

AN ARGUMENT FOR ECONOMIC MIGRANTS: POVERTY AS A COERCIVE MECHANISM

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In spite of the colossal amounts of evidence of human rights abuses in North Korea, Chinese authorities have balked at acknowledging North Korean defectors in China as refugees and have instead labeled them as illegal economic migrants. In this paper, the author examines the proper course of action China should follow under the liberal human rights philosophy to which the West generally ascribes and the communitarian human rights philosophy associated with Asia, as well as from the utilitarian perspective. The author then challenges China's position of North Koreans being economic migrants—subsequently ineligible for asylum status—by analyzing the international legal agreements China is bound to uphold. The paper concludes by calling for continued public pressure on China to abide by international law in order to prevent its loss of face, which the recent escape of the blind activist lawyer Chen Guangchen from house arrest has illustrated is something the Chinese state is incredibly insecure of losing.

Introduction

In early February of 2012, approximately 40 North Korean defectors were arrested by Chinese authorities in Shenyang, China, and held in prison awaiting deportation procedures. News of this prompted a wave of several protests and hunger strikes outside of the Chinese embassy in Seoul.¹ The South Korean National Assembly passed a resolution strongly urging China to stop forcibly repatriating the refugees back to North Korea.² Chinese authorities, however, have balked at acknowledging the North Korean defectors as refugees and have labeled them as illegal economic migrants “in China to make money.”³ Chinese Foreign Ministry spokesman Hong Lei has cited “insufficient evidence”

1 Evan Ramstad, “Seoul Increases Heat on China Over Defectors,” *The Wall Street Journal Asia*, March 1, 2012, 7.

2 Melanie Kirkpatrick, “China Delivers Unto Evil,” *The Wall Street Journal Asia*, March 01, 2012, 15.

3 Ramstad, “Seoul Increases Heat on China Over Defectors,” 7.

to claims that the North Koreans detained in China are refugees.⁴ Referencing article four of the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas between China and North Korea, a bilateral repatriation pact signed with Pyongyang in 1986, China has repeatedly refused to acknowledge the defectors as refugees protected by international law and humanitarian conventions and has instead branded them as illegal migrants crossing the border for economic reasons.⁵

By labeling these defectors as illegal economic migrants, China has brought to the forefront of refugee discourse the arduous task of defining who is and who is not a refugee. Under the 1951 Convention, OAU Convention and Cartagena Convention, economic migrants are not protected as refugees. Does that mean all persons fleeing their country for reasons related to economic activity are illegal economic migrants and thus ineligible for asylum? Chinese authorities certainly seem to believe so and argue that the North Korean defectors are no different than illegal Mexican immigrants in the United States.⁶ While it is possible China has chosen this impuissant retort in the face of objections from human rights organizations and world leaders out of concerns of straining tensions with North Korea (whose provocative actions in recent years highlight the state's rogue demeanor), border security, or a sudden massive influx of refugees, it is highly unlikely that these are true concerns for Chinese authorities. This is evidenced by the fact that North Korea is the only state from where China turns back refugees. Indeed, China's 1986 immigration control law allows individuals seeking asylum for political reasons to reside in China and allows the UNHCR to conduct refugee status determination. With refugees from Pakistan, Somalia, Iran, Afghanistan, Vietnam and elsewhere, North Koreans are "explicitly excluded" as if it is impossible for any North Korean to face any sort of political persecution at all.⁷

The ultimate goal of this paper is to answer the question of whether or not economic migrants can and should be given refugee status and protection, focusing specifically on North Korean defectors. This paper will first tackle the problem of sovereignty—addressing the issue of sovereignty and from whom the duty of care to refugees is owed. After discussing various definitions of the

4 He-suk Choi, "Seoul bolsters efforts for N.K. defectors," *The Korea Herald*, March 02, 2012, 2.

5 Hiroyuki Tanaka, "North Korea: Understanding Migration to and from a Closed Country," *Migration Information Source*, January 2008, <http://www.migrationinformation.org/feature/display.cfm?ID=668> (accessed October 26, 2012).

