

Performing unpaid work for the community remains the best option to rehabilitate some offenders, writes **Grenville Cross**

Service for society

Since their introduction in Hong Kong courts in the 1980s, community service orders have become a vital instrument in the sentencing of defendants, and have helped to rehabilitate offenders from all walks of life. Courts can sentence offenders to perform unpaid work of up to 240 hours for the community in a non-custodial environment. Such work may be arduous, and it aims to achieve justice through a combination of punishment, reformation and rehabilitation. Administered by the director of social welfare, community service may be imposed in place of, or in addition to, any other sentence the court thinks appropriate.

Some defendants are clearly so dangerous and their crimes so serious that imprisonment is inevitable. Those who traffic in dangerous drugs, molest children or rob banks have no realistic prospect of being sentenced to perform community service.

A community service order is a softer option than imprisonment, but it should not be dismissed as a soft touch

But many crimes do not fall into the very serious categories. In these cases, a community service order has a constructive dimension. If successful, it lessens the chances of a defendant re-offending.

The defendant ordered to perform community service may be required to work in hospitals or for charities. He or she may have to work with old, infirm or handicapped people, or undertake manual labour at schools or childcare centres, or even teach English. Such activities are intended to be therapeutic and character-building, and are a means by which the offender can serve the society he has wronged. In a nutshell, the scheme enables the defendant to make reparation for his crime.

Not all defendants qualify for a community service order. A court will usually need to be satisfied that the offender is remorseful and of good character; has a good work record and a stable home background; has a job or good

prospects of a job; and does not present a serious risk of re-offending. Many defendants will be unable to meet these criteria, and community service will simply be excluded as an option.

It is unfair to depict the community service order as an inadequate response to serious crime. A community service order is clearly a softer option than imprisonment, but that does not mean it ought to be dismissed as a soft touch. The performance of community service is an effective means of impressing upon a defendant that crime does not pay, and one which compels him to perform personal service for the public good. Society is the winner if the defendant is rehabilitated and sound work is achieved. England's former chief justice Lord Woolf once said that, in appropriate cases, "it can be better that an offender repays his debt to society by performing some useful task for the public than spending a short time in prison".

Properly viewed, the community service order is an effective alternative to imprisonment. The use of community service in a particular case does not in any way diminish the seriousness of the offence, but recognises instead that a custodial sentence is not necessarily the answer to each and every breach of the criminal law.

Some people think that imprisonment is the answer to most offences, and that locking up more defendants will keep society safer. This, however, overlooks the real advantages to society of keeping offenders, particularly young offenders, out of prison and away from involvement with the wider criminal fraternity. This may not always be possible, particularly when the public interest requires a deterrent sentence. But the courts must have the courage to explore the viability of community-based alternatives to custody.

Once sentenced to undergo community service, a defendant must comply with the order and also behave himself, or face the consequences. If he fails to observe the requirements of a community service order, he may be fined. If the breach is grave, or if he commits another offence, a court may revoke the order, and sentence him again for the original offence. The defendant, therefore, has a Sword of Damocles hanging over his head, and this can be salutary. Former High Court judge Graham Jackson once called this "a powerful incentive for the offender to comply fully with the order and an equally powerful disincentive to offend again".



That most defendants comply with the requirements and do not re-offend while they are subject to the order is testament to the efficacy of the scheme.

The community service order has proved itself to be an effective sentence of genuine utility. It can be administered at a fraction of the costs needed for a sentence of imprisonment, and because of the requirement of supervised work it has an advantage over other non-custodial sentences, such as probation or suspended sentences of imprisonment.

Since community service has an impact on the defendant that is both punitive and rehabilitative, it is quite wrong to suggest that, because of the order, he has somehow escaped his just deserts or that society has

been denied its pound of flesh. In its own distinctive way, the community service order is more than capable of delivering justice and ensuring that the punishment imposed upon the defendant fits the crime.

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Yoon Young-kwan

Let the market lead

Whoever turns out to be the new leader of North Korea, the nation probably faces an unstable future. Its fragility is suggested by the fact that even such an important political event as the Workers' Party conference, being held for the first time in three decades, was abruptly postponed earlier this month. One cause for the delay could be a schism within the ruling elite.

"Enough is enough," a mid-level North Korean government official recently uttered in a private conversation with a South Korean visitor to Pyongyang, regarding Kim Jong-un's likely succession. Ordinary North Koreans, too, evidently seem to view this succession differently from that of Kim Jong-il's inheritance of power from his father, Kim Il-sung.

There is no hope that any new leader, whoever it may be, will get any breathing space to establish unquestioned control, given the economy's utter state of decay, as last year's failed bid to reform the currency demonstrated. The regime is under growing pressure from those at the bottom of North Korean society, and recognises its own inability to handle the situation. For example, for the first time, North Korea's prime minister publicly apologised for a policy error – the failure of the currency redenomination.

