

Judicial Paradox in Spontaneous Anti-Corruption: The Study of Chiang Kai-shek's Decree of Eradicating Corruption in 1936

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Abstract: On March 10, 1936, Chiang Kai-shek, President of Chinese National Government, ordered all the departments to eradicate corruptions, which immediately arose hot report among public media. In this decree, the judicial rules of Severe Penal Codes and Deterrence played important roles and was inherited in other special anti-corruption laws. But the decree was only efficient in a short time and failed in restraining the tide of corruption. This paper, after an integrated study of the decree's background, content and implementation, finds that it is a judicial paradox.

1. Introduction

On March 10, 1936, Chiang Kai-shek, President of the Executive Yuan, issued a decree to eradicate corruption of the government. which “was regarded as the most important measure which can scratch the itch for Chinese since the establishment of the Republic of China”. This decree opened the door to the harsh laws against corruption of the Nationalist Government, and played an important role in the history of the Nationalist Government's anti-corruption. However, its lessons are also useful for today's anti-corruption.

2. The Background of the Decree of Eradicating Corruption

Since 1936, Chinese National Government, from the central to the local, had been in severe corruption. It was so serious that people then even thought that there had never been so many corrupt officials in any other times of Chinese history, nor such corruptive politics in any other government around the world. Some even criticized that the popularity of corruption of the Government, behind the reputation of honesty and loyalty, was worse than that of Qing Dynasty.

For example, Zhang Xueliang (张学良), a member of the Central Committee, had sold Tianjin Naval Hospital Medical School to seek illicit profits and then escaped overseas to avoid punishment. Chen Fumu (陈孚木), a deputy director of the Ministry of Communications, borrowing foreign debt by the name of the China Merchants Bureau, had swallowed 35,000 kg of silver and fled to Hong Kong. The number of the corrupted local governors, directors, and even presidents of local associations was hard to count. Because of corruption, only in 1931, more than a dozen county governors of Guangxi Province were sentenced in jail. Government of Sichuan Province even levied for 50 or 60 years in advance to satisfy the officials' greed. This forced the central government to do nothing, but to divide the 148 counties of Sichuan into 18 administrative supervision units, with each unit a grim supervisor to prevent local officials' corruption. Later, the supervisors themselves had become corrupt ones. The corruptions, with its atmosphere so popular, the ways so tricky, and the number so large, made the whole society upset. Hexun (贺洵), a small governor of Wuxi county, even got 100,000 Yuan illegally by faking official seals. The education industries, often regarded as a place with no benefits to squeeze, were full of corruptions. The exam contents were leaked before the Education Bureau's examination. Even the paper medals and the award materials of infant spoken contests were taken in. Corruption cases were piled too high to make the prosecutors at their wit's end. Finally, the prosecutors themselves began to corrupt, which provoked outrage.

Corruption was seen as normal behavior while non-corruption abnormal. Fraud, which had been thought as the violation of the law, then went to the other end. The media criticized that corruption caused “internal disorder and external invasion”----- the bureaucrat's exploitation forced law-abiding people to become law-breaking bandits; destroyed the national economy, weakened the national power, and led to imperialist aggression; and then hindered national construction and social development, etc. Some even warned that the corruption was shaking the root of government, and might lead the whole regime into collapse. In their opinions, external aggression was urgent, but the country couldn't be conquered in a short time because of its large territory; the rampant bandits could be put down only with existing forces. However, if the corruption were not to be erased, it would be easy to perish the country and cause the political life of the government to an end.

3. The Contents of Decree and Its Social Influence

The Decree of Eradicating Corruption was issued by Chiang Kai-shek on March 10, 1936, and a newspaper named THE PROGRESS quoted the main contents as follows:

The country has been weak for a long time, and the chronic abuses in the Government have become more and more deep-rooted. Having been President of the Executive Yuan, I have been worrying about the aggression of foreign countries and the decline of national power so much that I found it hard to eat and sleep. The weakness of our country, as I know, is due to the malpractice of the government; longing for bribery, the officials have been losing their moralities. To reform the current political system needs to weed out the avaricious and corrupt officials first. Among the officials inspected, law-abiding ones are mainly honest and self-disciplinary, it's unnecessary to supervise them. But the law-breaking officials are easy to corrupt in all kinds of ways if their supervisors take a closed eye.

Their common tricks are:

- (1) Embezzlement of public funds.
- (2) Illegal possession of public properties.
- (3) Abuse of public properties.
- (4) Illegal appropriation of public funds.
- (5) Entry of false accounts.
- (6) Acceptance of discounts in public purchasing.
- (7) Higher price quotations.
- (8) Concurrent posts for additional salaries or subsidies.
- (9) Receipt of unearned salaries.
- (10) Private acceptance of interest on public deposits.

And other false behaviors, etc.