6 Kirkpatrick, "China Delivers Unto Evil," 15.

7 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response* (US Committee for Human Rights in North Korea: 2006), 37.

term “refugee,” the paper will briefly describe the perilous human rights abuses occurring in North Korea. This paper will then analyze the Chinese position of the defectors being economic migrants and thus ineligible for asylum through the scope of liberal, utilitarian and communitarian human-rights philosophies. This paper will challenge the legitimacy of labeling the North Korean defectors as illegal economic migrants by examining how the North Korean state uses poverty as a political tool to induce loyalty and also explore international legal frameworks to which China is party. This paper concludes by calling for a revision by the United Nations on the current definition of refugee to include economic migrants under certain conditions and for continued pressure on China to maintain its international legal obligations.

A Duty of Care Owed by Whom?

The first question normally arising in the context of refugee care is where does the responsibility fall with regards to the rights of refugees? Conversation regarding refugees and the right to asylum will inevitably involve the issue of sovereignty for becoming a refugee requires the crossing of international borders. For the first 45 years of the United Nations Charter, the United Nations favored sovereignty and the rights of states over human rights.⁸ When the United Nations Security Council endorsed military force during the Balkan wars of the 1990s, the focus of sovereignty shifted from that of the state to that of individuals. As Boutros-Ghali emphasized, “the time of absolute sovereignty has passed ...” and has never in fact been a reality due to divine law, religious practices and natural law.⁹ Annan talks of two concepts of sovereignty; that of the states and that of the people. Though he says that sovereignty is still the essential ordering principle, “it is the people’s sovereignty rather than the sovereign’s sovereignty,” further underlining the shift from states to individuals.¹⁰

Thus a broader concept of sovereignty has emerged “from the changing balance between states and people as the source of legitimacy and authority” dealing with not only sovereignty as the rights of states, but also as what Francis Deng calls the responsibilities of states, which stipulates that when states cannot provide protective or lifesaving assistance to its citizens, the state is obligated

8 Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World* (Malden, Massachusetts: Polity Press, 2007), 18-23.

9 Boutros Boutros-Ghali, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*, June 17, 1992, <http://www.un.org/Docs/SG/agpeace.html> (accessed May 26, 2012).

10 Kofi Annan, “Two concepts of sovereignty,” *The Economist*, September 18, 1999, <http://www.un.org/News/ocsg/sg/stories/kaecon.html> (accessed May 26, 2012).

to seek and accept aid. There is an international obligation to act should the state deliberately refuse or obstruct this process.¹¹ Or, as Betts puts it, “there [is] an increasing recognition that where an individual’s country of origin is unable or unwilling to ensure his or her access to a certain set of basic rights, then there is a wider international responsibility to ensure that such individuals or groups receive protection.”¹² Additionally promoting this is the principle of non-refoulement which prohibits states from returning refugees to any place where they may face persecution. By constraining the capacity of the state in its ability to deport the refugee via the concept of non-refoulement, the rights of the individual are increasingly enhanced with respect to the rights of the state.

A duty of care is therefore first owed to the individual by the state claiming jurisdiction. When the state ceases to be able or willing to provide this care, the responsibility then shifts to the international community. This has occurred in the past when the United Nations Security Council (UNSC) authorized the Secretary General to address the critical needs of displaced Iraqis in the aftermath of the First Gulf War. This led to the establishment of a safe haven in northern Iraq to protect the Kurdish population that had been a target of Saddam Hussein’s military crackdown in response to a rebellion launched by “disaffected groups.”¹³ This occurred again in 2011 when the UNSC urged the Qaddafi regime of Libya to meet its “responsibility to protect” its citizens and later authorized air-strikes citing the right to protect doctrine.¹⁴

