

ESSAYS

**THE WAY OF BUREAUCRACY:
A CRITICAL REVIEW OF CLASSIC
COMPARATIVE BUREAUCRACY
LITERATURE**

Joel R. Campbel

**THE CHINESE GOVERNMENT'S POLICY
TOWARD NORTH KOREAN DEFECTORS**

Eunbee Chung

THE WAY OF BUREAUCRACY: A CRITICAL EXAMINATION OF CLASSIC COMPARATIVE BUREAUCRACY LITERATURE

Joel R. Campbell
Troy University

Introduction

Large bureaucratic organizations have become a key fact of life in modern polities. As bureaucracy has become an important concern in national politics, it has grown as a focus of comparative political analysis. Previous studies dealt with basics of bureaucratic organization in developed and developing countries, beginning with the theoretical insights of Max Weber, Robert Michels, and other early social theorists in the early twentieth century. Weber set the standard for viewing bureaucracy in terms of rational decision-making, hierarchical organization, and standard operating procedures. Over the past half century, a large body of writings has attempted to construct basic theories of bureaucracy. As a result, there is now an improved understanding of bureaucracy as a significant component of both politics practiced in the advanced industrial countries (AICs), especially Western European countries, and the process of political and economic development elsewhere. This paper looks at four critical classic works in the comparative analysis of bureaucracy in terms of their key contributions to early postwar political theory.

This article examines main ideas of this important classic comparative bureaucracy analysis literature. The authors' arguments parallel one another and together suggest the main elements of mainstream thinking about bureaucratic organization in the late twentieth century. Downs sets forth a series of "non-obvious" hypotheses that provide heuristic tools for study of bureaucratic organizations. Auerbach, et al. considers the "generic behavior patterns" of bureaucrats across Western countries. Crozier focuses on the nature of bureaucratic organizations in France, and examines the general applicability of French experience to other countries. Harrison assesses the usefulness of a corporatist model, whereby a state sets up exclusive organizations to represent certain

segments of society, such as business, labor, or farmers; this aids understanding how bureaucratic units of the twentieth century reacted to emerging social problems. The article also suggests that the changing nature of political and economic challenges in Western countries is altering the very nature of bureaucratic action and politics.

Emerging Laws of Bureaucracy

Downs's *Inside Bureaucracy* is a distinctly down to earth bureaucracy studies.¹ Focusing mainly on bureaucracy in America, it sets forth a number of "non-obvious" hypotheses about various aspects of the functions of bureaucratic organizations that can be tested by subsequent research. He begins with three "central hypotheses" and derives several "laws" from them. These hypotheses are: 1) "Bureaucratic officials (and all other social agents) seek to attain their goals rationally"; 2) "Every official is significantly motivated by his own self-interest even when acting in a purely official capacity"; and 3) "Every organization's social functions strongly influence its internal structure, and vice versa." Downs's "laws" follow directly from the above hypotheses, respectively: 1) the "Law of Increasing Conservatism," i.e., organizations tend to become more conservative as they get older; 2) the "Law of Hierarchy," or coordination of large-scale activities in the absence of markets necessitates a hierarchical structure; and 3) the "Law of Diminishing Control" and the "Law of Decreasing Coordination," i.e., as organizations become larger, control weakens and coordination becomes poorer.

Moreover, Downs adds, there is a "life cycle" to bureaucratic organizations, and this may be his most important contribution to comparative study. Such cycles begin four ways. First is what Weber calls the "routinization of charisma," where an organization is set up to carry on the activities or goals of a particular individual. Second is by the action of social groups, such as the agencies created during the New Deal. Third is by splitting off from an existing bureau, and fourth is through the "entrepreneurship of a few zealots." The growth of bureaus depends on the "exogenous" political environment. All bureaus, he says, are at first dominated by either advocates or zealots, and this determines the political climate found within the organization. Fast-growing bureaus lose their zealotness, gain a higher percentage of careerist "climbers" among their ranks, while the level of talent initially rises, and then gradually declines. As organizations grow older, they increase their efficiency through learning and develop formal-

1 Michel Downs, *Inside Bureaucracy* (Boston: Little, Brown, & Co., 1967).

ized rules, while officials shift from carrying out the organization's functions to insuring the survival of the organization. This hastens the onset of conservatism within the organization.

Related to this tendency toward conservatism is "the rigidity cycle." The greater the hierarchical distance between low-level officials and officials who give final approval for an action, the more difficult it is for officials to carry out their functions. As bureaus expand, the points of key decisions rise to higher levels. This "rigidity cycle" is most likely in totalitarian countries, or in bureaucratic institutions that serve democratic societies indirectly, but is an aspect of all bureaucratic organizations.