It frequently happens that, despite their limited salaries, those in charge of business affairs or accounts of the various Government organs are extremely lavish in their personal expenditure or make heavy investments. From where does their money come?

The answer to this question is most painful.

The country is now in the thresh of a grave emergency; the people's strength is almost exhausted; all business is waiting for revival; and the country is in greater need of money than ever.

Our colleagues, in serving the Party and the State, should therefore be mindful of the hard times and refrain from superfluous expenditure of public funds. Every copper spent should bring its maximum value, and each project undertaken should achieve the desire result. All the above malpractice must be eradicated on time by department leaders, with carefully self-inspecting measures to form an honest politic atmosphere.

The orders instruct that responsible authorities shall render reports on reform work within two months, the inspectors will be sent out to investigate the situation on time. Violators of the orders, as is warned, will be punished by the Commission for the Disciplinary Punishment of Public Functionaries. Thus an honest politics can be formed. I expect highly about it. I order all departments, civil and military, take active measures. Unless other special orders are enacted, all must follow the decree as standard.

That's all. [1]

Prior to this decree, the Nationalist Government has no special decree or laws on anti-corruption, and corruptions were punished only according to some related items in the Criminal Law, the Punishment of Bandits or other ordinances. Based on this decree, the Nationalist Government promulgated the “Provisional Regulations on the Punishment of Corruption” on June 27, 1938, and amended it as the “Regulations on the Punishment of Corruption” on June 30, 1943. [2] This was the first special criminal law to corruptions. Before this decree, the anti-corruption measures of the Nationalist Government had not been specifically regulated in judiciary. The offenders, once found, were mainly shot at once after simple interrogations. After the decree, a more formal judicial process of corruption was formed. This decree, obviously, is a landmark in the history of the Nationalist government's anti-corruption. As soon as it was announced, it attracted great attention and countless reviews. The people have high hopes for the government's anti-corruption efforts, applauded President Chiang, and believed that an honest government, under his leadership, could be founded in the near future.

4. Big Thunder and Little Rain

After Chiang Kai-shek's anti-corruption decree was issued, all departments and agencies were in great hurry to “follow” the order, as if all members of the government had great intention to “eradicate” corruption. Having received the decree, the Audit Department sent many commissioners to various agencies to exam the accounts, the Control Yuan ordered all the supervisors to supervise local governors more strictly, and report and correct it immediately once they found corruptions, never bending the decree for selfish, Jiang Zuobin(蒋作宾), head of the Ministry of the Interior, handed out the decree to the all divisions and warned the subordinates to inspect themselves strictly, never violate the law.

Among the central departments, the Legislative Yuan and the Ministry of Finance reacted much more vigorously to the decree. On April 6, 1936, the Legislative Yuan issued an order to all its members: Strictly examine their behaviors according to the ten Items of the decree. Once confirmed, the offender must be fiercely punished. The Legislative Yuan also ordered its subsidiary, the Control Yuan, to supervise all the members frequently. Kong Xiangxi(孔祥熙), Minister of Finance, hold a special meeting to introduce the decree to all the members and asked to be honest. Kong demanded all members of all divisions of Finance, such as officials in tariff, salt taxation and taxation, etc., never corrupt, and special officials would be sent to investigate them secretly. On May 3, 1936, the Ministry of Finance requested its subordinate agencies to report the official property, accounts, public funds, deposits, etc. within three days and submit them to the Ministry within ten days for verification. In September of 1936, Kong Xiangxi even suggested the central government that anybody who embezzled 500 yuan or more be “engaged in military law”!

As for the implementation of the Decree in local governments, Henan province was a miniature. Henan High Court developed Measures for Eliminating Corruption in Government Offices of Henan Province, with ten terms in all. Each term reflected to ten items of Decree of Eradicating Corruption, and concretely confirmed the scope of crime and its punishment. Furthermore, they decided to take a full stride by setting up a special agency--- Henan Prosecution Committee of Eradicating Corruptions, with provincial chairman as the leader. Finally, Executive Yuan thought Henan province had gone too far, and ordered it unnecessary to set up a “Prosecution Committee of Eradicating Corruptions”, thus canceled the committee.

Apparently, all departments, provinces and cities had been executing the Decree of Eradicating Corruption, seriously, carefully, and actively. But in fact, all of them overtly agreed but covertly opposed. They ignored the decree and made it as formality. Shortly after the decree was issued, someone predicted it would be gobbledygook, and would be dodged as “No Corruption Found Still” in the reports of all offices. As expected, two months later, on Thursday, May 28, 1936 ---- the deadline of reporting the results of “Eradicating the Corruptions”, all the offices “are honest and self-control, and No Corruption Found Still” after “all of them executed the decree and inspected

themselves carefully “.”Each province and municipality has investigated its offices severely and thoroughly, and Henan provincial government even set up Prosecution Committee of Eradicating Corruptions. Earlier, according to the reports from each province and municipality, corrupt cases have not been found yet”. After that, all the offices even pretended to be honest, and Chiang Kai-shek, the president, could do nothing to push forward the decree further.