The citizens of North Korea are owed certain provisions granting them the ability to lead a fulfilling life. By failing to protect the interests of its own citizens, the international community at large has a responsibility to act. As North Koreans cross the border into China, that responsibility largely falls on China because the refugees have become subject to Chinese authorities by virtue of being inside of China’s borders. Other states and non-state actors such as the United Nations and the United Nations High Commission for Refugees also share the obligation of protection, but China first and foremost has the obligation to ensure these defectors having crossed the border are not forcibly repatriated. Though China has responded to critics by claiming Chinese policy a domestic matter of juridical sovereignty, the reality is that sovereignty does not inoculate a state from its international obligations. China therefore has a respon-

11 Weiss, *Humanitarian Intervention*, 18-22.

12 Betts, *Forced Migration and Global Politics* (Malden, Massachusetts, 2009), 2.

13 UNHCR, “The State of the World’s Refugees 2000: Fifty Years of Humanitarian Actions,” UNHCR: 200, <http://www.unhcr.org/3ebf9bb50.html> (accessed June 03, 2012).

14 “The Lessons of Libya,” *The Economist*, May 19, 2011, <http://www.economist.com/node/18709571> (accessed June 3, 2012).

sibility to follow the proper protocols of international conventions and treaties to which it is a party when handling border crossers.

To Be a Refugee

One of the biggest challenges in refugee dialogue is determining who is and who is not a refugee. Surely not all migrants crossing international borders can or should be granted asylum, but how do the international community and receiving state determine who is deserving of protection and who is not? To call this a challenging task would oversimplify the degree of difficulty in assessing each claimant's reasons for exodus. Myron Weiner best illustrates this notion:

What would be an appropriate moral response to a boatload of Bosnians landing on the US Coast in search of asylum from their violent homeland? What if the boat contained Chinese claiming asylum on the grounds that their government forbids them from having more than one child? Or unemployed Ghanaians looking for jobs? Or Iraqi Kurdish families concerned about the future of their children? Or Chakmas from Bangladesh who had been pushed off their land? Or Haitians impoverished by a depressed economy and afraid of violence from local thugs? Should some be admitted and some repatriated, depending on the reasons for their migrations, or should they all be admitted because they underwent hardships coming long distances by sea?¹⁵

These several hypothetical circumstances demonstrate the daunting charge of determining what constitutes a refugee. Guy S. Goodwin-Gill states that a refugee is “in ordinary usage...someone in flight, who seeks to escape conditions or personal circumstances found to be to be intolerable.”¹⁶ Though Goodwin-Gill acknowledges that the reason for flight may vary,¹⁷ he argues that implicit through it all is an “assumption that the person concerned is worth of being, and ought to be, assisted, and, if necessary, protected from the causes and consequences of flight.”¹⁸

15 Myron Weiner, *The Global Migration Crisis: Challenges to States and Human Rights*, (Addison-Wesley Educational Publishers, 1995), 160.

16 Guy S. Goodwin-Gill, *The Refugee in International Law*, (New York: Oxford University Press, 1996), 3.

17 Reasons for flight Goodwin-Gill mentions include oppression, threat to life or liberty, prosecution, deprivation, grinding poverty, war or civil strife, and natural disasters such as earthquakes, floods, droughts, or famines.

18 Goodwin-Gill, *The Refugee in International Law*, 3.

Article 1a of the 1951 Convention on the Status of Refugees defines refugees as people who “owing to a well-founded fear of persecution, on the grounds of race, religion, nationality or membership of a social group, find themselves outside their country of origin, and are unable or unwilling to avail themselves of the protection of that country.”¹⁹ This stems from article 14(1) of the Universal Declaration of Human Rights which “recognizes the right of persons to seek asylum from persecution in other countries.”²⁰ Though this definition is limited in scope to persons persecuted for political reasons, the 1969 Organization of African Unity (OAU) Convention protracted the definition of refugee to include persons “who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”²¹ This definition extends protection to refugees who have fled their homes due to violence induced by inter-state wars or invasion of their country by a foreign military force. The 1984 Cartagena Declaration in Latin America goes even further and “includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”²² Not only are persecution and external aggression viable reasons for flight, but now also are internal conflicts, such as civil wars, as well as “massive violation of human rights” such as extrajudicial detentions or killings by the state.

