

# *Further Exploration of the Positioning of Administrative Penalty Power of Township Governments in China*

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**Keywords:** Administrative penalty power, Township governments, Property positioning

**Abstract:** In order to better promote the extension of the reform of the administrative and legal system to the grassroots level and address the theoretical and practical issues faced by administrative punishment in grassroots governance, this study is conducted in accordance with Article 24 of the Administrative Punishment Law, taking into account the formulation background and practical changes of the provision, as well as its practical application in reality. Through an analysis of the historical evolution and legal nature of the delegation of administrative punishment power to township governments, it clarifies the nature of the township's exercise of administrative punishment power: it is an inherent right of the township people's government, and the delegation of punishment power to townships should be positioned as "administrative return of power". On this basis, the legal nature of the delegation of administrative punishment power to townships is re-understood.

## 1. Introduction

On January 22, 2021, the 25th session of the Standing Committee of the 13th National People's Congress passed the Administrative Penalty Law, which added a separate article 24. This provision clearly grants township governments and neighborhood offices the power to impose administrative penalties, not only setting conditions for the delegation of administrative penalty power, but also imposing legal restrictions on the exercise of administrative penalty power by township governments and neighborhood offices. The institutional design of granting township governments the power to impose administrative penalties is in line with China's strategic deployment of comprehensively deepening reform and comprehensively governing the country according to law.

The nature of the exercise of administrative penalty power by towns and streets is not only related to the legal status of towns and streets as the subject of the exercise of administrative penalty power, but also to the clarification of the subject of empowerment decisions and the formulation of relevant principles and considerations. It is the theoretical premise for towns and streets to exercise administrative penalty power. [1]In the process of continuous advancement of the times, the dependence of national grassroots governance on government departments has deepened. Therefore, in order to solve a series of problems such as "big responsibility, small power" and "visible cannot manage, manageable cannot see" of township governments, China has carried out administrative system reform, delegating administrative law enforcement power to grassroots and amending the Administrative Penalty Law. Among them, the Administrative Penalty Law included in the delegation of township governments has taken different forms in local practice. There are still

significant differences in academic circles regarding the nature of the Administrative Penalty Law sinking into township governments. This chapter discusses the nature of the exercise of administrative penalty law by township governments from the perspectives of practice patterns and academic differences.

## **2. The practical changes of the township government's exercise of administrative punishment power**

The implementation of policies is flexible and fast, so in order to solve the problem of grassroots law enforcement before the amendment of the new Administrative Penalty Law, as early as 2016, the General Office of the CPC Central Committee and the General Office of the State Council issued the Guiding Opinions on Further Promoting the Reform of the Administrative System of Economically Developed Towns, which emphasized the need to integrate the existing strengths and resources of stations, offices, and sub-bureaus, and to unify the management and implementation of comprehensive administrative law enforcement by economically developed towns. [2] Later, the report of the 19th CPC National Congress proposed to create a community governance pattern of joint construction, joint governance, and shared benefits, strengthen the construction of community governance system, and promote the shift of social governance focus to the grassroots. [3] In January 2019, based on practical experience, the General Office of the CPC Central Committee and the General Office of the State Council issued the Implementation Opinions on Promoting the Integration of Approval Service Law Enforcement Forces at Grassroots Level, which proposed that towns and streets should "integrate existing station, office, and sub-bureau law enforcement forces and resources, establish a unified comprehensive administrative law enforcement agency, exercise administrative penalty power relatively centrally in accordance with relevant laws and regulations, carry out law enforcement work in the name of towns and streets, and accept business guidance and supervision from relevant county-level competent departments, gradually realizing a unified team for law enforcement at grassroots level." [4] The Fourth Plenary Session of the 19th CPC Central Committee further emphasized: "We should further integrate administrative law enforcement teams, continue to explore the implementation of comprehensive law enforcement across fields and departments, promote the downward shift of law enforcement focus, and improve administrative law enforcement capabilities." [5] Until 2021, when the Administrative Penalty Law was amended, it stipulated that administrative penalty power should be delegated to towns. Since then, a new chapter has been opened in the legalization of administrative penalty power delegation reform. Against this background, the practice of towns exercising administrative penalty power has roughly gone through three stages.

