

Jiangsu Governors' Strategy of “Governing Bandits by Military Law” in the Early Republic of China and Its Influence

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Abstract: In ancient China, legal provisions of punishing military crimes were included in the common law. At the end of Qing Dynasty, the Trial of Military Crimes in Army was issued; there was a special law to judge the crimes committed by soldiers. In the early years of the Republic of China, Dequan Cheng, the governor of Jiangsu Province, authorized county magistrates to concurrently serve as the military judge, and brought the cases of banditry into the scope of “military law”. Since then, the “military law” continuously encroached the authority of ordinary jurisdiction and seriously damaged the judicial independence.

1. Introduction

In ancient China, “military law” was a kind of law specially punishing military crimes, which was rarely applied to civilians. In the late Qing Dynasty, the military law was separated from the common law. In the period of the Republic of China, the jurisdiction of military law trial continued to expand and gradually occupied the space of ordinary jurisdiction. From “governing the army by military law” to “governing bandits by military law”, Dequan Cheng, the governor of Jiangsu Province in the early Republic of China, was the initiator.

2. Independence of Military Law in Late Qing Dynasty

Before the Republic of China, there was no separate military law; legal provisions punishing military crimes were included in the common law. [1] In the period of new policies of the latter stage of Qing Dynasty, the military judicial institutions and military laws in modern sense took shape.

In 1906, the Qing government abolished the military department and established the New Army department. Under the Ministry of Army, there were two departments and ten sub-departments. Among them, the Sub-department of Military Law was in charge of all laws and prison affairs of the army. In 1910, the Navy Department was set up, and the Sub-department of Military Law was also set up under this department.[2] In the late Qing Dynasty, there was a Law Enforcement Office in the New Army, but it was not an independent judicial body, and the appointment of law enforcement officers was not formed a system. For example, the eighth town in Hubei Province (“town” is equivalent to the level of “army”) did not set up the law enforcement office since the founding of the army. In case of violations and crimes, higher-level officers would judge and enforce the law. In order to participate in the Autumn Practice in Taihu Lake in October 1908, the town temporarily attached the Law Enforcement Office at the headquarters, and proposed to appoint Shiwei Wang, the magistrate of Jiangxia County, as the law enforcement officer.[3] In 1909, the Ministry of Army abolished law enforcement offices of the New Army and set up a High Military Law Council in Beijing to try crimes committed by military officers. At the same time, it ordered all levels of armed forces to set up military law councils to try military criminal cases. [4]

In 1908, the New Army of each province was basically formed and trained. Compared with old armies like eight banners and the green camp, the New Army was well-equipped and well-trained. At the same time, the arrogance of New Army began to appear; criminal cases of soldiers occurred in various towns from time to time. The Qing Government needed to enact laws to restrain the New Army. In February 1910, revolutionaries launched the Guangzhou New Army Uprising. After

successfully suppressing the uprising, the Qing Government punished senior officials of Guangzhou New Army Association, Zhepei Zhang and Yupei Liu. The minister Zaitao went abroad to investigate. After he returned to China and heard about the incident, he requested that the two men should be handed over to the Military Law Department of the Ministry of Army for trial “in accordance with the common law of various countries”, and obtained the consent of the court. Zaitao put forward four reasons for “independence of military law” in his memorial. “First, the military is independent, so the enforcement of military law should also be independent to achieve the unification of military and political affairs. Second, judicial personnel should serve as advisers, and the chief judge must be officers, in order to respect the dignity of soldiers. Third, the chief of the Military Law Council, whose rank must be higher than that of the criminal, should try the case on the court to maintain the order of servicemen. Fourth, the criminal of servicemen should not be fully examined by people other than military personnel. To maintain fair judgment, soldiers who violate the military law cannot be governed by the ordinary criminal law.” [5] The Ministry of Army put the revision of military law on the agenda, and promulgated the *Trial of Military Crimes in Army* in 1910.[6] The promulgation of the constitution marked that there was a special law for the trial of military crimes.