Downs lays out a Weberian list of characteristics common to all bureaus or agencies, viz., hierarchical structure, hierarchical communications, extensive formal rules, informal structures of authority and informal communications, and intensive personal loyalty and involvement among officials. He then lists the "limitations and biases common to all officials," such as the tendency to distort information as it flows up the chain of command, to be biased in favor of policies or actions that advance one's own self-interest, and to vary in the degree one carries out directives, depending on whether they help or hinder one's interests. Downs delineates several different categories of civil servants, such as "climbers," "specialists," and "conservers," i.e., people biased against any changes in the status quo.

Most bureaucratic communications, Downs states, are "subformal," in that the organization's "straining for completeness in the overall communications system" forces those working in the organization to fill in the gaps. Intra-agency communications are greater where there is more interdependence, uncertainty, and time pressure. The most effective communications are among well-established, slower-growing organizations.²

Downs's hypotheses are fruitful and describe important elements of bureaucratic behavior. Particularly useful may be his idea of an organizational life cycle. This is something that could possibly be verified in time sequence or case studies. However, there are two problems. The first is that, though he aspires to "non-obvious" propositions, Downs's hypotheses are not all that unusual or groundbreaking. Most of his conclusions are well within the conventional Weberian framework, i.e., rationality, organized management, hierarchy, and clear roles. He merely suggests that bureaucracies may not be as rational as Weber thought. Secondly, his central hypotheses and attendant "laws" seem closer to the conclusions of popular works on the ways that large organizations promote

2 Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown, & Co., 1967), 3-30.

incompetence or trample ordinary people, such as *The Peter Principle* or *Up the Organization*. The book is more a collection of impressionistic hypotheses than systematic analysis. Downs's ideas are ever fascinating, but they cry out for more empirical analysis.

Aberbach, et al. take up the research challenge posed by the likes of Downs. Their study, *Bureaucrats and Politicians in Western Democracies*³, aims to discover the "generic behavior patterns" of both politicians and bureaucrats in the policy process. Based on semi-structured interviews with 1,400 high-level lawmakers and officials during the early 1970s in seven countries (Britain, West Germany, Italy, the Netherlands, Sweden, France, and the US), the study shies away from culturally specific discussion like that found in Crozier (discussed below). Where Crozier's study is far too France-centered to have universal application, Aberbach, et al. miss much of the cultural context of the countries they study. They also are not very clear about the questions asked respondents or sampling methods used.

The authors set out four different images, actually more like ideal types of the relationship between politicians and bureaucrats. Image I is closest to the classical Weberian ideal of complete separation: politicians make decisions; bureaucrats implement them. Image II suggests both politicians and civil servants have roles in decision-making, but that their contributions are distinct. According to Image III, both groups are equally involved in both politics and decision-making. The only difference is that politicians advance the broad, diffuse interests of the electorate, while bureaucrats focus on narrower interests of more organized groups. Finally, Image IV is a hybrid, in which the Weberian distinctions totally disappear. In France or Japan, for example, bright bureaucrats occasionally exchange a successful administrative career for political office.

The book's conclusions are hardly startling, but always well presented. First, bureaucratic elites "come from the tiny minority of the population that is male, urban, university educated, upper middle class in origin, and public affairs oriented"⁴, while parliamentary elites come from the male college graduates of "public affairs oriented families." Second, the authors suggest that both politicians and administrators engage in political "games," but the nature of these games is different for each: the bureaucrat uses skills of mediation and bargaining in "juggling" different interest groups, while the politician is more a generalist. As a consequence, politicians are in touch with "broader social

3 Joel D Aberbach, *Bureaucrats and Politicians in Western Democracies*, (Cambridge, Mass.: Harvard University Press, 1981).

4 *Ibid.*, 81.

forces,” while bureaucrats are “enmeshed” in the concerns of narrow interest groups. Third, they note the ideological contrast of left-leaning European politicians and more conservative civil servants, which partly reflects the differing historical development of their respective institutions.