### **2.1. The early stage was the administrative delegation model in which the township government was entrusted with the power of administrative punishment**

In the early stages of the practice of delegating administrative punishment power to towns and villages, local people's governments often delegated the power of law enforcement to towns and villages through the way of entrustment. The so-called administrative entrustment refers to the administrative organ that enjoys the power of administrative law enforcement entrusts its administrative law enforcement authority to other administrative organs or organizations to exercise. The administrative organ or organization entrusted with the power of administrative law enforcement implements administrative law enforcement in the name of the entrusting administrative organ within the scope of the entrustment. [6] For example, the Health and Family Planning Bureau of a district in Shenzhen entrusted the administrative punishment power related to family planning to the street office within its jurisdiction. [7] Article 2 of the Administrative Law Enforcement Department of the

People's Government of Yinchuan City and County Entrusts the Law Enforcement Agency of the People's Government of Townships to Exercise Some Administrative Law Enforcement Power Management Regulations stipulates that "the relevant law enforcement departments of the people's governments at the city and county (city and district) levels entrust some administrative law enforcement powers to the administrative law enforcement agencies of the people's governments of townships, and the entrusted organizations implement administrative law enforcement in the name of the entrusting organs. The legal consequences arising from their law enforcement actions shall be borne by the entrusting organs. " [8]In these local practices, relevant functional departments of the people's governments at the city and county levels entrusted administrative law enforcement power to township governments..

## **2.2. In the medium-term stage, delegating administrative punishment power to township governments through various means such as authorization and delegation**

With the deepening of reform, China's central government has successively promulgated three documents: the "Implementation Outline for the Construction of a Rule of Law Government (2015-2020)" [9], the "Guiding Opinions on Further Promoting the Reform of Urban Law Enforcement System and Improving Urban Management Work"[10], and the "Implementation Opinions on Promoting the Integration of Approval and Service Law Enforcement Forces at the Grassroots Level[11]". Various localities have complied with the reform trend by issuing announcements, notices, regulations, lists, and other forms to delegate administrative punishment powers to township governments, such as the "List of Administrative Powers at the Three Levels of Chongqing Municipality, Districts, and Counties" (2020); the "Announcement of the People's Government of Guangdong Province on Comprehensive Administrative Law Enforcement in Townships and Streets"; and the "Decision of the People's Government of Beijing Municipality on Delegating Some Administrative Law Enforcement Powers to Sub-district Offices and Township People's Governments and Implementing Comprehensive Law Enforcement". The delegation of power in many places presents the following characteristics: First, the way of delegating administrative punishment power is diverse, mainly through authorization and delegation, as well as the joint law enforcement mode of departments on the platform of townships and towns, such as stationed law enforcement, downward shift of law enforcement windows, and other methods. Secondly, the delegation of law enforcement power to township governments presents diversification. In many provinces, other law enforcement powers that are also delegated along with administrative punishment power include administrative coercion power, inspection power, confirmation power, etc.

## **2.3. After the amendment of the Administrative Penalty Law, the power of administrative penalty has been transferred to the township governments, with authorization as the main means and delegation as the supplement**

Article 24 of the Administrative Punishment Power in 2021 clearly stipulates that the administrative punishment power can be appropriately extended to township governments. After the amendment of the Punishment Law, various regions have responded. For example, 16 towns (streets) in Jiyuan City, Henan Province, have obtained the county-level administrative punishment power, which clearly states that "after the township governments exercise the administrative punishment power collectively, the original implementing organs will no longer exercise the administrative punishment power that has been collectively exercised by the town people's governments (street offices), and the administrative punishment decisions made by them will be invalid. " [12]Shanxi Province has also delegated some county-level administrative law enforcement powers to township governments and street offices. The decision states that "the administrative law enforcement power

shall be exercised by township (street) according to law, and the relevant administrative law enforcement departments of the county-level government shall no longer continue to exercise it, so as to avoid the problem of multiple and repeated law enforcement." [13]After the amendment of the Punishment Law, most places have adopted authorization to exercise the downward punishment power, but Shaanxi Province and Shanxi Province have also indicated that they can delegate the administrative punishment power outside the Guidance Catalogue according to their work needs. [14] Within their statutory authority, they can entrust township governments and street offices to implement administrative punishments in writing. In this stage, the punishment power sinks to townships mainly based on normative documents issued by provincial governments, with authorization as the main form, and a few places also adopt the form of entrustment.

