

The Rise and Fall of Transitional Justice in Taiwan

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Taiwan's president, Ma Ying-jeou.

This essay is part of the Middle East-Asia Project (MAP) series on "Pathways to Transitional Justice in the Arab World — Reflections on the Asia Pacific Experience." The series explores the pursuit of transitional justice in the post-Arab Spring Middle East, and how such efforts could be informed by past and ongoing justice processes in Asia-Pacific countries. See Resources ...

Authoritarian rule in Taiwan ended peacefully in the late 1980s. Since then, state institutions and private organizations have repeatedly attempted to address the atrocities committed during authoritarianism (1945-1987). This essay explores the various factors that have determined transitional justice in Taiwan over the last two decades. It demonstrates that post-authoritarian Taiwan has experienced three distinct periods: first, limited apology and compensation (1988-2000); second, attempts at transitional justice that ended in failure (2000-2008); and third, a reversal of all transitional justice mechanisms and a relapse to the past (2008-present). These changes are due in significant part to indigenous conflicts in Taiwan that have not been resolved, but also to global economic and political events that have drastically reduced the focus on democratic governance and accountability.

The Repressive Past

At the end of World War II, the United States, as the principal occupying power of Japanese territory, authorized Chinese President Chiang Kai-shek to administer Taiwan. At the time, the Chinese Kuomintang government promoted Han ethno-nationalism with the aim of establishing a Han nation, consisting of one state, one people, and one language. As part of this attempt, the government sought to assimilate the native population of Taiwan through social control and education. Regulations forbade the use of Japanese as well as aboriginal and Sinitic languages in favor of Mandarin. Ethnic origin and the ability to speak Mandarin allowed one to qualify for public and political positions and thereby became instruments of social control. State institutions were purged of the Taiwanese, and within a few years Chinese nationalists held most key positions in government and state-run industries.

Social and political injustices caused by the Han nationalists' dogma of racial superiority and widespread bureaucratic inefficiency led to public protests and culminated in a massacre on February 28, 1947 (known as the 2-28 Incident), in which Chiang Kai-shek's troops brutally killed thousands of Taiwanese civilians. Two years later, the Kuomintang lost the civil war on the Chinese mainland and retreated to Taiwan, where martial law was imposed from 1949 to 1987.

The defeat on the mainland and Mao Zedong's subsequent proclamation of the People's Republic of China as the *de facto* and *de jure* successor state of the Kuomintang's Republic of China caused a crisis of legitimacy for the Chiang Kai-shek regime. On the international stage, the United States assisted Chiang Kai-shek in maintaining that the Kuomintang government was the sole legitimate government of China. Domestically, this position, while untenable from a juridical point of view, was kept alive by promoting Han nationalism and persecuting opponents. At the end of the 1980s, socioeconomic consequences of rapid economic growth, such as a growing middle class and labor disputes, and pressure from the international community, especially from members of U.S. Congress and organizations such as Amnesty International, forced the Kuomintang regime to initiate political reforms. Martial law was lifted in 1987, and subsequent constitutional amendments paved the way for democratization.

During the authoritarian period (1945–1987), several laws restricted political rights and civil liberties. The military, the police, and a Kuomintang network of informers protected the authoritarian state. The total number of victims of the Kuomintang regime is unknown, because many executions were extrajudicial and not recorded. According to declassified information, most extrajudicial executions were carried out in the 1950s, when 130,000 people went missing. Torture and (extrajudicial) executions were widespread until the late 1970s. Reports by the Ministry of Justice, parliamentary interpellation, and other government sources suggest that 30,000 political trials involving more than 200,000 individuals were held in military courts. About 20 percent of the accused were sentenced to death or punished with lifelong imprisonment. Some 60 percent received prison terms between one and 15 years, while others had to undergo reformatory education.

Transitional Justice

Since 1987, transitional justice in Taiwan has proceeded in three main stages. The first attempts to address the past were made under the presidency of Lee Teng-hui, a native of Taiwan who succeeded Chiang Ching-kuo after his death in 1988.

