

The subtle aspects of transitional justice

Written by Lin Chia-ho 林嘉浩

Saturday, 26 March 2016 07:21

Transitional justice is a matter of dealing with the past, of a nation facing its own history. People who suffered because of human rights violations and disregard for the rule of law under authoritarian dictatorships are entitled to ask for some sort of compensation from the perpetrators, be it judicial rehabilitation or punishment, or the return of seized assets or monetary compensation.

Since transitional justice is a matter of overcoming the past, it is necessary to put aside the experiences of individual victims when evaluating the injustices of a past regime. Instead, people have to consider the overall picture and evaluate the system as a whole.

Removing authoritarian symbols, uncovering historical facts and addressing violations of the law on the part of political parties that were able to get away with such behavior because it has become “institutionalized” are all necessary components.

If there is nothing more than talk about the future while refusing to address the past, then it would be a hypocritical recreation of past injustices that would allow them to go unaddressed.

It is important to know that, in addition to the more glaring examples of injustices having been done, there exist many subtle peripheral aspects of transitional justice and these cannot be discounted.

For example, when Hsiao Hsiao-ling (蕭蕭), a music teacher at Zhongshan Junior High School in Taipei, was fired after opposing then-Taipei mayor Hau Lung-bin's (郝龍斌) “one guideline, single textbook” policy, the authorities failed to follow due process.

The administrative court muddled through its verdict, telling Hsiao that “there are so many reasons for firing you, so even if some are wrong, there are still a lot of other reasons.”

Taking an uncharacteristically stern approach, the Control Yuan took a special interest in the case and issued a report noting violations of the law and dereliction of duty involved in Hsiao's

The subtle aspects of transitional justice

Written by Lin Chia-ho 林佳豪

Saturday, 26 March 2016 07:21

dismissal.

Despite this, nothing came of the Control Yuan's intervention: The court respected the school's decision to fire Hsiao, saying it had "latitude for judgement" and the city's Department of Education respected the court's verdict, saying it had been reached in accordance with the law.

There was, amongst all this, one party that was not respected, however: the teacher herself. Hsiao had exercised her freedom of expression only to be "educated" by the educational system. If that is education, then what need do people have for politics? If that is the law, then why do people need judges?

Then there was the incident with the masked military instructor who on Feb. 26 tore down posters that bore the names of victims of the 228 Massacre, saying that "the content of the posters was inappropriate."

By comparison, his was a much more direct approach, directly informing everyone that the authoritarian era is still alive and that the pursuit of revealing historical facts is but a pipe dream.

When French historian Alexis de Tocqueville, who wrote *Democracy in America* in the early 1800s, looked at the European society, he lamented that all he could see were "subjects," not "citizens."

Transitional justice is a great undertaking: Against the backdrop of a true citizenry, perhaps Taiwanese should start by addressing the more subtle, nuanced aspects of what transitional justice is supposed to be.

Lin Chia-ho is an associate professor at National Chengchi University's College of Law and a member of the Taipei Society.

The subtle aspects of transitional justice

Written by Lin Chia-ho 林佳豪

Saturday, 26 March 2016 07:21

Translated by Perry Svensson

Source: [Taipei Times - Editorials 2016/03/26](#)