### **3. Theoretical differences in the nature of administrative punishment power in towns and villages**

#### **3.1. The legal nature of the administrative punishment power sinking**

These views analyze the administrative penalty power as part of the overall administrative law enforcement power. The first view believes that the decentralization of administrative law enforcement power to townships and towns is a redistribution of the jurisdiction of local governments at different levels, which should be decided by the provincial government and authorized by provincial government regulations. [15] The second view believes that when administrative law enforcement power is delegated to township governments and neighborhood offices, this adjustment of the power of law enforcement has gone beyond the scope of internal optimization of the power of law enforcement, allowing organizations that do not have such authority to obtain administrative law enforcement power, rather than administrative delegation or authorization. This is a structural change in the allocation of administrative law enforcement power, [16]which belongs to the redistribution of administrative law enforcement power and should be amended to provide a legal basis for the delegation of law enforcement power to townships. [17] The third view believes that the decentralization of administrative law enforcement power to townships and towns is a vertical reallocation of powers. [18] Similar views suggest that the decentralization of administrative penalty power is essentially a vertical transfer of administrative law enforcement power. [19]The fourth view believes that the delegation of administrative penalty power to townships and towns is an expansion of the implementation body of administrative penalty. Article 24 of the new Administrative Penalty Law clarifies that township governments have the dominant position in administrative penalty power. [20]These four views are essentially the same. From a legal perspective and constitutional provisions, township governments as a tier one people's government clearly stipulated in the Constitution may have their own punishment power, which was temporarily abolished for the purpose of curbing abuse of power by townships.

#### **3.2. The form of administrative punishment power sinking to the township**

Putting aside the nature of the administrative penalty power sinking to villages and towns, there are different views in the theoretical and practical circles on the normative path of formal administrative penalty power of the township people's government based on Article 24 of the new Administrative Penalty Law. The view of the practical circle is that the transfer of the power of punishment to villages and towns can be either administrative authorization or administrative entrustment [21], and can also cover various ways such as "street whistling and department reporting"[22]. Some even list five ways such as delegation, relatively centralized punishment power, entrustment, authorization, and establishment of resident agencies. [23] The view of the theoretical

circle is that Article 24 of the Administrative Penalty Law essentially clarifies that the exercise of administrative penalty power by township governments belongs to the administrative authorization of provincial governments. [24] Another view interprets Article 24 of the new Administrative Penalty Law as a "catch-all" clause that transfers the power of administrative punishment to villages and towns through administrative authorization or administrative entrustment. [25]

#### **4. Re-exploring the nature of administrative punishment power of township governments**

The nature of the administrative punishment power's sinking to the township level is closely related to the choice of form. Essentially, the relationship between nature and form. The nature of the administrative punishment power's sinking to the township government determines the form of sinking to the township government. Different nature positioning means different forms of sinking. Conversely, the form of administrative punishment power's sinking to the township level also reflects its nature positioning. [26] Therefore, it is necessary to comprehensively understand the historical evolution and existing legal norms, clarify the nature positioning of the township government's exercise of administrative punishment power, and better explore the essence of the phenomenon of punishment power sinking.

##### **4.1. Analysis from the perspective of historical evolution**

The township management system in China has not been constructed out of thin air since ancient times, but is closely related to the nature and characteristics of towns and villages in a certain period of time, and has undergone historical development and transformation. Therefore, for the nature of the administrative penalty power of township governments, perhaps we can find the answer by reviewing the history of the township management system.