The dynamics of the relationship between North Korea's people and its rulers seem to be changing fundamentally. One troubling aspect of this change is that the new leader may feel the need to resort to brute force more frequently to suppress popular resistance. And, at a time of domestic hardship and diplomatic isolation, North Korea's leaders might try to distract their public through audacious, and possibly destructive, acts abroad.

Indeed, the North Korean threat nowadays derives more from the regime's internal weaknesses than from its aggressive external posture. Unfortunately, however, most international efforts target the symptoms rather than the underlying disease.

Of course, in order to pressure North Korea's government to give up its nuclear option, the current international economic sanctions, which target weapons of mass destruction-related

products and luxury goods, should probably continue. But, at the same time, the international community should place greater emphasis on policies aimed at inducing North Korea to launch serious economic reform.

Such a policy may seem impossible to undertake. Yet a road map for a peaceful transition can be designed.

If, say, North Korea is willing to respect international standards of economic behaviour, it could be invited to join the International Monetary Fund. Western governments

could also permit charitable foundations to provide North Korean officials or students with scholarships to study abroad and learn how to run a market economy.

The international community would lose nothing by trying this approach. In fact, following the recent currency fiasco, North Korean leaders may have become more open to economic reform than ever before. Such an approach is also compatible with Chinese policy, which has been to pressure North Korea to adopt its model of economic reform.

To be sure, North Korea's regime is not the only obstacle to international engagement. Conservatives in both the US and South Korea may argue that North Korea must first move towards denuclearisation before economic assistance is offered.

But there is no reason why international efforts to ensure North Korea's denuclearisation must preclude policies aimed at bringing about domestic reform. On the contrary, it may be impossible to win North Korea's assent to denuclearisation in the absence of far-reaching domestic change.

The past two decades have shown that "politically correct" decisions do not produce the "right" results, even in the long run. As North Korea grows a new leader, the world needs to groom a new policy for North Korea.

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Caixin View Edited by Hu Shuli

Home eviction tragedies must end

One person died and two others were seriously injured after setting themselves on fire in a tragic end to a forced eviction in Yihuang county, Jiangxi (江西) province, earlier this month. As a result, several local party cadres were suspended from duty. In a way, this "lose-lose" outcome could be described as a kind of progress: the cadres' suspension is a warning to other low-level officials, and it offers redress of a sort to the family of the deceased.

But accountability alone is not enough to prevent more tragedies from happening as a result of violent evictions. The authorities must speed up reform of the way they manage relocations, which currently goes against the spirit of the Real Right Law that regulates and protects property rights. Rules for relocation should be fully reviewed to strengthen supervision of the exercise of power. There is also an urgent need to extend such ad hoc accountability to one that applies system-wide.

It is not the first time officials were censured for their lapses in eviction cases. Six years ago, the party secretary and the chief of Jiaba county in Hunan (湖南) province were among several officials sacked for abusing their power in illegal evictions. The State Council even called for a meeting to work out the appropriate preventive measures and penalties. But these efforts have not been effective.

In recent years, some victims of forced evictions have resorted to burning themselves in protest. Only they and their family knew the depths of desperation and helplessness, when faced with the full force of state power, that drove them to take such action. When late

last year, a woman in Chengdu (成都) set herself on fire in a stand-off with officials, people lamented her extreme character. When reports surfaced of officials who beat up and illegally detained residents, people dismissed them as clashes over competing interests between home owners and government. But the drastic act by the three members of a family in Yihuang surely suggests that grave injustice lies at the heart of the trouble.

Those who have nothing to live for will no longer fear death. Government accountability in this case came at the expense of a human life; this cannot be the end of evictions.

The root of the problem of forced evictions is a corrupt system that lacks checks and balances

the matter. Of course, some redress for wrongdoing is better than none, but it does not tackle the root of the problem of forced evictions, which lies in a corrupt system lacking checks and balances. If only a small number of officials are punished, or more compensation is paid to the victims' family, it will do little to prevent similar tragedies from taking place in future.

The relocation system at present empowers local governments to take full control of urban development and land planning, and in the recall of land and property. Many relocation companies and property valuation firms are linked to government. This concentration of power will

undoubtedly lead to the infringement of people's property rights. We made this point in an editorial published in February and, again, we are calling for reforms.

The meaningless loss of life must be stopped. The Law of Land Administration that regulates property rights in both rural and urban areas is now under review, while a draft of the regulations for the recall of property on state-owned land is open for public consultation. Three issues must be resolved.

First, the government must overhaul its appraisal system for officials, place more restraint on local government authority, and facilitate any civil litigations that may arise over relocation issues.

The government must revamp its system of assessing the performances of top cadres that now overly focuses on GDP, financial revenues and urban development indicators. At the same time, it should strengthen the oversight of local National People's Congress representatives on local governments and departments, to ensure legal compliance of their work.

To further prevent the abuse of power, the system must allow residents to seek redress for grievances through civil suits. Any disputes should be settled through independent third-party adjudication, rather than by violent coercion. Change would take time, but we have to begin the process now.