5. The Causes of Failure and Its Lessons

This anti-corruption didn't work as well as it had been hoped. Instead, it led to self-repair and self-reinforcement of the net of corruptions. Ironically, all the offices presented no corruptions in their reports with popularity of corruptions in society.

What caused the decree to fail?

First, the affection of individual leader took the place of the reason needed in corrupt eradication. Chiang Kai-shek issued the decree because he had “been worrying about the aggression of foreign countries and the decline of national power so much that I was sad and forgot eating and sleeping”, thus “The answer to this question is most painful”! Deeply affected at the situation, Chiang Kai-shek had started the anti-corruption spontaneously. Such a radical action made by a great leader is rarely seen. Once the decree was ordered, it had resonated with a lot of followers, with more emotion, and less reason.

Second, the decree only “Slapped the fly” instead of “Fighting the tiger.” The decree was issued “as if to eradicate corruptions of junior government officials, and as to senior ones, it never mentioned”. Furthermore, the decree pinned the hope of eradicating corruptions on office leaders of different ranks. However, the higher the rank is, the more power one gets; the more power he gets, the severer corruption he chases and the harder for him to be punished. Notoriously, Song Ailing(宋蔼龄), wife of Kong Xiangxi(孔祥熙), and Song Ziliang(宋子良), young brother of Song Ziwen(宋子文), had even leaked the news that Shanghai would implement the new currency system and embezzled a lot from it. Chiang Kai-shek had promised to punish anyone who broke the law. However, after he found the insiders, the case went nowhere.

Third, the multiple and complex roots of corruption could not be “eradicated” only by an anti-corruption decree.

Just before the Decree of Eradicating Corruption was enacted, discussions about corruptions had been very hot in media, even famous jurists such as Zhang Chunming(张纯明), Chen Maizhi(陈迈之) and other socialites such as Hu Shi(胡适), were involved in it and nailed their colors. According to reports from newspapers or mainstream media during the period of 1911 and 1936, corruptions were thought to originate from extreme poverty of economy, party and bureaucratic politics, impunity or too light punishment, the house of supervisor's failure on duty, political favoritism or feudalism, some even considered corruption as selfishness of human, etc. Each idea disclosed a certain truth. [3]

Thus the cause of corruptions in Chinese politics is that “the whole society is a corrupt society and its culture a corrupt culture”. After the Revolution of 1911, old and new warlords in China extorted excessive taxes and levies to prey on people, but there had been no “corruption”.

During the process of national unification, Chiang Kai-shek used the state fund as “special expenditure” to satisfy different officers, “from several thousand to several million”. “Corruption” then acted as a military aid to finish China's political unification, an important tool with no oppose from public. Amassing money and making troops stronger in all means were the warlords' ultimate purpose, thus “it is natural to form corruptions in such a social organization. According to the principle that only the fittest can survive, corruptions became normal, while honest abnormal. All parts of society are seducing people to corrupt and forcing them to corrupt”. The roots of corruption were diverse and complex, but the ten corrupt items of the decree, as scholars then said, only listed ten behaviors of embezzlement and graft, which substantially left much to be desired.

Fourth, the malpractice of Chinese National Government's political system was the basic cause to the failure of the decree. Chen Maizhi said: “Autocracy can lead to a dishonest government,

while democracy an honest one, because democratic government is from people, and their political careers are completely controlled by the people, they dare not bet their future to corrupt.

This lesson is thought-provoking: If the conflicts between the judiciary and authoritarian system cannot be solved at first, anti-corruption and corruption will enter an odd trap of endless circulation and growing with each other. This is a judicial paradox: anti-corruption makes corruption more and more furious. [4]

This paradox found its evidence. Since then, other decrees of Anti-corruption of Chinese National Government had inherited the Deterrence and severe penal codes of the 1936 Decree, and the Government had made anti-corruption a long-term extreme special task. But this strategy could never stop the trend of corruptions. Chiang Kai-shek had signed so many bans that he was tired of it, and so many warrants to shoot embezzlers that everybody was frightened, but the fruits were still poor. What's worse, with the US Dollar Bond Embezzlement Scandal Kong Xiangxi, the system malpractice of Chinese National Government was completely exposed, which made America very disappointed. As a comment had said: "A so-called supreme leader of nation didn't seek the cause in himself to overthrow the whole dark political form of 'A change of sovereign brings a change of ministers' by abandoning the heroism of 'wrecking any grouping he is unable to control', but issued some decrees to eradicate corruptions, which is renouncing the essential while pursuing the trivial. Even if he didn't intend to deceive the people, his policy could be found self-contradictory obviously. "

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