Law enforcement, as a necessary means to complete public affairs and maintain rural order, must have a specific responsibility-bearing subject, so as to achieve the fundamental purpose of providing public services and maintaining social order through the performance of functions and the exercise of power. From the perspective of the nature of rural society, the development of China's township administrative system can be roughly divided into four stages. The first stage is the traditional agricultural period of rural governance under centralized authority. The ancient rural management system is characterized by the duality of autonomy arising from within rural society and administrative power originating from outside rural society. [27] The state administrative power generally does not enter rural areas, mainly implementing the principles of "governing by doing nothing" and "governing by villagers". Below the county level, rural autonomy is mainly implemented, that is, "the authority of the king ends at the county government". The second stage is the extension of state power downward in modern society, and the integration of resources at the grassroots level in rural areas. The third stage is the people's commune system of "integration of government and society" after the founding of the People's Republic of China, and the fourth stage is the dual governance model of "rural politics and village governance" after reform and opening up. These four stages present the development process of grassroots governance in China and the trend of grassroots law enforcement power in each period.

##### **4.1.1 Rural governance under centralized power in the traditional agricultural period**

In ancient China, there was never a formal political system corresponding to the county level below the county level, and the township was only an organization with administrative functions. The country's governance was divided into urban and rural areas, and the upper and lower levels were divided. The centralized vertical rule was implemented above the county level, and the rural

autonomy was implemented below the county level. However, this autonomy was a limited transfer of state power. The rulers did not want to extend their power to the countryside, but the limited surplus of the rural economy was difficult to bear such a complex bureaucratic organization, and the cost was too high. Moreover, traditional China was based on the peasant economy, which could basically meet their own needs for self-sufficiency, and order and security were also exercised by the rural self-organization. Therefore, there was no need for the state to set up a political power at the grassroots level at that time, and this autonomy was a more ideal governance means.

The traditional Chinese rural governance structure in China is that "the state power does not extend to the county level, and the county level is only governed by the clan". [28]The clan is autonomous, and the autonomy depends on ethics, which creates the gentry. Therefore, the township did not become a formal political system in ancient China, and it only played an administrative function. Through the administrative organization network of the township, taxes were collected, labor and military service were levied, public security and justice were maintained. Because the township was not a grassroots political power, in the grassroots power structure below the county level, the "gentry" linking the state and grassroots society played an important role in grassroots social governance, playing the role of a "regulator" between the state and grassroots society, and completing the maintenance of rural order and fulfilling public affairs responsibilities. Therefore, the ancient imperial power, gentry power, and clan power constitute a stable triangular structure of rural governance. [29] It can be said that traditional Chinese society's rural governance is a model of autocracy-autonomy, with towns and villages having a high degree of autonomy.

#### 4.1.2 The formation of "modernized" regimes in modern society

In the first half of the 20th century, society entered a period of radical change, and the state power was only transferred from the county to the township. The township began to become a formal political institution at the first level. By the end of the Qing Dynasty, whether it was the self-demand of national construction innovation or the pressure of imperialism, China was required to build a modern state power. Therefore, at this time, the state needed to extend its power to the grassroots level and achieve the integration of national resources through the control of rural society. During this period, the social structure of "the king's power ends at the county government" gradually differentiated and disintegrated. The traditional authority in rural areas was squeezed by state power, so local forces expanded, and the gentry class also began to move towards the opposite of imperial power. Therefore, after the Revolution of 1911, the Qing government was forced to open up some local governments in reality, absorb new political forces to participate in grassroots social governance, and implement local autonomy in imitation of Western countries. [30]

In the 35th year of Guangxu's reign, the Qing government promulgated the "Township Autonomy Charter," which stipulated that "cities, towns, and villages are the most basic units of local autonomy. Among them, cities with a population of more than 100,000 are designated as 'districts,' cities with a population of more than 50,000 outside the city are designated as 'towns,' and those with a population of less than 50,000 are designated as 'townships.' They will establish 'autonomous offices,' and all towns and villages will be local autonomous bodies. Townships will establish 'councils' and 'boards' and other institutions to handle affairs within their jurisdiction. The scope of autonomy for townships will mainly focus on education, health, charity, roads, agriculture, industry, commerce, public business, and autonomous funds. The Qing government recognized the control of local gentry through this system and incorporated them into the grassroots government departments in order to consolidate their rule. The local autonomy adopted in the late Qing Dynasty was a mutually beneficial cooperation between the conservative Qing government and equally conservative local gentry in order to maintain their political power in a changing world. Therefore, after entering the bureaucratic system, local gentry did not fully comply with state power, which was also an important factor leading to the

separation of warlords during the Republic of China.