It should be noted that in both the OAU and Cartagena Declarations, the phrase “events seriously disturbing public order” arises. This allows for leeway granting asylum to those forced migrants whose tribulations are not specifically detailed in the aforementioned conventions. Betts acknowledges, in addition to conflict-induced internal displacement, two such circumstances causing serious public disorder. The first is what he dubs “development displacement.” This occurs when development projects, such as the construction of dams, force

19 UN General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, <http://www.unhcr.org/refworld/docid/3be01b964.html> (accessed May 26 2012).

20 Ibid.

21 Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, September 10, 1969, <http://www.unhcr.org/refworld/docid/3ae6b36018.html> (accessed May 26, 2012)

22 Americas—Miscellaneous, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama*, November 22, 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html> (accessed May 26, 2012).

people to leave their homes.²³ One example he notes is the construction of the Three Gorges Dam on the Yangtze River in China which has displaced and adversely affected the lives of hundreds of millions of people.²⁴ Other types of projects include urban development and transportation projects. The second circumstance Betts cites as potentially causing public disorder is “environmental displacement.”²⁵ Not only can desertification and sinking islands induce movement, but it also results in increased competition for land and resources which can ultimately lead to internal violence and civil war. Betts also mentions natural disasters such as the tsunami in Sri Lanka in 2004 and Hurricane Katrina in the United States in 2005. Under Betts’ categories, North Korean defectors would therefore qualify for refugee status due to the starvation of more than 2,000,000 North Koreans as a result of the “failure of the centralized agricultural and public distribution systems operated by the government of North Korea.”²⁶ The starvation of these people is a direct result of failed development policies which has induced their movement across international borders. It can also be attributed to the mid-nineties famine which claimed as many as 1,000,000 lives.²⁷ Poverty, therefore, has acted as a two-way coercive mechanism in not only coercing flight, but also coercing political loyalty as benefits regarding food, education, employment, health-care and other necessities crucial to livelihood are dependent upon loyalty to the Kim regime. Even if North Korean refugees have not endured some of the human rights abuses detailed in the following section, they still must be considered as refugees for they are victims of social engineering designed to extract political loyalty through means of poverty and starvation. These are circumstances that warrant consideration by both the UNHCR and also Chinese authorities when conducting refugee status determination of “economic migrants.” The following section will detail rights abuses taking place inside North Korea that must also be considered when determining the fate of North Korean defectors.

23 Alexander Betts, *Forced Migration and Global Politics*, 8-9.

24 Harold Thibault, “China’s largest freshwater lake dries up,” *The Guardian*, January 31, 2012, <http://www.guardian.co.uk/environment/2012/jan/31/china-freshwater-lake-dries-up> (accessed October 28, 2012).

25 Betts, *Forced Migration and Global Politics*, 10.

26 108 Congress, North Korean Human Rights Act.

27 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response* (US Committee for Human Rights in North Korea: 2006), 26.

Human Rights in North Korea

North Korea is a minefield of human rights violations. These abuses have been documented for decades by the United Nations and international human rights groups.²⁸ UN special rapporteur for North Korea Marzuki Darusman described the situation as “dire” and has reported civil, cultural, economic, political and social rights as non-existent.²⁹ North Koreans caught in China are rounded up and forcibly repatriated where they are incarcerated in re-education camps. Inside these camps, they are treated as traitors and “corporal punishment, forced labor and other human rights abuses are rampant.”³⁰ Since the death of Kim Jong-il, his son and new leader of North Korea Kim Jong-un has publicly stated that he would “eradicate three generations of a defector’s family.”³¹

The Pyongyang government holds an estimated 200,000 political prisoners among a network of labor camps across the country.³² Well over 100,000 prisoners have died in these camps over the past forty years.³³ Guards of these prison camps are known to enjoy systematically “torturing those under their control [and] play sadistic games with them.”³⁴ In addition to routine starvation, forced labor, beatings, torture and executions, forced abortion is also frequently carried out on women prisoners who are impregnated by Chinese men after crossing the border and later repatriated to North Korea.³⁵ Reports of medical experimentation on prisoners have also emerged.³⁶ The most brutal punishments, however, appear to be reserved to those attempting to defect.