More remarkable is the book’s reworking and blending of both Weberian and elite theory. Noting Weber’s valedictory diagnosis of the emerging state as run by “two uncertain partners, the elected party politician and the professional state bureaucrat,” they suggest that these two roles are becoming blurred. Bureaucrats are taking on the role of intermediary between interest groups and the state, a function traditionally assigned exclusively to politicians. Overall, the work is a well-crafted study of contrasting elites, but it never reaches the level of grand theory. It merely affirms common sense that bureaucrats and politicians are different by both background and interest, but they still play in the same game.⁵

More focused than these broadly theoretical works is Crozier’s *The Bureaucratic Phenomenon*.⁶ Like Downs, Crozier devotes much of his book to an exposition of general patterns within bureaucracies, but approaches his subject through two unnamed cases drawn from the French bureaucracy a Parisian clerical agency and a state-owned manufacturing enterprise. Also like Downs, he hopes to generate general hypotheses about the operations of organizations but within the broad notion of “cultural systems.” Crozier begins by distinguishing three definitions of bureaucracy 1) Weber’s in terms of rationality; 2) “government by bureaus,” or “departments of the state staffed by appointed and not elected functionaries, organized hierarchically, and dependent on a sovereign authority”⁷; and 3) the common pejorative evocation of slowness, routine, and “complication of procedures.”

It is in terms of the latter definition that Crozier chooses to examine bureaucracy. First, he sees power relationships, or the means of social control operating in a closed “cultural system” of organization, as the central problem of bureaucracy. Organizations are collections of mutually dependent subgroups (perhaps a close approach to interdependence), providing employees little chance for promotion or transfer. Second, he suggests that a “pathology of organizations” develops from the fundamental incompatibility of basically utilitarian organizational goals with means of social control derived from the cultural milieu from which organizations spring. Through rule making, bureau-

5 Joel D. Aberbach, et. al., *Bureaucrats and Politicians in Western Democracies* (Cambridge, Mass.: Harvard University Press, 1981), 3-24, 47-83.

6 Michel Crozier, *The Bureaucratic Phenomenon*, (Chicago: University of Chicago Press, 1964).

7 Ibid., 3.

cracy tries to resolve conflicts that can develop where rules are unclear, but the resulting rigidity of rules (a point also made by Downs) becomes a new source of conflict and organizational dysfunction. The bureaucracy attempts to get around its rigidity through centralization of functions, but this only distances top management from workers. Supervisors can get by merely observing the rules, but top management faces criticism all around. This only adds fuel to the conflict, and makes workers feel no one cares about them except people at their own level. Third, unlike mainstream theorists, but he sees conflict as an insurer of stability, since it can bind workers together and force management to deal more directly with lower levels.

Crozier's is an interesting approach, especially in its focus on power and rule-making as a source of conflict, and stands as an alternative to Weberian analysis. However, Crozier's ideas are severely limited to the specific 1960s French context. While it may be useful to examine bureaucratic organizations as collections of mutually dependent groups engaged in an ongoing power struggle, it is not true that all organizations constrain opportunities for advancement. Many bureaucracies, especially American and Japanese, use different forms of systemized promotion as a strong motivator. Rule-making may indeed promote conflict, just as much as it resolves it, but new rules do not always result in the progressive alienation of workers or staff from management. In the Japanese case, top-level management continually relies on lower levels to generate ideas, analysis, and inputs. There are undoubtedly cases where conflict can be a source of stability, but it is more often a hindrance to the organization's work. In American departments and agencies, for example, attempts to discipline or fire employees can lead to months or years of internal hearings and court cases.

Crozier's fourth point is an attempt to relate French bureaucratic behavior to French national traits. Like Converse and other scholars of French bureaucratic behavior, he notes a tendency within French society toward conflict. The French, says Crozier of his fellow countrymen, have difficulty forming groups, eschew group identification of any kind, shy away from one-to-one interactions, and are quite defensive about their individual roles within the organization. Generally resourceful, they are alienated from their social settings. French also tend to relate to institutions in a very legalistic manner, and this heightens the tendency to rule making.

His is an intriguing approach but, like Crozier's general theoretical ideas on bureaucratic behavior, may have restricted usefulness. If the French have the traits he says they do, perhaps these traits alone account for the power-centered, rule-oriented nature of French bureaucracy. So, other bureaucracies could be expected to have entirely different internal patterns. If culture is as crucial an

explanatory variable as he says it is, then German, Italian, or British bureaucracy would not manifest the same kind of power relationships or rule making tendencies. One may also question the objectivity of conclusions about one's own culture, particularly when they are as one-sided as Crozier.