During the period of warlordism in the early Republic of China, although there were changes in the local self-governance system in towns and villages, its basic principles were inherited by the government of the Republic of China. In 1915, during the reign of Yuan Shikai, the "township autonomy" was abolished and a two-tier system of districts and villages was implemented, with the intention of institutionalizing and formalizing the governance of non-official organizations such as the gentry, thereby consolidating political power. As the scholar Huang Zongzhi said, "Before 1941, township-level organs were not included in the budget of the county government and did not have their own financial income, but only existed in name." [31] After 1941, the "Township (Town) Organization Regulations" were promulgated. Under this series of institutional arrangements, towns officially became grassroots political power in the country. At this time, the functions of township public offices mainly included compiling household registration records, arranging finances, establishing schools, handling security guards, stipulating land prices, promoting cooperation, training the four powers, promoting health, opening up transportation, implementing relief, etc. However, the so-called autonomy at that time was limited to the level of institutional formality rather than substantive autonomy. It was only a means for the government and local forces to stabilize their respective powers in order to integrate rural society into the national integration system and draw resources needed for modernization from rural areas. Moreover, the sinking of state power increased bureaucratic institutions and governance costs, which also needed to be borne by farmers. Therefore, it aroused popular resistance and further undermined its ruling foundation. Local autonomy based on civil rights was only a formality, and the township system did not produce practical effects.

Subsequently, the CPC early established the "combination of legislative and executive" township grassroots political power, the so-called "combination of legislative and executive system", which means that "the representative organs directly or indirectly elected by the people uniformly exercise state power, and the state administrative organs and other state organs are elected by the people's representative organs, and each is responsible for and supervised by the state authority". At this time, due to the emphasis of the Communist Party of China on the unified leadership of the Party, the township party committee is the de facto leadership core of political management activities in the entire township. The construction of Soviet political power during the Land Revolution was carried out by the township Soviet Representative Conference, which was the highest authority in the township and was composed of representatives elected by the township voters. The Soviet regime led by the Party adheres to the principle of "unity of deliberation and action" in its operational mechanism. The daily responsibilities of the township government include: executing orders, laws, and resolutions of the superior government; Discuss and formulate the work plan and implementation arrangements of the local government; Responsible for preparing for the convening of the Soviet Representative Conference; Responsible for handling conflicts and disputes within the scope of the township; Responsible for registering relevant information and documents related to population, land, marriage, etc; Responsible for confiscating and distributing land, organizing farmland, and developing water conservancy projects; Responsible for collecting donations and taxes; Responsible for formulating budget and final accounting plans and reviewing their implementation; Responsible for establishing local armed forces such as the Self Defense Force and assisting the Red Army in combat; Responsible for developing public utilities such as culture, education, health, and social insurance in the township. During the War of Resistance Against Japan, the construction of anti Japanese democratic regimes at the grassroots level generally implemented the township head responsibility system, and the authority of township heads was relatively large. In some places, there was even a situation where township heads took over the work of township governments. In some places, the township head has great prestige in the township, and all work in the township, whether it is economic construction or cultural education, is handled by the township head. If there is anything, the township head should prepare

their opinions first, and then pass them on to the township government committee for implementation. The opinions of the township head are generally not rejected. In addition, the township government also has a document and a self-defense company commander. The document assists the township head in his work, and the platoon leader assists the township head in managing the militia and maintaining social order. The daily work is discussed at the township government meeting composed of township heads, clerks, self-defense platoon leaders, and relevant personnel. After making decisions, they are executed separately. [32]During the Liberation War, with the outbreak of civil war, the Central Committee of the Communist Party of China demanded that all liberated areas vigorously strengthen the construction of township level political power. Establish the township (village) government committee as the highest administrative organ of the village. The township (village) committee discusses and executes the usual tasks assigned by the higher-level government, and the chairman of the township (village) government committee is responsible for "leading the plan, supervising and inspecting the implementation of the entire village's work, and handling daily affairs." After the establishment of the government of North China, it made important attempts to standardize the process of law enforcement, formulated administrative laws to punish violations of laws and disciplines, and attached great importance to maintaining government authority. Specific issues in administrative management were all handled by the government.

