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## On the Legitimacy of Government Behavior in Public Crisis Management\*

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*In this paper, the central argument is that: there are some legitimacy leaks in the government in the routine management. These weaknesses will become more salient when the public crisis occurs. If the government can not maintain a strong base of legitimacy, the political system will be in chaos or even collapse, which shows the necessity of reestablishing the legitimacy of the government.*

### 1. Introduction

With the frequent occurrence and expansion of SARS, Bird Flu and other disasters, public crisis has become a common phenomenon. Governments started to pay more attention to the public crisis management. Scholars published books and articles to fully examine the prevention of crises, the cooperation mechanism during

the crisis, and the reconstructions after the crisis. This article is not to repeat the importance of crisis management but to examine the legitimacy of the government in the public crisis management, mainly from the viewpoint of political philosophy.

### 2. Main Concepts

Before going into further details of this article, three core concepts should be specified.

The concept of *Public crisis* refers to large-scale accidents which severely damage and threaten the citizens and the state during a certain period of time and in a certain area. According to Uriel Rosenthal, public crisis “relates to situations featuring severe threat, uncertainty, and sense of urgency”<sup>1</sup> which can be largely divided into regular crisis like natural disaster, economic crisis, public disease, terrorist attack, and special crisis like coup and war. As Rosenthal described, “A wide variety of phenomena, large — as

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well as small—scale, may be approached from this perspective: natural and technological disasters, conflicts and riots, terrorist actions.” (Rosenthal and Pijenburg, 1991. P. 3)

*Public crisis management of government* is a series of reactions of the government to prevent the potential crisis or to solve the current public crisis. Those reactions include collecting information before the crisis, establishing prevention mechanism, coordinating and cooperating during the crisis and restoring after the crisis.

*Legitimacy of the government behavior* is that all activities of government in public crisis management are legal, fair, effective and supported by the public. “Legitimacy” is an important concept in politics as well as in law, which refers to, according to empiricists such as Max Weber, G. A. Almond and S. M. Lipset, all kinds of demonstration of government for the sake of maintaining existing political order, as well as the general recognition and faith of the public.

### 3. “Big government” and its legitimacy crisis

Because of the sudden occurrence and large-scale damage of the public crises, there is no single person or organization that can manage and effectively respond. Thus the citizens expect the government to play a crucial role, which also provides opportunities for the government to expand their power to become so-called “big government”. On the one hand, this kind of “big government” will effectively react to the crisis and reestablish the social system. On the other hand, however, the

expansion and abuse of the government power will infringe upon the civil rights or interests of the people. If the abuse of the government power can not be corrected in time, it will lead to the legitimacy crisis of the government.

Admittedly, there exist legitimacy leaks even during the routine management of the government, which can be explained by the historical transition of state legitimacy.

#### 3.1. Historical point of view: transition of legitimacy of government

Any political system to some extent has the problem of legitimacy during the transition of their society. According to John Locke, the public power of government derived originally from the individuals. People’s natural right, such as liberty, property and life, is the bottom line of the public power of the government. Once the government violates the social contract and infringes on the natural rights of the people, it will lose its legitimacy.

J. Harbermas argued in *Legitimation Crisis* that the problem of legitimacy existed when the government was established. In a complete authoritarian society, the governors strengthened incessantly the power of the state at the cost of the rights and interests of the citizens, which encouraged violent riot from the demos. This signaled the comedown of the political legitimacy of the state.

At the early stage of capitalism, the state obtained its legitimacy by allowing the full development of the civil society. However, with the development of capitalism, particularly the rising of state interventionism, on the one hand, economic policies like Keynesianism contributed to

the prosperity of the state and the improved wealth of the people. At the same time, the government has taken more and more responsibilities towards the market and the society. Thus the government had to expand its power to take on these responsibilities, which resulted in an overloading government. The two negative results coming from the overloading government are: first, the public expect the all-powerful government to resolve all the social problems. Thereby, once the government fails to meet those demands, the legitimacy of the government will be doubted and challenged. As Habermas insists, “a legitimation crisis arises as soon as the demands for such rewards rise faster than the available quantity of value, or when expectations arise that cannot be satisfied with such rewards.”<sup>2</sup> Second, the power rent-seeking phenomenon overruns. The officials are also “home-economicuses”<sup>3</sup> who seek to maximize their own interests. The over intervention of the government will provide opportunities for the rent-seeking behaviors. The overrunning of corruption hurts the image of the government and lowers the prestige and accountability of the government, which leads to the loss of the supporting and obeying from the public. On the other hand, the state interventionism brought a worse result that the governmental power infiltrates private domain of civil society and encroaches the freedom of the people, which in return the public will gradually lose faith to the government.