Secondly, the regulations for the recall of property on rural land should be revised and promulgated based on the regulations for property on state-owned land. Doing so will standardise – for both rural and urban property – the

procedures for land recall, compensation guidelines and the channels to redress grievances. The lack of standardised laws has led local governments to make up their own rules as they go.

China is undergoing rapid urbanisation, with 70 to 80 per cent of the new land coming from the recall of rural or farm land. This will lead to a massive relocation of rural residents. The separation of laws for urban and rural relocation is no longer appropriate and changes are needed immediately.

Finally, the government must integrate the legislation for urban and rural relocation with the Law of Land Administration to ensure that property rights are protected. The Law of Land Administration is being revised. Among the proposed changes is a rule that bars the government from taking over land located outside the urban planning areas for private construction. The proposed rule, which follows a decision taken at the Communist Party Central Committee's plenary session in October 2008, also allows farmers' groups to take charge of the development of the land. This means fewer areas would be available for land recall, which would affect plans for the relocation of rural residents. The legislation must spell out the mechanisms that would guide the negotiations for fair compensation.

The reforms must work, for our sakes and for the sakes of those who needlessly lost their lives over forced evictions.

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Voices: Sino-Japan relations

The dangers of tit for tat

Andy Yee

While many Japanese feel Tokyo "caved in" to Chinese pressure by releasing the trawler skipper at the centre of the Diaoyu/Senkaku Islands dispute, it is actually calculated diplomacy. Indeed, all of Japan's manoeuvres were intended to convey the impression that the islands are Japanese territory under domestic law.

It is useful to put this into context. In 2004, seven members of the China Federation for Defending the Diaoyu Islands landed on Uotsuri, one of Diaoyu islands. Japan deported them after only two days of detention.

In contrast, the Chinese captain in the current case was detained for two weeks, and extensive references were made by Japan to domestic laws. On September 22, following Beijing's announcement that it would suspend high-level bilateral official exchanges, Chief Cabinet Secretary Yoshito Sengoku said that the case was a legal matter, and Japan would try to convince China to understand how Japan's judicial and political system works.

An editorial in the *Asahi* newspaper on the same day said "it makes perfect sense for Japan, a country of laws, to stick to its guns in calmly dealing with the issue in accordance with domestic law".

This line of argument is reminiscent of a recent article by Beijing-based blogger Yoshikazu Kato, who writes regularly in a FT Chinese column. Kato said the fishing boat incident was a good opportunity for Chinese to learn about how the Japanese executive and judicial system operates. China needed to understand that the incident involved judicial as well as diplomatic issues, he said. Kato also

praised the Chinese government for constraining extreme nationalists.

Kato's article was strongly refuted by Zhang Wen, a leading Chinese journalist and media commentator, who wondered how Japan could employ domestic laws when the sovereignty of the islands was in dispute. Furthermore, Zhang accused Kato of having a hidden agenda, of trying to use the Chinese government to clamp down on Chinese nationalism.

Aggressive as it might be to Chinese eyes, Japan's attitude could be interpreted as an ideological aspect of its statecraft. Possession is nine-tenths of the law. And as de facto owner of the islands, Japan's employment of domestic laws could further help its claim to legitimacy. It should be noted that authorities in Okinawa have not officially closed the Chinese captain's case.

In fact, Japan does not even acknowledge that there is a territorial dispute. Officially, Japan claims that the islands, formerly unoccupied, were discovered by Japan in 1885 and formally incorporated in 1895. After US administration between 1945 and 1972, the islands were transferred to Japan and have been administered by Japan since then. It was not until the late 1970s, with the prospects of petroleum discoveries, that China began to question Japan's claims.

What remains to be explained is the more aggressive Japanese behaviour compared with the 2004 detention case. The answer lies in more assertive Chinese actions.

In December 2008, two Chinese maritime survey ships entered the territorial waters of the islands, the first time Chinese government vessels had travelled so close. In April this year, a Chinese helicopter flying too close to a Japanese

warship also stirred fear in Japan. A sense of antagonism is revealed in the Japanese public. The Pew Global Attitudes Project finds that 69 per cent of Japanese have an unfavourable view of China this year, up from 42 per cent in 2002.

Never in history have Japan and China emerged simultaneously as major economic and geopolitical actors. According to conventional wisdom, "cold politics and hot economics" have prevented minor quarrels between China and Japan from escalating into major conflicts. But the current imbroglio, with talks suspended on joint exploration of gas fields in the East China Sea, has gone beyond the political realm and is affecting economic relations.

Japan's calculated approach and China's increased assertiveness are both to blame. But this game of proportional escalation, in the spirit of "if they do something, we'll do something until they understand our determination", is a dangerous one. No one can know for sure what effects the accumulation of grievances over time would have on the prospects of peace. The history of how Anglo-German relations evolved from "hot economics" at the turn of the 20th century into two horrific wars should provide ample food for thought.

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