sociogenesis of the figuration” (Baur and Ernst 2011, 134), because both informants and researchers should take part in this intertwined sociogenesis. These interactions between informants and researchers have been approached by the “action research,” which is defined as a participatory process concerned with developing practical knowledge in the pursuit of worth-

while human purposes (Reason and Bradbury 2008, 4)<sup>9</sup>. At a glance, it can be seen as a strange analogy between Luhmann's theoretical observation and practice-oriented researches, but Luhmann himself prospected the possibility of these practice-oriented researches, which he called "consultation," for the description of the evolution of political practices which was caused by interactions with scholars (Luhmann 2002, 395). As it were, if we wish to describe these effects on political practices through "action research," we can describe the open-ended interactions between the politics and academism more suitably as the "structural coupling," which is peculiar to the interaction between sub-systems in the differentiating of contemporary society (Luhmann 2002, 394).

From the practice-oriented perspective of "action research," in the context of analysis of decision-making processes of the mutual aid, those concepts, i.e., "convergent theory" and "legitimation of legitimacy" should be thrown back not only to scholars but also to informants or practitioners. Since those interviews in winter of 2012, I have held several meetings with local government officials who have been interested in communication with a researcher as me, as I have intended to actualize or formalized their implicit knowledge and to share that knowledge with as many local governments as possible. For most public officials who have taken part in meetings with me, on the one hand, the concept of "convergent theory" was regarded as the lesson that the public officials should utilize experiences or tacit knowledges acquired within other sections or organizations (especially voluntary organizations); and on the other hand, the concept "legitimation of legitimacy" was seen as the principle of use of those experiences or tacit knowledges, that is, "legitimacy" should be considered not as immobile but plastic due to the involvement not only of public officials but also of the stakeholders belonging to voluntary organizations which have organized gradually after 3.11.

In fact, after 3.11 the number of non-profit organizations which were established by the non-elite public has increased rapidly and levelled off without regional differences in Tohoku region,<sup>10</sup> which is regarded as one of the most traditional community-based society. Consequently, the local government officials have begun to acknowledge necessity and possibilities of coordination of the different sensitivities on legitimacies of social services between not only elite officials but also non-elite staffs of voluntary organizations whose activities have extended from disaster response to daily health care of the disadvan-

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<sup>9</sup> By their definition, action research seeks to bring together action and reflection, theory and practice, in participation with others, in the pursuit of practical solutions to issues of pressing concern to people, and more generally the flourishing of individual persons and their communities.

<sup>10</sup> The number of non-profit organization of each prefecture in Tohoku region has fallen to the range of 400, except for Fukushima Prefecture where myriads of voluntary grassroots organizations have risen for the advocacy of the victims of the nuclear power plant accident.

taged. From the perspective of “action research,” I started to promote the sharing of tacit knowledges on coordination of different legitimacies over the boundaries not only between the elite and the non-elite but between the experienced and the inexperienced. In my opinion, this sharing of diverse knowledges will also awaken the partiality of their perspectives of researchers and commence the data-producing process based on open-ended data which is open to both researchers and informants.

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