

# Mass Claim Events and the Dilemma of the Rule of Law in China

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Mass claim events (MCE) as a concept in this article refer to mass actions such as agora, pageant, demonstration, strike, adjuration, appeal to higher authorities, blocking public places or facilities, and etc. for the purpose of people claiming their economic interests from their government or government agents.

It is easy to find similarities between MCE and other types of collective actions, but they are essentially different. Collective actions are not necessarily solely against the government, for example, one family may go against other social groups for their honor or economic interests, and one village might fight another village for the protection of the common interest of their village. MCE is an appeal to government for economic interest. While social groups may antagonize each other or be corporate in collective actions which have existed for a long time, MCE must be a mass action against government and only occur in transitional China.

It is also easy to find similarities between MCE in China and protests and social movements in western countries. They are similar in their forms of expression, but they are essentially different, too. In general, the later has a broader meaning. Any strong social groups, not just governments, can be targeted by a protest or a social movement. In addition, a social movement may not have a specific adversary; a protest or social movement may be for a more abstract interest, whereas MCE are for very specific economic interests. In a protest, people may go against new tax regulations and workers may strike in order to fight lay-offs. In a social movement, most participants would protest for political rather than economic purposes. For example, peasants may revolt for overthrowing their government, student movements may be for political reform, and a popular movement can be a call for a change in life styles. In MCE however, participants are only interested in claiming their rights and economic interests from their government.

Because MCE expose the conflict between the masses and government, the media and society are very concerned about such events. Some scholars even argue that MCE express social turbulence, differentiation, disaggregation, and rupture with rapid economic growth. It would seem logical to make deductions based primarily on the number of MCE and the number of people involved. To date, several scholars have already pointed out that MCE could cause social collapse in China. However, in this article we will not be focusing on why MCE could make China crash and how to save China from the danger of this, we will also not be focusing

on trying to understand why MCE occur and how to avoid their negative impacts. This article will focus solely on the behavior logic of MCE, in order to see the impact that MCE have on the rule of law in China.

### **A Case study of a MCE**

A hosiery factory in a city of Shanxi Province announced bankruptcy in 1997 when it was a middle size state-owned enterprise (SOE). It had more than 700 workers, and had run for more than 40 years. A few months before the announcement, the municipal government (MG) released two policies called “The Working Process and Implementary Methods in Bankruptcy of SOE (draft version)” and “The Regulations of Basic Life Securing for Laid-off and Retired Workers from Bankrupted SOE”. The central government has advocated local governments to be careful when declaring the bankruptcy of SOE. The government has said “If there is any way to resume SOE, bankruptcy is not allowed. In the process, local government must consult with the loaner for enterprise annex, coalition, surrogate, or breakaway. It is prohibited to let SOE bankrupt without any retrieval efforts.” Although the central government discourages SOE bankruptcy, and the MG knew that, it still announced their hosiery factory bankrupt, in order to throw off its fiscal burden.

Ironically, the local policy “The Working Process and Implementary Methods in Bankruptcy of SOE (draft version)” required bankrupted enterprises to be whole-sold, re-organized, or downsized. In other words, the announcement of bankruptcy

is not the end of a SOE. The end can be any way that local policy permits, such as being whole-sold. Coincidentally, not a long time after bankruptcy was announced, a private tea company (buyer) in the provincial capital expressed its willingness to buy the hosiery factory.

This was good news to the MG, as it was worried about the jobs and livelihoods of the workers. In November 1998, the MG held a meeting to discuss the proposal of selling the hosiery factory and dealing with the workers. The meeting memorandum supported the proposal and agreed on the following items: (1) the buyer should buy the factory in whole, including everything transferable of the factory; (2) the buyer should take over the factory's liability; (3) the buyer should resume production and increase workers' income in six months after the selling contract is signed; (4) the buyer should be responsible for retired workers' insurances and laid off workers' payments; (5) the MG would pay all expenditures of the factory from the announcement of bankruptcy up until to the signature date of the selling contract; (6) the MG would pay 6 months worth of salary to the workers and their insurance after the signature date; (7) the MG would agree to transfer factory land usufruct that is not transferable by law and would agree on the buyer using the land for real estate business; (8) the MG would wave a part of purchasing tax and land using tax.