The proposal of the School of Law in Army began in 1907. Duanfang, the governor of Liangjiang and Junbao Tao, the director of Nanyang Military Police Academy, discussed to establish a law institution attached to the school to recruit 40 officers and military assistants. In order to solve the problem of funds, Tao suggested that officials at all levels donate money to support the construction of the school. If soldiers volunteered to study in the institute, they would be charged a monthly tuition fee of 1 yuan.[7] In 1910, after visiting the armies of other countries and returning home, Zaitao learned from the experience of the German army, and set up a military law school in the capital to train legal talents in the army. He recruited 80 graduates of Military Academy to study in the school. After graduation, they were sent to local troops to take charge of law enforcement.[8] Laws such as the *Trial of Military Crimes in Army*, which were enacted in the late Qing Dynasty, were not abolished because of the demise of the Qing Dynasty. For a long time in the early years of the Republic of China, these laws were kept after simple amendments.

3. Jiangsu Governor Authorized County Magistrates to Concurrently Serve as Military Judges

Jiangsu is the first province to implement the strategy of “governing bandits by military law”. In the late Qing Dynasty, bandits were rampant in Taihu Lake Basin and Northern Jiangsu Province. In 1911, Cheng Dequan authorized military offices to hear cases of bandits as well as stragglers and disbanded soldiers, and stipulated that “if the area is close to the provincial capital, the case shall be interrogated and reported by the patrol camp office; in the northern part of the Yangtze River, all government departments, prefectures and county offices shall lead the inquiry together with the leaders of all communicates, and it is not necessary to submit the case to various examination departments for approval.”[9] This actually deprived the power of judicial departments at all levels in Jiangsu to try bandit cases.

In the late Qing Dynasty and the early Republic of China, banditry in Jiangsu province became more and more serious. After the outbreak of the 1911 Revolution, the revolutionary army continued to recruit troops to expand its strength; many secret societies and bandits joined the army. After the negotiation between the north and the south, the number of revolutionary army in the south was huge, which brought huge financial pressure to the government. Xing Huang, who was “left behind in Nanjing”, began to disarm. A large number of unemployed soldiers flowed into the society; parties and bandits “returned to their old jobs”. The public security situation in Jiangsu Province deteriorated.[10]

On January 4, 1913, Cheng Dequan, the governor of Jiangsu Province, called President Shikai Yuan and asked, for areas bandits were rampant, county magistrates could take over the post of the military law office. The cases of bandits should be handled within the scope of military law; the case file should be submitted directly to the governor for examination and approval. On January 8,

1913, Yuan approved that county governors of Jiangsu Province could serve as military law officers.

After county magistrates took charge of the military law for a period of time, it seems that these governors did not form a sense of “judicial independence.” “They have no clear authority, and all cases fall into the scope of military law.” “A large part of laws” quote in the trial was not appropriate, and they asked for “establishing officials and adding posts one after another”. In order to standardize county magistrate's jurisdiction over military law, the governor of Jiangsu Province and the provincial administrative office promulgated *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law*. The detailed rules clearly stipulate the jurisdiction of county magistrates as follows.

First, bandits who gather in mountains or by rivers and resist officers and soldiers;

Second, bandits who sell illegal salt and gather people to resist arrest;

Third, bandits in secret societies which sell tickets and persuade people to join in the association, or after joining the association, they cooperate with others to rob and communicate with them to incite and harass them;

Fourth, robbers committed one of the following crimes: killing; setting fire to people's houses; raping others' wife and daughter; robbing the prison warehouses (include both money and food warehouses of the government office); invading in the city (or climbing into the city) or government office; gathering with more than three people with guns, or gathering with more than 30 people without holding guns;

Fifth, robbers who are armed with weapons or hi-jack on the street in the daytime;

Sixth, stragglers and disbanded soldiers who rob property in a gang.

The county magistrate served as the chief judge of the provisional joint trial of military law; the chief military officer stationed in the county served as the judge; the recorder and other posts were temporarily assigned by the county administration. If the county magistrate thought that it was unnecessary to organize a joint trial of military law, the county magistrate had the right to judge the case with the company of recorders. As the result, military officers encroached judicial power in the name of trial of bandits; county magistrates had the power of independent trial of military law cases. In addition, *Detailed Rules* also stipulated that the governor had the power to approve the death penalty in military law cases. It seems that the magistrate of a county was also in charge of military law. It seemed to be the “revival” of the old county magistrate's trial of banditry cases, but at that time the “military law” began to change subtly. It is clearly stipulated in the *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law* that the county magistrate, as an administrative officer, has the power to mobilize the garrison troops in case of “emergency”.[11] On February 13, 1913, Jiangsu Province ordered prefects of all counties to ask for military assistance at any time if the police force was weak in the process of arresting bandits. [12] The army also had an excuse to interfere in local affairs; the military and political circles jointly used the name of “suppressing bandits” to undermine judicial independence.