Crozier's conclusions also raise troubling questions about his design and methodology. First, in aspiring to grand bureaucratic theory while insisting the French political culture may be unique, Crozier sets up a crippling contradiction that limits the applicability of his work beyond French borders. Crozier seems unable to decide what kind of study this is. To arrive at grand theory, he needs cross-national data, and to engage in comparative analysis, he needs information on bureaucratic cultural contexts in other countries. Second, it is not really appropriate to generalize about an entire nation based on a study of two organizations. Third, his generalized impressions of cultural behavior do not necessarily provide a true picture of a people's character. This sounds suspiciously like the unsystematic studies of "national character" that preceded Gabriel Almond and Sidney Verba's *The Civic Culture*.⁸

Finally, Crozier hopes his study can lead to better "choice of structures" within such organizations. He suggests specific changes in the clerical agency designed to overcome the problems of worker alienation and distancing of management. For example, he sees the clerical agency as a fairly simple organization that can be improved through better channels of communication from top management to supervisors, and to workers. Adding this normative dimension does not strengthen the work. It is the accepted wisdom of much of social science that analytical and normative studies are different species, and frequently do not coexist well between the covers of the same study. In Crozier's study, the analytical so far overshadows the normative that one wonders why the latter was included at all.⁹

In *Pluralism and Corporatism: The Political Evolution of Modern Democracies*¹⁰, Harrison deals more generally with the way political organizations relate to society, using the concept of corporatism as applied to modern states. He begins by noting the changing role of the state politics in the AICs. The functioning of a nation's politics, he says, boils down to four essential questions: "What is the political culture? What is the pattern of conflict and of interest definition

8 Gabriel A Almond and Sidney Verba, *The Civic Culture: political attitudes and democracy in five nations*, (Princeton, N.J. : Princeton University Press, 1963).

9 Michel Crozier, *The Bureaucratic Phenomenon* (Chicago: University of Chicago Press, 1964), 31-60, 112-174.

10 Reginald J Harrison, *Pluralism and Corporatism: The Political Evolution of Modern Democracies*, (Boston: Allen & Unwin, 1980).

and expression? What is the pattern of controls? What is the relevance of the external environment?" Political science has focused on the second, conflicts and interests, but the third, controls, is equally important. To resolve any conflict over goals, an advanced society blends mechanisms for control and consensus formation. He suggests a crude dichotomy of consensual and controlled societies. The former relies on incremental decision making in an environment of declining ideology, while the latter employs a "coherent set of policy goals" or long-term planning. It is a consensual society from which corporatism emerges.

Corporatism states of the twentieth century set up exclusive organizations to represent various segments of society, e.g., business, labor, farmers, and women. The corporatist model, a reaction to the prevailing pluralist interpretation of democracy, posits an arrangement whereby government grants official recognition to such private organizations to serve as the sole representatives of sectors of the economy, in a "collaborative but functionally segmented process of policy formation." Harrison believes that corporatism is not only becoming increasingly important to the work of modern democratic states, but is altering the nature of representative democracy. The ascendance of corporatism, he says, goes back to the early postwar prosperity of the 1950s, when high growth provided both the finances and the consensus to undertake a variety of new social commitments. Government bureaucracies were left to work out the details, and required the cooperation of various interest groups to implement these social programs. Bureaucrats found corporatism an attractive answer, as did the interests granted a high degree of participation in policy decision-making.

Harrison suggests planning, not bureaucracy itself, is the hallmark of the corporatist society. Building on Galbraith's notion of "the New Industrial State," a two-tiered system of large corporations operating through planning and a market system for small and medium-sized enterprises, he suggests that each of the major AIC's have a well-developed planning sector which operates alongside a market system. In Britain, government-directed enterprises are a large presence in the economy, though government management is a relatively small component of the overall economy. The French government, by contrast, uses contracts, tax incentives, and financial concessions to shape economic decisions. The postwar reconstruction of West Germany and Japan gave their planning agencies a mandate to foster free economies, while protecting them from economic crisis and ineffective business practices.¹¹

Harrison agrees with Aberbach, et al. that the central issue for bureaucracies

11 Reginald J. Harrison, *Pluralism and Capitalism: the political evolution of modern democracies* (London: George Allen & Unwin, 1980), 13, 188.

is the degree to which they should be involved in political decision making. Clearly, postwar bureaucracy has acquired political responsibilities that place it far beyond the Weberian model of professional neutrality. As a corporatist agent, bureaucracy gets involved in the writing of legislation, serves as the focus of interest group activity, and must frequently respond to demands of politicians, such as ministers and permanent secretaries in the UK.