According to the guidelines of the memorandum, the MG organized a small group of representatives to implement

the contract. By December 1998, the selling contract was signed, just a few days before a new policy about SOE bankruptcy was released by the central government. In the new policy, the central government prohibited any wholesale of SOE, such as the hosiery factory in this case.

Before the selling contract was signed, there had been three different opinions held by the workers. One group was strongly against selling the factory; another group strongly supported it and the third group was in the middle. To support the selling contract, the supporting group persuaded and even threatened the group who were in the middle. They said that if anyone was against the contract, he/she would not receive lay-off payments and retirement insurance. Finally, most of the people in the other two groups changed their minds to be in favor of the sale. However, there were still controversies among the workers when the contract was signed.

Just after the selling contract was signed, the buyer started to re-organize the factory. Strangely, this re-organization was not done in order to resume production, but in order to disassemble the facilities of production and to re-group workers. In February 1999, when the buyer started to remove the machines and equipment, a part of the workers stopped the action and blocked the doors of the factory. In addition, the workers organized a guard group in case the same event happened again and hung up banners that said "This is our factory, we must protect our interests." Surprisingly, the buyer got a group of prisoners to break

the door block, and removed machines and any other valuable facilities outside of the factory.

At the same time, the buyer re-grouped the workers into four groups: (1) the retired before sold group, workers in this group all worked until the age of retirement as stipulated in the National Labor Law; (2) the retired after sold group, members of this group were younger than members of the first group, but were still near the age of retirement according to the National Labor Law and were willing to resign with retirement payment; (3) the laid off group, members of this group were much younger than the age of retirement according to the National Labor Law and had the choice to be laid-off with one payment, which meant once a worker chose to be laid-off, he/she would not have any connections with the factory in the future; (4) the waiting for their position group, this group was transferred as employees of the buyer and had to wait for their next job.

No longer after the buyer had moved the facilities outside the factory, electricity power for the residential apartments sharing a cable with the factory was cut off by the electricity supplier. This caused condemnation from a part of the workers. They asserted that it was the buyer's retaliation, although they knew that the real reason was that the factory had not paid the electricity bill for a long time. In fact, the workers were more willing to connect these two things together; they questioned why the machine had been disassembled out of the factory and why the electricity was

then cut off.

From our point of view, no matter what had happened, the buyer should have resumed production within six months as was stipulated in the contract. In actual fact, the buyer sold off all valuable assets, except for unmovable houses and land. Instead of resuming production, the buyer overthrew the workshop and built apartment buildings. Strangely enough, the hosiery factory became a real estate company in one night. It was natural that the workers waiting their position would never have information about their job, and further, would have no way of getting an increase in salary. In fact, they received only RMB 188 per month, which was only equal to local unemployment benefits.

Two years after the factory was sold, when the workers saw the apartment buildings being established, they finally understood that the buyer never planned to resume production. All the buyer had wanted was the land for his real estate business. In this case, the laid-off workers started to appeal to the MG, using the reason that the selling contract was illegal. They requested the authorities to: (1) re-check the contract items; (2) revoke the lay-off contract and renew their jobs; and (3) help the poor workers. The appealing group visited the agents of the MG many times over several months without any results. Finally in October 2002, the group organized hundreds of workers to block the mayor's office building and requested the mayor give them instant answers. It is imaginable that the workers never achieved their goal. However, they continued their appeal. In the

following months, similar events happened many times. Although the appealing group changed their reasons for action and modified their requests many times, one of their requests never changed. The workers insisted that their difficulties in getting a job and supporting themselves were all caused by the sale of the factory, which was done by the agent of the MG. Therefore, the MG must take responsibility.