The Communist Party's move to incorporate the rural grassroots into the state power organization system has direct reference significance for the construction of political power after the founding of New China. And on the eve of the founding of the People's Republic of China, towns and villages had extensive administrative law enforcement powers, involving all aspects of township administration.

#### **4.1.3 The single power structure during the period of the people's commune: "unity of government and society" and the all-round governance of the movement style**

In the early and mid-1950s, the rural grassroots political system had just been established and was constantly changing due to land reform and the cooperative movement. It was not until the establishment of the people's commune system in 1958 that the rural governance system was basically finalized. After the founding of the People's Republic of China in 1949, in order to consolidate the new regime, the country gradually established a township-level political system below the county level while carrying out land reform. The Constitution promulgated in September 1954 abolished the coexistence of the previous district and village systems and stipulated that townships (townships, ethnic townships, and towns) were the only grassroots political organizations below the county level. [33]The township people's committee can establish working committees for civil affairs, armed forces, public security, finance and grain, cultural education, production cooperation, mediation, etc. as needed.

In 1958, the People's Commune system was established, officially establishing the basic economic system of rural areas of "three-level ownership and team-based". During this period, the commune was led by the county government or its dispatched institutions, managing all aspects of the commune's affairs. The commune reorganized farmers with grassroots as the center and the leading role, and almost all living, production, and migration activities were controlled by the grassroots regime. The main agricultural resources and their distribution were also dominated by the grassroots regime. During this period, political rights penetrated into the rural families, and various matters such as intra-family relationships, marriage, production, and even consumption were restricted by the commune norms. Therefore, some scholars have suggested that "the People's Commune system is the most effective governance method for rural society in modern China. The implementation of national policies and guidelines from top to bottom, the expropriation of rural social resources, and financial aspects are also completed through grassroots organizations of the state power. This system greatly



guarantees the stability of rural society."

Under the unified leadership of the party organization, the grassroots level under the people's commune system had a strong ideology and a highly centralized and unified discipline, which gave it extensive administrative power and made it highly efficient in governing the country and society. This system adapted to the needs of national governance for a certain period of time, but the commune system imposed unified revenue and expenditure on finance. The commune could neither violate the scope of expenditure stipulated by the higher government nor arbitrarily ask for money from farmers. Therefore, many economic problems were born under the commune system. This overly centralized system suppressed the enthusiasm of farmers' production and ignored the diversity of rural economic development. Therefore, the people's commune system was abolished.

#### **4.1.4 The governance model of "township government and village governance" after the reform and opening up**

After the reform and opening up, the household contract responsibility system was implemented in rural areas. The state power began to retreat from rural society, and the "withdrawal of commune and establishment of township" gradually spread to the township level. The township-village governance system was established in towns and villages. The township-level system after the abolition of the people's commune was the result of the decentralization of state power, which mainly relied on the separation of government and society to mobilize the enthusiasm of grassroots and the masses. The villagers' autonomy system was established and developed rapidly. However, in the practice of this period, the problems left over from the commune system, such as "separation of party and government" and high centralization, still existed. The county-township management system did not undergo corresponding changes, but the administrative law enforcement power of township governments became less and less.