4. The Efforts of Higher Procuratorial Office to Safeguard Judicial Independence

The Higher Procuratorial Office of Jiangsu Province was dissatisfied with governor Dequan Cheng's violation of judicial authority, and reported the *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law* to the Ministry of Justice. On February 18, 1913, the Ministry of Justice ordered judicial departments at all levels, procuratorial departments and county governors who temporarily exercised judicial power, stipulating that, except for cases clearly stipulated in the *Trial of Military Crimes in Army*, “the rest shall be subject to ordinary trial”.[13] At the same time, the Ministry of Justice sent a message with the same content to the Ministry of Army, trying to exert pressure on Dequan Cheng, the governor of Jiangsu Province, through the Ministry of Army. [14]

The Ministry of Justice and Jiangsu Higher Procuratorial Office presented the petition to the president to abolish *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law*. Two reasons were put forward. Firstly, the *Detailed Rules* were in conflict with current laws; secondly, the bad habit of carrying out death sentence on the spot in the Qing

Dynasty could not be used in the Republic of China. On July 21, 1913, Shikai Yuan ordered to abolish *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law*. [15]

At that time, the Second Revolution broke out, Jiangsu Province was in the battlefield between two armies, and the situation was more turbulent. Dequan Cheng, the governor of Jiangsu Province, resigned from his post and retired. Dehong Ying, the director of civil affairs of Jiangsu Province, organized an office in Shanghai and announced that he would “immediately engage in military law” against bandits who committed arson and robbery in Shanghai.[16] Wujiang county put up a notice announcing that bandits and those who spread rumours and make troubles were “handled by military law”. [17] As the world was in chaos, county governors had no scruple with the central government's order to abolish *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law*. In August 1913, the magistrate of Baoshan County asked the province governor to “shoot Asheng Liu, a gangster who attempted to escape from prison,” in accordance with the military law.[18] In the same period, there was another case of bandit inciting and threatening people and trying to escape from prison in Baoshan county. The magistrate of Baoshan declared that the case should be included in the scope of military law. He announced the charge of the criminal and shot him with the warden. After that, he submitted it to the governor for examination and record.[19] From provincial governors to county magistrates, they implemented the “military law” one after another to stabilize the social order. The repeal of abolishing *Detailed Rules for County Magistrates in Jiangsu to Temporarily Assume the Post of Military Law* almost became a mere scrap of paper.

5. The Influence of “Governing Bandits by Military Law”

After Dequan Cheng institutionalized the county magistrate's concurrent role of military judge in the trial of bandit cases, the scope of military law expanded day by day. Later, military laws were carried out to punish bandits. “In case of complicated cases, county magistrates are afraid that if these cases are not handled properly, they will be refuted by higher courts. They often use local order as an excuse to ask the military and political officers of each province to include these cases into the scope of military law for handling; the military and political officers fail to understand their excuse, and they just approve the applications.”[20] In August 1913, the military law division of Zhejiang government detained and tried the former Lishui County Magistrate for corruption; the crimes committed by public servants were subject to the trial of military law.[21] On December 6, 1915, Shikai Yuan approved that police crimes could be applied to Article 2 of the *Army Criminal Regulations*, and classified police crimes into military law. [22] On December 28th, 1921, president Shichang Xu approved that the military law applied to “crimes of the police security team”. [23]

During the period of Nanjing National Government, the power of county magistrate in managing military law was expanded again. In 1932, the command of suppressing bandits in Henan, Hubei and Anhui provinces was established, and the county heads of three provinces were appointed as military judges. All cases of banditry, tobacco, drug abuse, vagrants as well as stragglers and disbanded soldiers were tried by county magistrates in the name of concurrently military judge. After the outbreak of the War of Resistance against Japan, corruption, theft (military power lines and transportation equipment), violation of economic control, and destruction of social order were all brought into the scope of military justice.[24] The system of county magistrate concurrently in charge of military law lasted until 1949.

6. Conclusion

In the early years of the Republic of China, the judicial system was not perfect. Dequan Cheng implemented the strategy of “governing bandits by military law” as expedient, and appointed county magistrates as military justice officers, which caused endless harm. From “military law governing the army” to “military law governing bandits”, from “military law punishing corruption” to “military law controlling drugs”, military law constantly eroded judicial authority. County

magistrates can command the army to arrest criminals, judge bandit cases, and punish criminal servicemen; their power increased day by day. The administrative, judicial and military powers were entangled with each other; “judicial independence” and “military independence” became empty slogans during the period of Republic of China.