Transition of the society decreases the legitimacy of the government. Therefore it is more common that developing countries face the problem of legitimacy. S. P.

Huntington pointed, “The disruptive effects of social and economic modernization on politics and political institutions take many forms. Social and economic changes necessarily disrupt traditional social and political groupings and undermine loyalty to traditional authorities.”<sup>4</sup> Developing countries usually adopt “catch up” strategy during their modernization process, which means that the government has heavy onus of responsibility to develop their economy, fairly distribute the social welfare, and mobilize civil public for its development and so on. This father-like role which is also a burden overloads the government. As a result, the supply capability of the government declines, and can not fully meet the demands of the public, so its legitimacy will be seriously challenged. As S. M. Lipset concluded that there exist many structural inequalities eroding the legitimacy of government during the period of structural change.<sup>5</sup>

### **3.2. Expansion of governmental power in public crisis management**

During the public crisis, the government is expected to play a crucial role. In order to rapidly respond to the crisis, the government should have not only the urgent prerogative, but also the extended administrative free arbitration. For example, it shows in *the Constitution of the People's Republic of China* (Adopted on December 4, 1982) that certain restriction is permitted for the sake of the public in order to rapidly control the urgent emergency and recover normal order.<sup>6</sup>

The urgent prerogative may include some aspects, such as the power of requisitioning and allocation of the social

assets and materials, the privilege of mobilizing and deployment of the personnel, the authority of contingent limitation of personal freedom, partial changes of the social order and provisional violation of the law under urgent circumstances, and so on.

Except the crisis prerogative, the administrative arbitration would be expanded under the urgent circumstances. Because of the complexity of administrative matters in modern society, it is necessary to authorize the government to make judgments and choices according to situation.<sup>7</sup> As F. J. Goodnow pointed out, many duties should be left to the administrative officials to deal with in a modern society.

In practice, the breakout of the public crisis increases the opportunities of the government to expand their administrative arbitration. For example, during the economic crisis from 1929 to 1933 when the whole American society was on the edge of collapse, President Roosevelt realized that it is necessary to expand the power of the federal government so as to conquer the crisis effectively. As a result, the traditional government playing a “nightwatchman” role was replaced by the new state interventionism based on Keynesian economic theory, and increasingly, the public power had been penetrating into the private area. Similarly, the “9/11” terrorist attack in 2001 gave President George W. Bush the possibility to expand the power of the U.S. Government.

When the Chinese government was dealing with SARS in 2003, the power of the government increased. For example, the government restricted the price of medicine; citizens were obliged for health check

and for isolation if they were affected by the disease. Specifically speaking, the increase of government power included: A. the increase of the administrative arbitration of the government. For instance, all kinds of documents were made known to lower levels without legislation authorized by the People’s Congress of China, some of which, no doubt, started from securing people’s health and safety, but others were doubted to be the misuse of power. B. the use of the public budget and its freedom from the supervision of the legislature. C. the abuse of the government power, for example, some local governments designated certain brand of medicine to be produced or distributed. D. the essential rights or the legal personal interests of the citizens were infringed or impaired to some extent. Such as some local governments took regional protectionism policies which in a way infringed upon the freedom or other interests of citizens.<sup>8</sup> E. the power of the local government expanded. During the process of fighting SARS, the central government made specific law against the crisis and some of them maybe contribute to the expansion of local power. For example, in “the law of coping with emergency,” it can be seen that a local government has power to punish the mass media whose reports badly disobey regulations with penalty of 50~100 thousand Yuan,<sup>9</sup> the potential consequence of which is the localization of state power.

### **3.3. Legitimacy crisis of “Big government”**

It is inevitable that the government will expand their power during the public crisis management. However, this expansion

should not be unlimited. On the contrary, it should be restricted, reasonable, and supported by the public. If the government overuses or abuses its power under the name of controlling crisis, the citizens will lose faith to the government and the legitimacy of the government will be challenged.

3.3.1 The intrusion of the public power into personal rights and interests of the citizens intriques legitimacy crisis. The over intervention of the government in the society and market resulted in over high reliance and expectation on the government; rent-seeking behavior destroys the authority and credibility of the government; the intrusion of the public power into private domain decreases the citizen trust, support and obedience to the government and even stimulates resentment. Under this circumstance, once the crisis breaks out, the citizens will join the political movement against the government as a way to show their dissatisfaction to the public officials. In addition, the government “has to” limit or even deprive the personal rights or interests of the citizens in emergency, but if the restriction and deprivation is not ended after the crisis and the loss of the citizens is not compensated, it will also cause the problem of legitimacy crisis.