Harrison's study is a valuable addition to corporatist theory. He rightly notes the limitations of corporatism; specifically that it is an ideal type. This is an important caveat because ideal types, as mentioned above, only have value to the degree that they get theoretical discussion started. Harrison's analysis is adequate as far as it goes, but is lacking in several respects. His discussion of both the development and future direction of corporatism is thin, and he neglects much of the critical literature of corporatism. For example, though he mentions Philippe Schmitter, he does not take up his and others' discussion of the limitations of corporatism in both Europe and Latin America. Corporatism is perhaps a useful concept, but it is both difficult to measure and has never appeared in a fully functioning form. Even fascist Italy and the bureaucratic-authoritarian regimes of Latin America used corporatist structures selectively. Given that high tech and service industries are replacing heavy industry throughout the developed world, labeling the current AIC's corporatist stretches the concept to its limits. Galbraith's *The New Industrial State*, with its fusion of capitalism and socialism, gained few adherents in the 1960s, and Harrison's sketchy portrait of corporatism is not likely to replace pluralism as the prevailing paradigm.

Conclusion

There are four main types of bureaucratic literature: historical development of bureaucracies, broad theoretical examination of bureaucracy, national studies of bureaucratic organizations, and applications of political theories derived from other areas, e.g., corporatism and rational choice. As the AICs shift from industrialization to high tech and service industries, the role of planning and economic bureaucracy has shifted from guiding hand to facilitator. As populations grow older, the need for social services geared to older populations increases. Bureaucracies of the future then must confront issues generated by globalization and economic integration, while dealing with a more technologically connected world and matters that transcend national boundaries, i.e., "intermestic" problems at the intersection of national and international policy. Since the focus of bureaucracy is radically changing, it is all the more important that scholars arrive at better understandings of how bureaucracy really works. **Y**

THE CHINESE GOVERNMENT'S POLICY TOWARD NORTH KOREAN DEFECTORS

Eunbee Chung
Yonsei University

The Chinese government's repatriation policy for North Korean defectors has been a topic of controversy. Due to deteriorating living conditions in North Korea, many flee North Korea to find food or work. Many of them go to China, and yet they are greeted by hostility. While humanitarian activists and organizations urge the government to issue refugee status, Beijing identifies them as illegal economic migrants and forcibly returns them to North Korea where severe punishments await. The current essay assumes that Beijing's repatriation of North Koreans is a breach to international refugee law, and explores political, economic, and social reasons contributing to the decision.

Introduction

While international law experts and humanitarian groups believe North Korean defectors benefit the *refugee* category of the *United Nations Convention relating to the Status of Refugee or the 1951 Refugee Convention*, China denies granting refugee status toward North Korean defectors and conducts forced return or repatriation on them.¹ As China acceded to the Convention in 1982, which is the core international doctrine pertaining to rights of refugees, its disregard for protection of North Korean defectors and asylum-seekers is perceived as non-compliance to its obligations. Moreover, China has been issuing refugee status to many populations, except for North Koreans. Most of the registered refugees in China are Indo-Chinese.² Then the question is, *why doesn't China fully com-*

1 Elim Chan and Andreas Schloenhardt, "North Korean Refugees and International Refugee Law," *International Journal of Refugee Law*, no. 2 (2007): 222.

2 "UNHCR Regional Representation for China and Mongolia: Factsheet," UNHCR, accessed October 2, 2013, <http://www.unhcr.org/5000187d9.html>.

mit itself to international refugee law by not offering minimum refugee rights for North Korean defectors? To answer this question, the current essay aims to explore China's stance regarding the matter in detail and address security issues contributing to the Beijing's reluctance to provide protection for North Korean refugees. In the process, it argues that security and economic factors are prioritized over human rights.

Oona Hathaway proposes that democratic states "may be more likely to adhere to their treaty obligations because the existence of internal monitors makes it more difficult...to conceal a dissonance between their expressive and actual behavior."³ According to her argument, China then, as a state, is likely to have low-commitment to international human rights treaties.⁴ Further, Jan Egeland's asserts that countries "without pluralistic political participation lack... even the most rudimentary domestic corrective of human rights oriented lobbies... therefore give strategic and economic considerations priority over morally founded foreign policy objectives."⁵ Adopting claims of Hathaway and Egeland, this essay further assumes China does not fully respect international human rights norms because as "the benefits of breach outweigh its costs, a country is expected to violate its agreements with other states."⁶

The paper agrees with the neorealist perspective that states are self-interested actors that place importance in utility maximization for survival. States are generally indifferent to or ignorant of human rights matters like refugee protection, unless it assists influence and welfare of state. In another case, a stronger state's enforcement of human rights may increase weaker states' compliance according to Stephen Krasner.⁷ In history, most events show that stronger nations do not always perceive human rights as essential nor does it coerce other states to improve human rights.⁸ For instance, the United States is one of the three nations that not yet ratified the Convention of the Child along with Somalia and South Sudan. In addition, the United States rarely places sanctions on countries for human rights abuses or humanitarian causes while it imposes

3 Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*, (June 2002), accessed April 1, 2013, <http://yalelawjournal.org/images/pdfs/134.pdf>.