References

- [1] Military Law Manual, <https://vdisk.weibo.com/s/BIYyru1VB41P0>.
- [2] Zhang, D.Z. A Survey of State Organs in Qing Dynasty, Beijing: Palace Museum Press, 2012, pp. 314 -321.
- [3] Hubei Government. Establishment of New Law Enforcement Department. Nanyang Military Affairs, no. 21, pp. 13, 1908.
- [4] Beijing Government. Establishment of Military Law Council. Nanyang Military Affairs, no. 37, pp. 1-2, 1909.
- [5] Zhou, Y. Military Law should be Independent; Please Hand Over All Army Criminals to the Ministry of the Army. Beiyang Military Affairs, no. 3, pp. 3-4, 1910.
- [6] Shenbao Newspaper, <http://s.reasonlib.com/>.
- [7] Military Police Academy. Establishment of Law Teaching Institute. Nanyang Military Affairs, no. 12, pp. 2, 1907.
- [8] Law Teaching Institute. Discussion Records. Chinese Businessmen Association Newspaper, no. 13, pp. 3, 1910.
- [9] Cheng, D.Q. Criminal Offences under Military Law were not under the Jurisdiction of Prosecution Departments. Beiyang Official Newspaper, vol. 2729, pp. 10-11, 1911.
- [10] Jiangsu Province. Dispute over the Magistrate of Jiangsu County and the Leading Branch of Military Law. Shanghai Journal of Judicial Officials, no. 13, pp. 8-9, 1913.
- [11] Governor Office of Province. County Governors to Temporarily Assume the Post of Military Law Division and Detailed Rules for Handling Affairs. Jiangyin County Bulletin, no. 1, pp. 6-8, 1913.
- [12] Jiangsu Province. Provincial Decree No. 580: in Case of Arresting Bandits and Robbers, the Magistrate of the County may Ask the Local Garrison to Take the Case. Jiangsu Provincial Bulletin, no. 107, pp. 2, 1913.
- [13] Ministry of Justice. Decree No. 51: Ordering the Judicial and Procuratorial Departments at All Levels Outside Beijing and County Governors Temporarily Exercising Judicial Power. Government Bulletin, no. 286, pp. 19, 1913.
- [14] Divisions and Brigades of Army. General Order that the Trial of the Army shall be Subject to the Joint Trial of Military Law and the Rest shall be Subject to the Ordinary Trial. Jiangsu Provincial Bulletin, no. 118, pp. 8, 1913.
- [15] The Chief Justice. Submitted to the President of the people's Republic of China to Examine and Verify Administrative Rules of Jiangsu County Magistrate's Temporary Appointment to Military Law Division. Government Bulletin, no. 436, pp. 23-24, 1913.
- [16] Military and Civilian Governors. Bandits should be Judged by Military Law. Police Series, vol.2, no. 27, pp. 53-54, 1913.
- [17] The Magistrate Office of Wujiang County. Notice No. 55: Bandits shall be Handled By Military Law; Notice No. 56: People shall not Make a lot of Wind. Wujiang Communique, no. 7, pp. 16, 1913.

- [18] The Magistrate Office. To Governor's Office: Prisoner Maomao Ling who Intended to Escape the Prison was Executed by Shooting According to Military Law. Baoshan Republic Magazine, no. 9, pp. 24-25, 1913.
- [19] The Magistrate Office. To Governor's Office: Armed Bandits Destructed the Police Office and Injured Police Officers to Rescue Criminals, Please Punish them by Military Law. Baoshan Republic Magazine, no. 9, pp. 25-26, 1913.
- [20] The President Office. Presidential Decree. Laifu Newspaper, no. 52, pp. 2, 1919.
- [21] Zhejiang Prefectural Administrative Office. No. 1460 Official Document. Zhejiang Bulletin, vol. 10, no. 22, pp.3, 1913.
- [22] The Ministry of Interior. Applying Military Law to General Crimes. Government Bulletin, no. 1289, pp. 9-12, 1915.
- [23] The President Office. The President Order 2875: Presenting to the Police Force to Apply Military Law to General Crimes. Government Bulletin, no. 2098, pp. 8, 1921.
- [24] Sun, K.K. On Military Law Trial of Non Servicemen. Legal Review (Beijing), vol. 15, no. 8, pp. 1, 1947.