3.3.2. The increasing financial burden will become the potential threat to the state legitimacy. The routine management of the government usually accumulates huge amount of financial debt which resulted from the expanded functioning of the government, oversized institutions, and

careless government behavior. The unusual expansion of the government functioning and institutions during the crisis management will further aggravate rate-paying burden of the citizens.

3.3.3. The prevention tendency in public crisis management of the government is becoming another potential threat of the legitimacy crisis. Modern society has been moving forward to a “risk society”<sup>10</sup> in which public crises break out frequently, therefore prevention policy has become the first strategy of the state and crisis management organizations. However, this strategy succeeds at a cost. The comprehensive and effective prevention strategy needs efficient mechanism and huge amount of personnel and financial resources. This will aggravate the financial burden of the tax-payers. More importantly, the government may “have to” intervene in the private life of the citizens in the course of collecting and dealing with information. The earlier the intervention actions of the government proceeds, the lower the damage level will be. However, people will be more disturbed by the intervention and thus the base of government legitimacy will be eroded.

3.3.4. Misfeasance will lead to insufficient political justice of the government and lead to political indifference of the public. The legitimacy of the government derives from its political justice, namely, the starting point and final goal of government power’s acting is to preserve freedom, security, democracy, justice and fairness of the society. If the government deviate from its tropism of value, or can not

fulfill its obligation, which will result in political justice deficit, and the public will gradually lose interests in politics. Without exception, during the crisis management, if government behavior violates its value system and does not correct it properly after the crisis, the public will have a strong impression of the injustice of the government. This will also intensify their indifference towards politics.

3.3.5. The violation of the Constitution and law will most directly damage the legitimacy base of the government. The legitimacy in legal sense is the most important support of the political legitimacy. Whether the government behavior is or not in accordance with the common-accepted rules and laws is an important yardstick for the public to evaluate their government. Only those government behaviors that are justified by the law can be supported by the public. During the crisis, some illegal behavior and non-public interest oriented behaviors will be doubted by the citizens.

#### **4. Reestablishing the legitimacy of government in public crisis management**

The inappropriate behavior of the government directly threatens its legitimacy. In Habermas's words, "If governmental crisis management fails, it lags behind programmatic demands *that it has placed on itself*. The penalty for this failure is withdrawal of legitimation."<sup>11</sup> If the legitimacy crisis can not be resolved, the political turmoil will lead to the collapse of the whole political system. This suggests the importance of preserving the legitimacy of

the government.

#### **4.1. Disciplining the government behavior with the Constitution and law.**

The public crisis may dramatically change the citizen's normal life, which necessitates more clear and forceful laws to discipline the government behavior. It requires: firstly, the legislatures rapidly make laws to guide the government behavior, prescribing what they should do and what they should not. Secondly, the government should innovate for new laws or borrow successful laws from other countries to respond in the early, middle and after stage of the crisis. Finally but not unimportantly, the principle of democracy should be the highest criterion of crisis management. "Rule of law should be superior to any other obligations."<sup>12</sup> Government behavior can not overmatch the law, and the emergence of crisis is not an excuse for the government to break the law.

#### **4.2. Circumscribing the arbitration with administrative rationality, and regulating urgent prerogative with proportionality principle.**

The overuse of urgent prerogative power and administrative arbitration during the crisis is the easiest way to harm the individuals who are in a weak position. Therefore, besides the rule of law, the administrative rationality principle and proportionality principle should also be employed. Administrative rationality means that the government behavior should be rational, legal, justified, appropriate, necessary and effective. The abuse

of arbitration includes that: illegal or unjust motivation; not to consider important factors or irrelevant factors being taken into account; ignore the public interests; ignore the legal demand and expectation of the public; violation of contract or commitment; inappropriate explanation of the law; dishonest or malevolence; injustice; obsession; dictatorship; mistakes; abnormality and tyranny, and so on.

In order to maintain the balance between protecting most effectively the civil rights of the citizens and working the prerogative power under the urgent circumstances, the proportionality principle was generally employed in Britain and Germany. Proportionality principle means that although it is necessary to execute a certain administrative power, the damage brought by the power can not outstrip the just goal of using of this power. If it is truly necessary to sacrifice the individual interests of citizens, the government should evaluate the cost and benefit, and can only exercise that power when they have confirmed that the benefit for the public is absolutely greater than the cost, and atone for individuals after crisis. The proportionality principle requires: the exercise of government prerogative should be legal and fair; minimum damage to the citizens who are involved; appropriate proportion between individual cost and benefit for the society.

#### **4.3. Establishing a responsible government.**

As an agent of the public power, the government should be responsible to its citizens and representative institutions that authorized it to exert the power. A responsible government should fully fulfill

its social obligations; effectively protect the rights of citizens and the public interests. In a word, the government should take all administrative, political, legal and moral responsibilities. In fighting SARS in 2003, Chinese government produced a condemnation system of administrative responsibility, by which 120 officials ranking from central to local governments over 15 provinces were penalized for their irresponsible behavior or misfeasance.