4 Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *The Journal of Conflict Resolution*, no. 6 (2005): 950.

5 Jan Egeland, "Human Rights: Ineffective Big States, Potent Small States," *Journal of Peace Research*, no. 3 (September 1984): 209.

6 Andrew T Guzman, "A Compliance-Based Theory of International Law," *California Law Review*, no. 6 (2002): 1860.

7 Stephen D. Krasner, "Sovereignty, Regimes, and Human Rights," *Regime Theory and International Relations* (1993)

8 Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" 950.

sanctions on countries that are perceived as threats to security. Disinterested in human rights, stronger powers are more consumed to resolve security and economic issues in the international political arena, thus not actively reacting to China's non-compliance in human rights regimes. Agreeing with Krasner on the presence of power politics in international human rights regimes, the paper analyzes an individual country's "domestic concerns and not of international incentives," or in other words, its domestic and foreign policy considerations in its non-compliance to international law.⁹ With this in mind, in the upcoming section, the North Korean refugee crisis will be overviewed, followed by China's "strategic and economic considerations" in its current decision to breach international refugee law.

Background

According to Andrei Lankov, until the early 1990s China-North Korea border was relatively stable, and thus security control of the border between China and North Korea did not rigorously take place.¹⁰ After 1990s, with the collapse of the Soviet Union, the security of the border region began to deteriorate with new developments. First, economic crisis led the North Korean government to minimize restrictions on movement of people. Second, increased corruption among North Korean officials including border guards made the border easier to be penetrated. Thirdly, the normalizing relations between China and South Korea in August 1992 contributed to the rapid increase of economic activities of ethnic Koreans inhabiting in near border areas in China, also attracting many North Koreans seeking business opportunities or improved living standard to these border regions. Thus these independent events together created insecurity in border areas, eventually alarming the government to tighten border controls.

The U.S. Department of State reports that there are about 75,000 to 125,000 refugees residing in China by 2000.¹¹ In 2005, it estimates a number of refugees between 30,000 and 50,000. According to the International Crisis Group's report in 2006, there are approximately 100,000 North Korean defectors in China.¹² These escapees residing in China are in constant fear of deportation and

9 Federico Merke and Gino Pauselli, "Foreign Policy and Human Rights Advocacy: An Exercise in Measurement and Explanation," no. 2 (April 2013): 134.

10 Andrei Lankov, "North Korean Refugees in Northeast China," *Asian Survey*, no. 6 (November / December 2004): 857.

11 "The Status of North Korean Asylum Seekers and the U.S. Government Policy Towards Them," U.S. Department of State, accessed March 15, 2013, <http://www.state.gov/j/prm/rls/rpt/43269.htm>.

12 "Perilous Journeys: The Plight of North Koreans in China and Beyond," International Crisis Group, accessed May 20, 2013, [http://www.crisisgroup.org/~media/Files/asia/north-east-asia/north-korea/erilous_journeys__the_plight_of_north_koreans_in_china_and_beyond.pdf](http://www.crisisgroup.org/~/media/Files/asia/north-east-asia/north-korea/erilous_journeys__the_plight_of_north_koreans_in_china_and_beyond.pdf).

repatriation by the Chinese authorities. Beijing's recognition of North Korean defectors as illegal migrants creates a dilemma. Many North Korean defectors have fled their homeland in search for necessities to sustain basic survival like food. However, since North Korean law bans travels outside the country without permission from the state, they receive severe punishments when enforced to return by the Chinese government.

Many South Korea based NGOs, activists, and conservative politicians apply international refugee law to categorize North Korean defectors as refugees. The 1951 Convention and 1967 Protocol depicts a refugee as:¹³

... a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution (see Article IA(2)).

However, China reasons that North Korean defectors are not persons of concern to the Convention because they left the country for economic reasons. True, North Korean defectors may not have been refugees when leaving the country; however, they do face valid fear of persecution when returned, which makes them *refugees sur place*.¹⁴ As a party to the Convention, China is thus liable to provide protection to the escaped individuals.