Compensation and Apology (1988-2000): The immediate post-martial law years saw several large-scale protests demanding political and social reforms. Although human rights activists and victims of the Kuomintang atrocities called for transitional justice, in 1988, President Lee started his term in office with a press conference merely stating that the people of Taiwan should look forward and forget the past. Lee's long career in the repressive regime and his close friendship with his predecessor likely prompted his refusal to address the past. Political realities, however, forced Lee to rethink these policies. Unlike his predecessors, Lee was neither a Mainlander nor a staunch supporter of Chinese nationalism. Senior party leaders aware of his support for Taiwanese nationalism repeatedly attempted to oust him from the party leadership and the presidency. As his conflict with the conservative wing of the Kuomintang intensified, Lee saw public support as the key to his political survival, and thus presented himself as a statesman who listened to the people. Consequently, he adjusted his transitional justice policies to accommodate public opinion. To this end, he pursued a policy of apology and compensation without investigating the role of the Kuomintang government in past atrocities.

In 2000, Lee's policy of apology and compensation was abrogated by his successor, Chen Shui-bian, who believed that all previous government policies failed to address the question of who was responsible for past crimes. The focus of transitional justice thus shifted to identifying the perpetrators. Chen's two terms in office can be seen as the second stage of Taiwan's transitional justice.

Identifying the Perpetrators (2000-2008): Chen Shui-bian was the first Taiwanese president who was not a Kuomintang member. During the martial law era, the Kuomintang persecuted Chen for his opposition activity. As a victim himself he was determined to challenge the Kuomintang's interpretation of the 2-28 Incident and other crimes committed during authoritarian rule. In 2004, he set up a special committee comprised of historians and jurists to research legal and political responsibility for the massacre. The final report, released in February 2006, concluded that Chiang Kai-shek was the prime culprit of the 2-28 Incident. The committee's findings proved helpful in the new Democratic Progressive Party government's attempt to gain more public support for its transitional justice policies. As a consequence, dozens of statues were removed and several important public places were renamed. During Chen's term in office, the government also sponsored research on legal responsibility for the persecution of political opponents during the martial law era. Such research included concrete plans to prosecute the perpetrators. In addition, there was growing support for legislation demanding that the Kuomintang return property that it had obtained illegally or by improper means.

President Chen's transitional justice initiatives, however, encountered social, institutional, and political obstacles and thus remained unfinished when his term ended in 2008. As for the social obstacles, Taiwan developed into a leading economy under authoritarian rule and thus public opinion on former political leaders is divided. As for institutional and political obstacles, the president of Taiwan is the head of state but not a chief executive with strong veto powers. He therefore lacks the means to push through legislation when his party does not enjoy a majority of parliamentary seats. During Chen's tenure (2000-2008), the Kuomintang and its supporters controlled parliament and transitional justice became tied to national identity and race. As the key perpetrators of Kuomintang atrocities were Chinese nationalists, demands for transitional justice have mainly come from supporters of Taiwanese nationalism while resistance to it has come from Chinese nationalists. President Chen's calls for transitional justice have hence been interpreted as racial persecution. During the 2004 presidential election, for example, the Kuomintang compared Chen with Adolf Hitler in official campaign advertisements and asked the people to end Chen's dictatorship.

The issue of national identity has become one of the major internal obstacles in Taiwan's attempt to redress the past. The polarization is reflected in almost any discourse on transitional justice, including the debate on the content of school textbooks. Taiwanese nationalists support detailed descriptions of Kuomintang atrocities in textbooks, whereas Chinese nationalists complain that Japanese war crimes are not properly addressed. Although the Taiwanese were subject to human rights abuses during the Japanese colonial period (1895-1945), they still support Japan. Some of the most important Taiwanese nationalist leaders hold degrees from Japanese universities and are well connected with right-wing politicians there. Many Taiwanese nationalists venerate

Imperial Japan and Japanese right-wing intellectuals such as writer Kobayashi Yoshinori, who denies the existence of the Nanjing Massacre and other crimes committed by the Japanese in the 1930s and 1940s, which makes it difficult to convince liberal intellectuals to endorse Chen's call for transitional justice.