First of all, China is a unitary state, implementing a centralized leadership model from top to bottom. Therefore, in order to implement the decisions and orders of the higher-level state organs, local and grassroots governments must establish corresponding political institutions at the higher level. Since the restoration of township governments in 1984, the establishment of township-level government institutions has been corresponding to the higher level, that is, the establishment of lower-level institutions corresponding to the higher-level institutions. Therefore, in reality, the grassroots have become "thousands of threads above and thousands of needles below". The township-level institutions have rapidly expanded on the basis of the former people's commune system, [34]and the financial support and administrative expenses have not decreased. Secondly, there is a serious imbalance between "political power" and "financial power" in towns and villages. China has an administrative system consisting of five levels of government. The lower the level of the township, the more tasks and goals it has. Moreover, the township-level government in China has not yet escaped the influence of the people's commune system. The relationship between superiors and subordinates is used to take administrative measures and deal with problems. The superiors are used to direct and lead. Therefore, as a primary organization in the national political system, towns and villages are responsible for certain regional affairs. The expansion of township administrative institutions and tasks has led to an "embarrassing situation of having political power but no financial power". [35]The expansion of administration has made township finance increasingly strained and financial sources very limited. Therefore, in order to complete various tasks assigned by superiors, some have begun to increase farmers' burden in various ways. Some even use whether they can collect fines as a source of income for their institutions and personnel. Therefore, there is a serious problem of irregular collection and expenditure at the township level. In order to deal with this phenomenon, a tax reform was launched, with rural taxes directly collected and managed by counties. Moreover, social undertakings such as rural education and health are mainly responsible by counties, not by

towns or villages. The township finance office has become a subordinate institution, and the administrative power of towns and villages has gradually shrunk. The combination of fiscal and taxation systems with political structures and personnel systems between counties and towns has seriously distorted the autonomy of township governance. Although this reform has played a role in stabilizing grassroots development for a certain period of time, it is difficult to fundamentally get out of the dilemma. Thirdly, towns and villages are restricted by the "partitioned management" system. The agencies of various departments in the county have actually divided the power of the township government. In many places, the higher-level business departments have taken the property rights, financial rights, and human rights of township stations with more "oil and water", such as public security, justice, industry and commerce, post and telecommunications, communication, finance, taxation, electricity, medicine, tobacco, finance, grain, urban construction, land supply and marketing cooperatives, salt industry, etc., while leaving the stations with less "oil and water", such as agricultural technology, animal husbandry, veterinary medicine, forestry, family planning, water conservancy, etc., to the grassroots management. As a result, the township government has no power in its hands and is in a state of dual administrative and financial oppression, lacking vitality and efficiency. [36]

This period concentrated the inherent administrative law enforcement power of township governments upward, resulting in township governments having "no power when needed", which undoubtedly hindered the development of rural society. Moreover, "the deeper the state's administrative power extends, the more harm it will cause, which will eliminate the vitality of the grassroots and even bring development to a standstill; while the over-sized local administrative division will lead to unclear political orders and low administrative efficiency. Therefore, maintaining a moderate scale of local grassroots administrative institutions is the institutional foundation for achieving effective rural governance and meeting farmers' demand for public goods", [37]so institutional and structural reforms are needed to achieve breakthrough results, which is also the key issue for China's next administrative system reform.

In summary, throughout the historical changes and internal logic of township governance, whether in the traditional agricultural period of ancient times, the period of state power construction in modern times, or before the reform and opening up after the founding of New China, although the township governance model in each period has achieved economic development and political rule to a certain extent, it has not fundamentally achieved the ideal model of grassroots governance. In recent years, township system reform has also exacerbated the imbalance between township government power and responsibility to some extent. Before the 1980s, the management functions of township governments were very centralized and belonged to a centralized state. However, with the rise of departmental laws, in order to strengthen some departmental functions, some important powers have been separated from township governments, especially law enforcement departments with charging and punishment functions. At the same time, some compulsory powers originally belonging to city and county management have been delegated to townships, which is actually a kind of "throwing away the baggage". The vertical movement of power has weakened the power of township governments and brought many inconveniences to their work and development. However, through the analysis of grassroots law enforcement power in various periods, China's townships at the township level still have relatively extensive law enforcement power before the reform and opening up, managing all aspects of grassroots social affairs. It is only during this period after the reform and opening up that in response to a series of problems brought about by the grassroots administrative system, the law enforcement power at the township level was centralized upwards.