Non-refoulement is another crucial principle of the Convention; "it provides that no one shall expel or return ("*refouler*") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom."¹⁵ Human rights agencies have criticized the Chinese government for the violation of the principle. When forced to returned, these North Koreans either face unlawful border-crossing (Article 233 of the Constitution) or treason against the state (Article 62 of the Constitution). The former is sentenced to two or three year imprisonment while the latter is punished accordingly by the severity of crime, varying from five years of detention to execution or confisca-

13 UNHCR, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol* (Geneva: 1951 and 1967), <http://www.unhcr.org/3b66c2aa10.html>.

14 Roberta Cohen, "Legal Grounds for Protection of North Korean Refugees," The Brookings Institution, accessed April 29, 2013, <http://www.brookings.edu/research/opinions/2010/09/north-korea-human-rights-cohen>.

15 UNHCR, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*.

tion of personal assets.¹⁶ Intense labor, starvation, illness, poor hygiene, sexual violence, forced abortions, torture, and inhuman treatments are common in detention or penal facilities.

Despite criticisms made by human rights agencies and the international community, Beijing is unlikely to change its current policies toward North Korean refugees. Restricting access of the United Nations High Commission for Refugees (UNHCR) to North Korean asylum seekers in China and preventing humanitarian agencies to monitor the border areas, China conducts repatriation when refugees are arrested by law enforcement officers.

Unable to seek protection in China, most North Korean defectors wish to move to South Korea as it is the nearest nation that offers legal citizenship and holds well-structured resettlement program. Nevertheless, it is not a simple matter to travel to South Korea. In order to seek protection from the South Korean government, North Koreans are recommended to go to Korean embassies or consulates first. However, South Korean embassies do not always hold welcoming attitude toward North Korean defectors. Andrei Lankov asserts, "the Seoul government is remarkably unwilling to accept them and this position is reflected by South Korean agencies in China."¹⁷ Lankov further implies that the South Korean government does not want to weaken relations with China, particularly in terms of economic ties.

The South Korean government today accepts North Korean defectors arriving on South Korean soil; however, it is increasingly concerned about North Koreans seeking protection outside the South Korean sovereignty. Recently, the Lao government returned nine North Korean teens which provoked strong criticisms from activists and NGOs toward the Lao and South Korean government. The South Korean government's discreet attitude was especially censured; the protection proposal of the orphans was denied several times by the South Korean consulates in Laos. There are two reasons for this passive response of the South Korean government. Firstly, the increased sensitivity of South Korea's diplomatic and economic relations with host countries risks North Korean defectors. Secondly, the inducement of population outflow can destabilize Pyongyang and instigate turmoil, when South Korea (and the United States) may confront the sole option of reunification, but a costly one. Many scholars believe German-type unification in the Korean Peninsula will burden the South Korean economy.

16 Keum-Soon Lee, "The Border-crossing North Koreans: Current Situations and Future Prospects," *Korea Institute for National Unification* (May 2006): 58.

17 Keum-Soon Lee, "The Border-crossing North Koreans: Current Situations and Future Prospects," *Korea Institute for National Unification* (May 2006): 58.

Main Argument

China is normally the first stopping-over destination for many North Korean refugees. However, its unwillingness to acknowledge North Korean defectors as *refugees* according international law can be explained by three security or economic considerations. First, China's military partnership with North Korea hinders the progress of protecting North Korean defectors. Between China and North Korea, the *Sino-North Korean Mutual Aid and Cooperation Friendship Treaty* was signed in 1961 and China continues to support terms of the treaty. Beijing's apathetic attitude toward human rights of North Korean defectors demonstrates its willingness to maintain alliance with North Korea even when the international criticisms persist. As China conducts repatriation and respects the treaty, the Chinese government is able to maintain amicable relations with North Korea. Stephan Walt explains "alliances are more likely to persist if they have become symbols of credibility." To avoid provoking its ally, China compromises its international reputation in return for maintaining alliance with North Korea.

Secondly, China is wary of political instability of North Korea caused by a sudden outflow of North Koreans. Through practicing repatriation of North Korean escapees and constructing physical boundary, barbed wire fence, along the border in 2006, China hopes to avoid the collapse of the regime resulted from a massive exodus of the North Korean population.¹⁸ Further, a sudden collapse may raise the possibility of unification of two Koreas, heightening conflict of interests between China and the United States (or South Korea). The Council on Foreign Relations has released "Preparing for Sudden Change in North Korea" in 2009 which mentions challenges faced by China in the case of the unified Korea. First, China hopes to prevent the United States in moving its military in the North, near the Sino-North Korean border; China's second objective is to dispose the North's WMDs.¹⁹ With these challenges that may have high strategic and economic costs, an expert suggests "for the Chinese, stability and the avoidance of war are the top priorities."²⁰

18 Rhoda Margesson, Emma Chanlett-Avery, and Andorra Bruno, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options," Congressional Research Service, accessed June 1, 2013, <http://www.fas.org/sgp/crs/row/RL34189.pdf>.