The above is a typical example of an MCE. This particular MCE is still going to this day.

### **Why Don't Both Sides Go to Court?**

The MCE described above is neither the only case nor the most furious case in China. In the 90's, MCE became an important phenomenon in our changing society. First, the number of these incidents has increased radically. There were more than 8,000 cases in 1993, more than 10,000 in 1995, more than 15,000 in 1997, more than 30,000 in 1999 and over 40,000 in 2001. Second, many cases involved more than 1,000 people, and some involved even more than 10,000 people.

However, the causes for the increasing numbers of cases and participating people are few: (1) enterprise bankruptcy, lay-offs, or owing salaries have made workers poor; (2) land-levy and resettlement of houses have harmed people's interests; (3) illegal money raising has caused ordinary people to become bankrupt; and (4) the corruption of bureaucrats have increased the burdens of farmers. All

MCE, whether they occur in urban or rural areas, can be categorized as one of two types: (1) a conflict of interest between groups (one side must have official connections with government), these conflicts cannot be solved by themselves and the weak group then goes to the government for intermediation; (2) workers and farmers that are harmed by governmental agents and appeal to higher authorities in order to claim their economic interests.

If the case mentioned in this article had happened in a society of the rule of law, it may have been able to be resolved by the law, even outside of court. The question we must ask is why the workers blocked the mayor's office building instead of going to court. Are MCE more powerful than the law? What are the impacts of MCE on the rule of law in China?

To answer these questions, it is best to look into the workers' behavior during the MCE. In our case, we may have many questions, for instance, why the people who started the MCE were the laid-off workers; why the other groups did not appeal and so forth. However, in terms of the rule of law, the question would focus on the logic of the appeal made by the laid-off workers. Just like the MG described, the workers were willing to sign the lay-off contract and the contract had been officially notarized. If the laid-off workers felt that this was not fair, they had other choices. Once they had agreed and signed the contract, they had obligations to abide by the rules of the contract. If they felt that it was unfair after they had signed the

contract, they could negotiate with the contractor, but they had no reason to request the MG to terminate the contract.

But the laid-off workers never thought in this way. They argued: “Indeed, it was our factory that was sold to a private company, but we were not sold. We are citizens of this city who support the MG. The MG is our government. Therefore, the MG should take care of us in all regards and take care of everything that happens on this land. Sold? Yes, it was sold. But the land still belongs to the nation; the company still belongs to the nation, the profit still belongs to the nation, we, the workers, still belong to the nation. The MG must take care of our retirement and aged life.”

This is the fundamental logic of the workers. In detail, it includes some common ideas. (1) The MG is the judge for everything and has the responsibility of coping with everything that happens on the land in terms of justice. (2) The relationship between the factory and the workers in the planned economy cannot be cut off by the lay-off contract. The workers never thought the contract had the power to not only cancel their jobs, but to also finish their identity as SOE workers; they assumed that they were still a part of the factory. Thus, they believe that the MG must supply them with what they should have in the planned economy. In turn, they should monitor the government’s treatment of the factory and any mistakes the government may make. In short, the workers use the rules of the planned economy to deal with contracts of the market

economy. This is the reality in China that the rule of law has to envisage.

According to this sort of logic, what they requested of the MG is not surprising. (1) The selling contract without the agreement by all of the workers was illegal and should be canceled. By canceling the selling contract, all related contracts must be invalidated automatically. (2) If this could not be done, the buyer must resume production and offer jobs to all the workers. (3) Once the production has been resumed, the buyer must increase the income of the workers. (4) The buyer must support the living costs of the retired workers and their medical insurance.

However, the MG rejected the workers' logic. The MG argued that the SOE belongs to the nation and is managed by the government agents. Everything they had done was legal because the MG dealt with the hosiery factory and thus did not need the workers' agreement. If the workers had any evidence that could prove the selling contract was illegal, they should fire a trial rather than block the mayor's office building. Otherwise, they must stop their action. In all cases, the blocking of the mayor's office building violated the law.