## 4.2. Analysis from existing legal norms

Any institutional framework requires theoretical support, and any reform requires theoretical guidance. Only by clarifying the legal norms and underlying principles of the reform of the administrative penalty power of township governments in China can we further explore the nature and positioning of the administrative penalty power of township governments. Starting from the provisions of the Constitution, Local Organizational Law, and other legal norms and institutional principles regarding the functions and powers of township people's governments, we explore the nature and positioning of the administrative penalty power exercised by township governments.

### 4.2.1 The administrative law enforcement subject qualification of the township people's government

The administrative penalty power should be transferred to the township people's governments, and it needs to consider what kind of subject qualification the township people's governments appear as. Regarding the township people's governments, Article 95 of the Constitution stipulates that "provinces, municipalities directly under the central government, counties, cities, municipal districts, townships, ethnic townships, and towns establish people's congresses and people's governments. The organization of local people's congresses and local people's governments at all levels is prescribed by law." Article 2, paragraph 3 of the Organic Law of Local People's Congresses and Local People's Governments at All Levels (hereinafter referred to as "Local Organic Law") stipulates that "local people's governments at all levels are the executive organs of local organs of state power at all levels, and are local administrative organs at all levels." Therefore, the township people's governments belong to the national administrative organs, and according to Article 76 of the Local Organic Law, which stipulates the powers of the township government, and according to Article 65 of the Urban and Rural Planning Law (2019 Amendment), the township government organs have administrative law enforcement power. And the above statutory powers originally belong to the township people's governments, without the need for "empowerment".

### 4.2.2 The nature of the delegation of punishment power

In China's administrative law system and administrative theory, there are three forms of the generation and transfer of administrative authority, namely the establishment of administrative authority, the delegation of administrative authority, and the delegation of administrative authority. [38] Regarding the nature of the system of delegation of punishment power under Article 24 of the Administrative Penalty Law, there are different views in the academic community. The author believes that it is neither delegation nor authorization. Firstly, from the perspective of the location of the provision, Article 24 of the Administrative Penalty Law is located in Chapter 4 "Administrative Punishment Jurisdiction and Application", which excludes the possibility of delegation and authorization related to the subject of administrative punishment. Secondly, the authorization conditions for administrative authorization must be granted to organizations with public affairs management functions. The meaning of organizations is very broad, but it is necessary to limit the "organization" here. The organization here should not include the power organs of state organs, because different nature state organs perform different functions and cannot change the division of power between constitutional and organic laws through authorization by laws and regulations. Therefore, it cannot include administrative organs, either. The power of administrative punishment is the authority of administrative organs, and it is normal division of administrative power for laws and regulations to delegate punishment power to administrative organs. It does not belong to administrative authorization. The rules of administrative delegation are to implement administrative

punishment in the name of the delegating authority, but in practice, decisions from various regions have shown that after the power of administrative punishment is granted to township governments, the original authority no longer exercises this authority, so it does not belong to administrative delegation. Some scholars also believe that it belongs to "transfer of jurisdiction", but jurisdiction transfer occurs between superior and inferior administrative organs, while Article 24 of the Administrative Penalty Law occurs between relevant departments of county-level people's governments and township people's governments. There is no subordinate relationship between them.

## 5. Conclusions

The author believes that the downward delegation of administrative power to villages and towns should be identified as "administrative power return", but it is beyond the traditional sense of "administrative power return". "Administrative decentralization" refers to the division of some administrative power originally belonging to the government and delegating it to non-governmental organizations to exercise, in order to reduce the power burden of the government. "Administrative power return" refers to the "restoration" of social power that has been "swallowed" by the state (government) to society. The essential difference between the two lies in whether the power stripped from government functions is part of the state's sovereign power or part of society's self-governing power. [39]The state power itself originates from society, and from the perspective of historical development, human society and social power come first, followed by the emergence of the state. Therefore, social power gradually transforms into state power, and the natural expansion of state power continuously reduces the scope of social power. [40]From the perspective of historical evolution in the previous section, villages and towns have enjoyed administrative punishment power since the traditional agricultural period until before the reform and opening up. Therefore, administrative punishment power should belong to part of society's self-governing power, which is an inherent right of the township people's government. Therefore, "delegating power and empowering" is more appropriate to be understood as "returning power and empowering".

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