#### **4.4. Encouraging the participation of social groups.**

All social groups are influenced by the outbreak of the crisis, therefore, should take responsibilities. The participation of the social groups will decrease the negative effect caused by the crisis, publicize information to the public, and restore social order. Moreover, it will lower the cost of the government to deal with the crisis. With the cooperation of the society, the government may create a good image in the public and gain support from the citizens. Therefore, the government should include various NGOs<sup>13</sup>, NPOs<sup>14</sup>, companies and other social groups in the process of public crisis management. The government also needs to educate organizations and citizens to improve their knowledge and capabilities of crisis management. The Japanese government provides a good paragon.

### **5. Concluding remarks**

In conclusion, the legitimacy of the government behavior depends on two factors: first, the power operation of the govern-

ment should act in accordance with the Constitution and other related laws; second, the government behavior should be fair and effective and supported by the public. When public crisis occurs, however, the government behavior violates or ignores those factors. As a result, the abuse of the government power, the violation of the Constitution, and the infringement of the rights of the citizens will lead to the crisis of legitimacy. If this legitimacy crisis can not be resolved, the existing system will collapse. Herein, this paper holds that close attention should be paid to government legitimacy while emphasizing the importance of improving governmental capabilities of crisis management.

#### Notes

- 1 Uriel Rosenthal and Bert Pijenburg, *Crisis Management and Decision Making: Simulation Oriented Scenarios*. Kluwer Academic Publishers, 1991, P.3. For a more detailed definition of crisis, see U. Rosenthal et al. (eds.), *Coping with Crisis: Managing Disasters, Riots and Terrorism*. Springfield, III.: Charles C. Thomas, 1989.
- 2 J. Habermas, *Legitimation Crisis*. London: Heinemann, 1976, P.73. In this book, Habermas also defines that "a legitimation deficit means that it is not possible by administrative means to maintain or establish effective normative structures to the extent required."P. 47.
- 3 Homo-economicus is the concept in some economic theories of man (that is, a human) as a rational and self-interested actor.
- 4 S. P. Huntington, *Political Order in Changing Societies*. New Haven and London, Yale University Press, 1968. P 36.
- 5 See S. M. Lipset, *Political Man: The Social Bases of Politics*. Doubleday and Company, Inc., Garden city, New York, 1960. P 78. Lipset analyzed, "Crises of legitimacy occur

during a transition to a new social structure, if (1) the *status* of major conservative institutions is threatened during the period of structural change; (2) all the major groups in the society do not have access to the political system in the transitional period, or at least as soon as they develop political demands. After a new social structure is established, if the new system is unable to sustain the expectations of major groups (on the grounds of 'effectiveness') for a long enough period to develop legitimacy upon the new basis, a new crisis may develop."

- 6 See *the Constitution of the People's Republic of China* (Adopted on December 4, 1982) Article 40: "The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence except in cases where, to meet the needs of state security or of investigation into criminal offences, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law." Article 51: "The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." In the English electronic translation of the 2004 version, Article 13: "The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned."
- 7 See Tsutomu Muroi, *RiBen XianDai Xing Zheng Fa*. Translated by WU Wei. Beijing: China University of Political Science and Law Press, 1995.
- 8 One example can be seen in this website: <http://news.sina.com.cn/c/2003-05-07/05401033655.shtml>.
- 9 The detailed description can be seen in: <http://news.xinhuanet.com/newscenter/2006>



-06/25/content\_4745709.htm.

10 See Ulrich Beck, *Risk Society: Towards a New Modernity* (Translated by Mark Ritter. London: Sage Publications, 1992) and *World Risk Society* (Malden, Mass: Polity Press, 1999).

11 It is quoted from John Keane, *Public Life and Late Capitalism: toward a Socialist Theory of Democracy*. Cambridge University Press, 1984, P. 108. note 133.

12 See Samuel P. Huntington, *Political Order in Changing Societies*. New Haven and London, Yale University Press, 1968.

13 The term non-governmental organization (NGO) is used in a variety of ways, refers to many different types of organizations. In its broadest sense, a non-governmental organization is one that is not directly part of the structure of government. Apart from NGO alternative terms are often used such as independent sector, volunteer sector, civic society, grassroots organizations, transnational social movement organizations, private voluntary organizations, self-help organizations and non-state actors (NSAs).

14 A non-profit organization (NPO) is an organization whose primary objective is to support an issue or matter of private interest or public concern for non-commercial purposes. Nonprofits may be involved in an innumerable range of areas relating to the arts, charities, education, politics, religion, research, sports or some other endeavor.

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