Thus the MG answered the workers' requests by law. (1) The bankruptcy and the selling procedures were not illegal according to the law. If the workers still insisted that it was illegal, they could go to court and should not violate the law by blocking the mayor's office building. (2) The

contract between the workers and the buyer was agreed on by the workers, the lay-off contract was no exception. The people who signed the lay-off contract became free-men and had no relationship with the buyer. If they needed a job, they should go to labor markets, if they had difficulty in finding a job, the MG could help them. All of these problems faced by the workers had nothing to do with the lay-off contract, since it was all carried out legally. Therefore, it was impossible to cancel the lay-off contract. (3) Any laid-off people who had difficulty meeting living costs could apply for help from the MG and the MG may consider providing them with welfare at the rate of RMB 188 a month.

By considering the above-mentioned interaction between the workers and the MG, we have no real way of understanding why the MG was not willing to go to court, even though the MG believed that the actions of the workers had violated the law. In addition, why did the MG put the worker's questions about the contract aside and only discussed the living difficulties of the workers? On the other hand, why did the workers not go to court as the MG had suggested, even when they recognized that the MG's actions violated law? In short, why did both sides not go to court? We know that the workers and the MG possessed totally different logics in this interaction. However, they may have had common reasons for not going to court. The reason why both sides did not take the matter to court was that they knew that court could not offer a final resolution to the issue.

For the workers, court was meaningless. They knew that

prosecuting the MG was unavoidable when they made the accusation that the selling contract was illegal. In our survey they stated clearly: “In a narrow sense, we accused the buyer in front of the MG. In a broader sense, the reason why we blocked the mayor’s office was to impeach the MG. However, we did not know the real relationship between the buyer and the MG. It was possible that they were like child and mother. Thus, to accuse the buyer was to impeach the MG.” They also said that court is controlled by the MG. Thus, if they really wanted to make a lawsuit against the buyer, going to court was more like bringing owls to Athens. Thus they rationally chose to block the entrance of the MG.

From the perspective of the MG, if all the workers wanted to do was draw attention to their situation by blocking the mayor’s office building, it was harmless for all involved. In fact, this demonstrated that the MG had a good relationship with the masses and that they were capable of communicating with them. If the MG were not able to see things in this way and put the workers into jail, it would anger the masses greatly. This would be criticized by higher levels of government as cutting government off from the masses and ignoring mass monitoring, which are a central idea in communist governance. In addition, the MG could not guarantee that all bureaucrats involved in the selling contract had been involved in a legal manner. Even if the MG could guarantee this, the people still have the right to visit the government for their interest according to Chinese law. Therefore, it was not rational for the MG to take the masses

to court, though it is true that blocking the MG building was a violation of the law. The rational choice was to control the situation, stop the workers from visiting higher levels of government and avoid a lawsuit with the workers. Otherwise, it would be easy to trigger internal conflicts in the MG and corruption would thus be revealed. If those sort of internal conflicts were triggered, some of the bureaucrats would be put into jail. There are no bureaucrats in China that want to see this sort of result.

### **The Rule of Law in China Needs Social Support**

In the last ten years, most MCE were like the one in our case study, even though the number of cases and the numbers of people involved in them have increased rapidly. We know that these cases should be dealt with by law; this is of course supposing that these cases had happened in a society of the rule of law. However, all sides involved, the workers/farmers and government, were not willing to go to court.

