

The importance of judicial empathy

Written by Huang Di-ying 黃帝穎

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Early last month, a video clip of an address made by US Supreme Court Chief Justice John Roberts at his son's high-school commencement ceremony went viral.

"From time to time in the years to come, I hope you will be treated unfairly, so that you will come to know the value of justice ... and I hope you will have just enough pain to learn compassion," Roberts says in the clip.

His wishes for graduates to learn from their own frustrations are very unusual. They are also part and parcel of the concept of empathy, a skill invaluable to the judiciary.

If trials could be carried out with empathy and judges put themselves in others' shoes to understand the parties involved and to solve disputes, then it would be possible for the public to trust the judicial system.

With trials by jury, the US judicial system allows people to participate, in order to avoid arbitrariness and lack of empathy from the judge, perhaps neglecting the important principle of the presumption of innocence, under which a suspect is considered innocent unless proven guilty. In some cases, judges try suspects and encounter unsavory characters on a daily basis, so it is sometimes difficult for them to maintain the presumption of innocence.

However, according to an opinion poll published by National Chung Cheng University last year, as many as 84 percent of Taiwanese do not trust judges — a state of affairs difficult to imagine in a democratic nation. At this critical moment in Taiwan's judicial reform, the key to success lies in empathy toward the public.

Whether it is the US jury system or Japan's lay judge system, their purpose is to create opportunities for people to participate in trials with empathy.

At the sixth meeting of the judicial reform preparatory committee on Monday last week, President Tsai Ing-wen (蔡英文) declared four main areas for reform, including transparency of

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judicial proceedings, improving the selection and discipline of judges and prosecutors, and the establishment of a system of civic participation in the judicial process, all of which are necessary to rebuild public trust in the judicial system.

Facing the judges and prosecutors, who are in general considered to be “the winners at the game of life,” the public concern should keep track of the policies related to rebuilding the judicial empathy.

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Translated by Lin Lee-kai

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