Chinese Historical Revisionism (2008–present): The third stage of transitional justice began in 2008 with the presidential election victory of Ma Ying-jeou (Kuomintang). As an outspoken supporter of Chinese nationalism, Ma is known for his ambivalent view of democratic institutions and transitional justice. Soon after his inauguration, most of the previous government's transitional justice policies were reversed without public consultation. The former dictators' mausoleums were reopened, and the National Taiwan Democracy Memorial Hall was renamed the Chiang Kai-shek Memorial. Museums and other places commemorating the Kuomintang atrocities were "sanitized," meaning that exhibits illustrating the reign of terror were removed and commemorative sites repurposed by renaming and turning them into cultural centers with art performances that no longer honor the victims.

Global Factors

Although indigenous factors have been important in determining Taiwan's transitional justice policies, the development itself has predominantly been the result of extraordinary global circumstances and Taiwan's adaption to such changes. In this respect, Taiwan's state capacity in foreign relations plays a crucial role. It may well be argued that Taiwan is short on structural power in that its ability to determine the rules of interstate exchanges is rather limited. In other words, it is a weak state and as such it is forced to rely on its bargaining power to survive.

During the Cold War, Taiwan's existence depended on U.S. military and political support. It was Taiwan's geopolitical importance that helped it get the necessary support and protection from the United States and its allies. But support was not unconditional. The Kuomintang government had to ensure socioeconomic development and political stability in Taiwan.

The end of the Cold War, the emergence of a further global wave of democratization, and the subsequent proclamation of liberal democracy as the prevailing form of political governance changed the environmental setting. Taiwan under Lee Teng-hui thus attempted to increase its state capacity in foreign relations by using its economic and political achievements as bargaining chips. Domestically, the global democratic atmosphere helped (or convinced) Lee to accelerate democratic reforms and to initiate transitional justice. On the international stage, he sided with the victorious West and became an outspoken critic of the "Asia values" paradigm, while trying to shore up Taiwan's international clout and contain China's growing ambitions.

Lee's successor, Chen Shui-bian, followed in his footsteps and tried even more to "sell" Taiwan's outstanding democratic achievements to extend the country's international influence, but he proved less successful. His attempt to transform Taiwan into a cosmopolitan state prepared to work toward the fulfillment of the global democratic project was appreciated neither at home nor abroad. Internal factors for Chen's failure were addressed above; as for the external ones, a series

of global events, such as the U.S.-led War on Terror, the deepening fiscal crises in the United States and Europe, and the rise of China, have put an end to the immediate post-Cold War democratic euphoria. These developments have shifted the world's focus away from the global democratic project to state-centric interests, such as national security and economic growth.

These global developments also changed the Kuomintang's perception of its commitment to the United States and liberal democracy. Ma Ying-yeou's term in office consequently brought about the end of transitional justice in Taiwan.

Conclusion

Since the lifting of martial law in 1987, transitional justice in Taiwan proceeded in three main stages. First, between 1988 and 2000, President Lee Teng-hui of the Kuomintang promoted a policy of compensation and apology. Second, from 2000 to 2008, Chen Shui-bian of the opposition Democratic Progressive Party made transitional justice a priority, but most of his policies failed to materialize for various social, political, and institutional reasons. Third, since 2008, President Ma Ying-jeou (Kuomintang) and his government have reversed almost all previously adopted transitional justice policies.

Although indigenous factors have played a decisive role in transitional justice in Taiwan, its development (or lack thereof) has predominantly been the outcome of global political changes. During the late 1980s and throughout the 1990s, global democratic euphoria and Taiwan's dependence on international support paved the way for transitional justice initiatives. The rise of China, the War on Terror, and other developments have made democratic values less attractive to policy makers in Taipei, and as a consequence have put an end to transitional justice initiatives in Taiwan.

As for the newly democratizing countries of the Arab world, Taiwan's experience has shown that whatever the specific indigenous circumstances of each country, global factors play a decisive role in determining the success or failure of transitional justice.