This phenomenon makes us think of the article by Fei Xiaotong, "A society without litigation". Fei argued that people had internalized rules to govern their actions. These rules were rules regarding action within the family and for action within society in traditional China. This process of internalization began with one's upbringing. People were educated by their parents and elders in the society. Because everyone followed the rules, there was no conflict, and thus no litigation. Even if there were conflicts, people may

have their own ways of solving the conflicts and they would not let these conflicts come into public view. Therefore, there was no need for the judiciary, like in western countries. On the other hand, a society without litigation may have a criterion to judge accusation. It was believed that accusation is a result of an inadequate internalization of rules. It was a shame if a society could not maintain its own rules and keep social harmony without litigation. In short, a family and a society emphasized the internalization of rules, and this internalization of rules guaranteed that people did not violate rules. By contrast, in the modern judiciary system, individual rights are stressed and people attempt to use regulations and the law to protect their own interests. The result is just the opposite. In the search of their own individual interests, people sometimes break the law. The law is then used to protect individual rights.

Because there is a conflict between the modern judiciary system and this set of traditional rules, it is not possible to combine them over night. On the one hand, people who have lived in a traditional society might not be able to understand the fundamentals of new rules, thus they are not willing to use them. On the other hand, even if people were to use the new rules, they might not know how to make a lawsuit. Therefore, the modern judiciary system in China lacks a social base.

Fei's article was published sixty years ago, but it can still explain the logic behind the behavior of the workers and the MG. For the workers, they have been educated that

they belong to the nation and that the government is the people's government in the planned economy. This idea and related rules were internalized when they became SOE workers. So, they could not believe that a contract would overthrow everything, could not understand the transition, and could not believe it even though it was there in front of their own eyes. They thought it was right to visit their government when they had difficulties. To go to court was seeking far and neglecting what lay close at hand.

With a similar logic, the bureaucrats knew exactly their rights, their power by law and understood why the workers would not go to court. However they still believed that the MG is the government of the people and that it is the supreme judge in the local society. Thus, they knew that if the MG lost social support that it would lose its legitimacy. This has happened time and time again throughout Chinese history, i.e. people being driven to rebellion by the rule of tyrannical governments. For this reason, the MG would still play a total-judge in the conflict, even if the workers impeached the government.

In other words, adequate social support is lacking for the rule of law in China, although the government and society have made great efforts in the construction of a modern judiciary. For instance, the Nation People's Congress (NPC) has issued over thousands of acts that cover most areas of political, economic and national security, social life and so forth. However, people are still not willing to go to court when they have conflicts, especially conflicts with the

government. A survey done by the Supreme People's Court earlier this century showed that only 4% of those questioned would go to court when law violation happened to them, 45% would go to mediation, 40% would go to local government, 8% would go to media, and 3% would do nothing.

Early in 1998, Zheng Yongnian and I concluded in an article that the rule of law in China cannot be measured by the number of acts released by the NPC; but that it must take social support into account. Without that social support, the rule of law will stop at the level of a concept and will never go into practice. Consequently, democracy will be caught in idle theorizing. However, we must be patient with this gaining of social support. We need one or two generations for this process. The reason is simple. Behavior has inertia; the theories of dependence on institutional paths as proposed by Sociology and Economics are examples of this inertia. Once people have internalized a set of rules, it is not easy for them to change. The other reasons for people not going to court have to do with delayed impacts of the planned economy such as corruption, law absence, high court costs, unfair trials, and so forth.

In fact, what we have seen in MCE is even more evidence for our conclusion. In urban MCE, people involved in the movements are older than 30, but in rural MCE, the ages of the participants range from younger than 20 to older than 70. Perhaps within a few years, MCE may vanish from urban society; however we may still see them in rural society. Once MCE vanish from the whole of society, the

hope for the rule of law in China can become a reality. Of course, this assertion is based on a social base for the rule of law and does not include the other dimensions, such as political reform and international environment. To build this social base, it is important that the government sets a good example and acts as a model for the rule of law. If the government itself does not use the law and courts, it is impossible to build up the rule of law in China. To promote the government as a model in the modern judiciary system, governmental behavior must be monitored institutionally and evidence must be collected that can prove the government does in fact abide by the law. Obviously, building up institutions to support this check and balance system is essential. However, this needs more time.