

A comparison of transitional justice in Taiwan and East Germany

by David Reid

This article was published in the May 2009 edition of Dianmo, a German student magazine about Sinology. You can download the complete issue at <http://dianmo.wordpress.com/2009/05/15/kulturspezial/>.

Transitional justice is a major challenge facing states that make a transition from authoritarianism to democracy. Huntington writes that transitional justice in third wave countries is little affected by legal and moral considerations. “It was shaped almost exclusively by politics, by the nature of the democratization process, and by the distribution of political power both during and after the transition.” The experiences of Taiwan and East Germany, which both emerged from authoritarianism in the late 1980s, make for an interesting contrast and illustrate Huntington's thesis.

Martial Law ended in Taiwan in July 1987. Although the KMT might have slightly relaxed its grip on power at that time it certainly didn't give it up. A blacklist preventing foreign and exiled Taiwanese dissidents from entering Taiwan was maintained until 1992. A number of violent incidents and large scale protests occurred in this period. It was the March 1990 Wild Lily protest that led to President Lee convening a National Affairs Conference and the Taiwanese were finally able to elect the representatives of the National Assembly in December 1991. The first direct Presidential election took place in 1996 with the incumbent Lee Teng-hui winning a majority of the vote.

Taiwan experienced a transition to democracy without a simultaneous transition of power. As democracy developed the KMT remained the primary political power and the apparatus of the party-state largely remained in place. It was not until 2000 when DPP candidate Chen Shui-bian was elected as President that a full transition of power finally took place. Even then the KMT still maintained a majority in the Legislative Yuan.

Compare this situation with East Germany. When the Berlin Wall fell in November 1989 the people rapidly took power. Citizens' committees were formed that seized control of the files in town halls and more importantly in the Ministry of State Security. Round tables were formed to monitor the actions of the transitional government and work out the basis for democratic transformation. The central round table forced the transitional government to dissolve the Ministry for State Security. The Ministry employed 100,000 people and had accumulated masses of data from surveillance of the local population.

Free elections were held on 18 March 1990. The election was won by the “Alliance for Germany”, a coalition of parties. They faced a massive task in preparing the country for reunification within six months. One of the key tasks for the new government was to remove the dictatorial structures and strip the old leaders of their structural *and* material power.

Local elections were held on 6 May 1990. This enabled the citizens, who had previously had no political power or experience, to take control and strip the local cadres of power at the grassroots level. Another task was transforming the judiciary. Almost all the staff in the judiciary were members of the Socialist Unity Party of Germany (SED). Committees were set up to examine every single judge and about half the judges were allowed to remain in office. These were just a few of the issues addressed by the People's Chamber during East Germany's transition. There were others such as legal reform and reorganisation of the police force.

One of the biggest challenges was the SED party assets. The SED had accumulated vast assets during 45 years of dictatorial rule. A law was passed to put the assets of the SED and associated organisations that existed on 7 October 1989 into trust. An independent commission and the trustee were then responsible for liquidating and disbursing the assets. Assets were returned to the former owners or successors in title if the ownership was proved. The commission returned assets to the SED and other organisations when the assets had been acquired lawfully. Remaining assets were realised for non-profit purposes, especially the economic restructuring of the states of the former GDR.

Taiwan's experience provides a stark contrast. In the years immediately following the lifting of martial law many of the strict controls of the dictatorial state remained in place. The process of democratisation took place gradually over a decade under the leadership of Lee Teng-hui. As previously noted it was not until 2000, 13 years after the end of martial law, that the opposition party was elected to the presidency and took control of the executive branch of government.

Lee's contribution to the development of Taiwan's democracy was enormous. However, it was achieved from within the KMT and this limited Lee's capacity to act in ways that did not have support of at least some sections of the party. While great strides were made in the development of elections and political participation there were not simultaneous efforts to remove the vestiges of the KMT's dictatorial past. Hence this created a conundrum. The KMT established its political legitimacy through elections, yet it was never subject to transitional justice.

This is further illustrated by the treatment of the 228 Incident. 228 refers to the events surrounding 28 February 1947 when Taiwanese rebelled against the rule of the KMT and were met with a violent crackdown which killed more than 10,000 people. Lee ordered an independent report into the event and subsequently took part in numerous acts to commemorate 228. A committee was set up to pay reparations to the victims of 228 and later the White Terror period. As a result victims were compensated but the wrongdoers were never prosecuted or named.

What Taiwan has achieved in the area of transitional justice has largely been in areas which don't directly challenge the power of the KMT. Numerous 228 memorials and human rights museums have been established. There have been many documentaries and books on 228 and the White Terror period. During the 2000-2008 period the DPP undertook a program of name rectification. State owned companies and institutions that had references to China or the ROC in their names had these changed to Taiwan. Statues of Chiang Kai-shek were removed from many locations and most controversially, the Chiang Kai-shek Memorial Hall in central Taipei had its name changed to Taiwan Democracy Memorial Hall. It should be noted that the KMT has acted to revert some of the name changes after returning to power in 2008.

The tackling of harder issues such as a Truth Commission and KMT party assets have never been realised. The DPP raised the issue of party assets a number of times while it was in power. Some accused it of using the issue simply for political gain during elections. The DPP was limited in the actions it could take because it lacked a majority in the legislature. The KMT has continually failed to make any efforts to reform itself.

For Taiwan transition without justice creates a dilemma. All Taiwanese now enjoy the fruits of democracy, but the party of the former authoritarian regime retains its political power. The challenge for Taiwan is how to achieve transitional justice without engendering further social and political division. It demands either a broad based grassroots movement or skillful leadership from the top. Both seem lacking in Taiwan at present as society is split along a strong political divide.

References

- Arrigo, Linda Gail. "From Democratic Movement to Bourgeois Democracy: The Internal Politics of the Taiwan Democratic Progressive Party in 1991." Chapter 5. *The Other Taiwan: 1945 to the Present*. Murray A. Rubenstein (Ed.). M.E. Sharpe, New York, 1994.
- Chen, Yi-shen. "Transitional justice is not just electioneering." *Taipei Times* 7 January 2008.
- de Maiziere, Lothar. "Transition of the former German Democratic Republic (GDR) and the liquidation of the assets of the "Socialist Unity Party of Germany" (SED)." Proceedings of the International Conference on Comparative Studies of Transitional Justice, Taipei, 28 July 2007.
- Fischer, Malte. "The review of the assets of the communist United Socialist Party of Germany – Sozialistische Einheitspartei Deutschlands (SED) – of the former German Democratic Republic (GDR)." Proceedings of the International Conference on Comparative Studies of Transitional Justice, Taipei, 28 July 2007.
- Huntington, Samuel P. *The Third Wave: Democratization in the Late Twentieth Century*. University of Oklahoma Press, 1993.
- Tsao, Ronald Chin-jung. "Museums for peace: Identity of Taiwan's peace museums and human rights parks." INTERCOM 2006 Conference Paper.
- Wu, Naiteh. "Transition with Justice, or Justice without History: Transitional Justice in Taiwan." Paper presented at International Conference on Political Challenges and Democratic Institutions, National Taiwan University, 3-4 December 2004.
- Yu, Susan. "Drastic cut expected in dissident blacklist." *Free China Journal* 10 July 1992.