Who Will Maintain Public Security While Preventing New Political Persecution?

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After a change of regime, public security enters its most vulnerable window: the old security institutions have lost their political master, the new institutions have not yet been established, and the streets may fall into disorder — or may see revenge carried out under the name of “settling accounts.” The tragedy most likely to occur in this window is not a comeback by the old regime, but the new regime, in the name of maintaining order, repeating the very persecution it has just overthrown.

The question of public security must therefore be answered as two questions together: who will maintain order, and what system will guarantee that those who maintain order do not become new persecutors? The first question, without the constraint of the second, will soon be distorted; the second question, without the execution of the first, is only a piece of empty paper.

1. Depoliticizing the Police: Answerable to the Law, Not to a Party

The body that maintains daily public order should be the local police, performing their duties locally and enforcing the law. The first rule of depoliticization is this: the standard for police enforcement can only be whether conduct violates the law; it cannot be political stance, background, or speech. To make political identity the standard for enforcement is itself political persecution — no matter what banner the enforcer carries.

Personnel decisions must observe the same line: what is pursued is an individual’s serious illegal conduct, not political identity or work unit. Ordinary police officers who perform their duties in accordance with the law should be retained; those who have committed illegal acts should be dealt with through legal procedure, and the conclusions reached may be appealed. This series’ Question 14, on the basic stance of transitional justice, is precisely to distinguish individual responsibility and not to carry out collective revenge; this question cites that conclusion rather than repeating its full argument.

2. Institutional Guardrails Against Revenge

Revenge most easily appears in three guises: private punishment, mass dictatorship, and settling accounts under the name of law enforcement. To deal with these three guises, guardrails must be established in advance: no organization or individual may, in the name of “the people,” carry out detention, house searches or confiscation of property, or personal harm; arrests, searches, and the freezing of assets must have a legal basis and be subject to review by an independent judiciary; and complaint and investigation channels independent of the executive must be established, so that victims have somewhere to appeal.

Amnesty and pardon in the transition period especially require legal procedure. Who may be pardoned, for what crimes, and by whom the decision is made must all be stipulated by law and publicly explained; they cannot be decided temporarily by street outcry or by an individual leader. Restraint in procedure is precisely the place where the new order and the old order are easiest to tell apart.

3. Who Enforces: The Division of Labor Must Be Stated Clearly in Advance

The division of labor among enforcement bodies should be written out clearly before the transition period begins: the local police are responsible for daily public order; the military must not intervene in daily public order or in politics — this is the conclusion of this series’ Question 24 on the nationalization of the military, which this question cites rather than expands upon; community organizations and civic groups may assist in reporting information and caring for victims, but they have no law-enforcement power; and independent recording and observation work may serve as auxiliary supervision, but it cannot replace the judiciary.

The cost of an unclear division of labor has been shown repeatedly by history: when everyone can “maintain order,” in practice everyone can persecute. The monopoly on enforcement must be held by institutions constrained by law, and the power that constrains enforcement must be held outside the enforcement institutions.

4. Balancing Security and Freedom: A State of Emergency Especially Needs Binding Constraints

In a transition period, it is unavoidable that someone will advocate emergency measures. If a state of emergency is unavoidable, it must simultaneously satisfy three conditions: a clear time limit, a clear scope of application, and independent supervision with ex post review. A state of emergency without a time limit is normalized abuse of power — this series’ Question 30 discusses precisely how a new government can avoid replicating the old regime’s abuse of

emergency power, and this question cites it in advance rather than expanding upon it.

The last guardrail is freedom of speech and assembly. In a transition period, voices criticizing the new order especially need protection, because suppressing dissent is the most common starting point of new persecution. Whether a transition plan is reliable (see the criteria in Guide No. 6) depends on whether it treats critics by law as well: treating supporters by law is not difficult; treating opponents by law as well is what the rule of law is.

Recording work in the transition period is equally important: violations that occur should be recorded promptly and objectively, and evidence preserved, both to reserve evidence for future judicial proceedings and to prevent accusations that cannot be verified afterwards. Recording is not a revenge list, but the starting point of the rule of law — justice without a record easily becomes rumor, while justice with a record can withstand the test of a court. Recording work should be undertaken by personnel independent of the executive and subject to judicial supervision; no one may harass or threaten others in the name of recording. Open and transparent recording can also constrain enforcers themselves: people who know their actions will be recorded are more likely to act in accordance with the law.

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References

The Forty Questions on the Republic of China (https://freechina.live/governance-public-policy/third-republic-governance-blueprints/roc-history-constitutional-reconstruction/) — Index

Question 14, “What Experience and Limitations Does Taiwan’s Transitional Justice Have?” (https://freechina.live/?p=22008) — the conclusion distinguishing individual responsibility and rejecting collective revenge, cited by this question

Guide No. 2, “What Is a Constitution Actually For?” (https://freechina.live/?p=21234) — the conclusion that law constrains power, cited by this question

Guide No. 6, “How Can One Judge Whether a Transition Plan Is Reliable?” (https://freechina.live/?p=21238) — the standard of institutional constraint, cited by this question

The Seven-Law Model Texts (proposed model laws, not laws currently in force) (https://freechina.live/?p=15848) — institutional options, cited by this question

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