19 Paul B. Stares and Joel S. Wit, "Preparing for Sudden Change in North Korea," Council on Foreign Relations, accessed June 10, 2013, <http://www.cfr.org/world/preparing-sudden-change-north-korea/p18019>.

20 Jayshree Bajoria and Beina Xu, "The China-North Korea Relationship," Council on Foreign Relations, accessed June 10, 2013, <http://www.cfr.org/china/china-north-korea-relationship/p11097>.

China is concerned of the US influence in Northeast Asia (i.e. the presence of the US military presence in Japan and South Korea) as the United States may seek an opportunity to restrict the rising power of China via the unification of Korea. Consequently, China currently intends to keep the status quo in Northeast Asia as its military or economy cannot surmount the United States' power. As long as the United States prolongs its influence in the Pacific-Asia and China remains to be unprepared for armed conflicts with the US military, China seeks to avoid a direct confrontation with the United States.

Thirdly, the outflow of North Korean refugees poses threat for Chinese socio-economic stability. Some North Korean refugees are former soldiers and some may be from elite Special Forces units who are capable to apply their training to cause violence and internal instability in China. Andrei Lankov states, "the Chinese government, mindful to keep its own monopoly over violence, is bound to worry about those people."²¹ In addition, a surge of entry of North Korean refugees intensifies low-skilled job rivalry in Chinese society. While some local Chinese are sympathetic to North Korean refugees, increasing competition for jobs may deepen hostility toward refugees by the public, creating internal schism and even violence. The Chinese authorities are also concerned that granting access to international agencies to North Koreans in China triggers other ethnic groups in China, like Tibetans, to demand protection from international human rights organizations.²²

Lastly, China's economic cooperation with North Korea holds back protection advocacy for North Korean refugees. Since 2003, economic interaction between China and North Korea has been booming. From 2004 to 2006, North Korean trade with China is 39% and in 2009, the percentage has increased to 53%.²³ Particularly in 2009, North Korea and China enters into a new phase of economic relations as they sign various economic cooperation agreements. For instance, in 2009 China announces the joint development of Rajin Port. From 2010, the two countries signs memoranda of understanding in developing the Rason Special Development Zone. North Korea's underground resources and shipping ports seem to motivate China to maintain economic ties with North Korea to enhance China's industrialization and economic growth.

21 Jinwook Choi, "Preparing for Korean Unification: A 'New Paradigm' for Discourse on Unification," *Korean Unification and the Neighboring Powers*, ed. Jinwook Choi (Seoul: Korea Institute for National Unification, 2011), 48.

22 Rhoda Margesson, Emma Chanlett-Avery, and Andorra Bruno, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options."

23 Hyeong Jung Park, "Expanding DPRK-China Economic Cooperation and the Future of the DPRK Regime: A "Rentier-State" Analysis," Korea Institute for National Unification, accessed May 13, 2013, [https://www.kinu.or.kr/upload/neoboard/DATA01/co11-19\(e\).pdf](https://www.kinu.or.kr/upload/neoboard/DATA01/co11-19(e).pdf).

Conclusion

While the North Korean defector issue is complexly intertwined with political and economic interests of individual states, defectors chronically lack legal and physical protection while hiding in China (or other countries). With psychological and physical threat of deportation and repatriation, most defectors face extreme poverty and poor health condition, and many women become susceptible to traffickers. On the exterior, Beijing denies to categorize North Korean defectors as *refugees*, identifying them as economic migrants. Yet it is essentially inspired by security and economic factors. The paper has explored these factors that give explanations to the Chinese government's non-compliance pertaining international norms of refugee protection. First, China hopes to maintain the Sino-DPRK alliance; second, it seeks to establish status quo in the region. Lastly, China is motivated to bolster its internal security and economic ties with North Korea. In short, China's hostile policy towards the refugees reflects the prioritization on security and economic concerns over human rights. Subsequently, it is quite unfortunate that the affected individuals will need to cope with the bleak reality where security and economic interests dominate. **Y**