Defectors sent back to North Korea are subject to interrogation by the City or County Security Agency.³⁷ Those exiting the country illegally for economic purposes are sent to labor camps, whereas those found guilty of political crimes against the state are sent to political prisons.³⁸ Economic defectors face a sentence of labor correction of up to two years whereas defectors determined to

28 Geoffrey Nice and William Schabas, “Put North Korea on Trial,” *International Herald Tribune*, April 26, 2012, 6.

29 Ibid.

30 Sang-hun Choe, “China urged not to return escapees to North Korea,” *International Herald Tribune*, February 23, 2012, 4.

31 Hee-jin Kim, “One-time defectors say repatriation could be fatal,” *Korea JoongAng Daily*, February 24, 2012, 1.

32 “North Korea’s Gulag,” *The Wall Street Journal Asia*, May 17, 2012, 11.

33 David Hawk, “The hidden gulag of the North,” *Korea JoongAng Daily*, April 12, 2012, 9.

34 “North Korea’s Gulag,” 11.

35 Ibid.

36 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 18.

37 Ibid., 19.

38 Kim, “One-time defectors say repatriation could be fatal,” 1.

have crossed the border for political reasons are charged with treason and sent to political labor colonies “where conditions are abysmal, torture is practiced, and death rates are high.” Though North Korea consistently denies the existence of such camps, a mammoth amount of evidence exists to the contrary. Indeed, some inmates are even born and spend their entire lives in prison camps with no knowledge of any other life. Though not guilty of actually committing any crime, they run afoul of the guilt-by-association law that punishes the families of enemies of the state.³⁹ This is akin to modern day slavery and the few that do escape face a long, difficult struggle to reach safety in another country willing to grant asylum. Even if as China claims North Koreans crossing the border are doing so for economic reasons, the reality of the treatment awaiting them upon return is a critical factor that must be considered.

In the next sections, I examine liberal, utilitarian and communitarian philosophies and suggest what an appropriate response to North Korean defectors in China would be under these lenses. I choose these three philosophies in particular because it is the liberal philosophy that the West generally subscribes to, communitarian philosophy that East Asia advocates and it is utilitarian philosophy which seeks the optimal amount of “good” in a society. These three different perspectives will serve to strike a balanced point-of-view.

The Liberal Perspective

Liberal philosophy claims that “individual persons have basic rights.” Among these are free speech, equal protection under the law and political equality.⁴⁰ John Rawls argues that liberty and opportunity should be distributed equally unless an unequal distribution will favor the least well off.⁴¹ This ideology of equality “ensures that people’s fate is determined by their choices, rather than their circumstances.” As Kymlicka states, “part of the idea of being moral equals is the claim that none of us is inherently subordinate to the will of others, none of us comes into the world as property of another, or as their subject. We are all born free and equal.” According to the Rawlsian difference principle, advantages are only just if they improve the position of the least fortunate members in society. Rawls claims a device is needed in order to prevent people from exploiting others due to arbitrary advantages and disadvantages. He calls this the “veil of ignorance” where: “No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution

39 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 18.

40 Michael Goodheart, *Human Rights: Politics and Practice*, (USA: Oxford University Press, 2009), 61.

41 Will Kymlicka, *Contemporary Political Philosophy*, (USA: Oxford University Press, 2001), 55.

of natural assets and abilities, his intelligence, strength and the like... The principles of justice are chosen behind a veil of ignorance.” The idea being, that if nobody knows their place in society, people would choose a society where the least advantaged person is benefited the most among the options available for the least advantaged person could be you or friends or even loved ones. Looked upon in this light, it is easy to understand why Chinese authorities should grant asylum to North Korean defectors seeking refugee status. Behind the veil of ignorance, since nobody knows the place in society he or she will hold, choosing what is best for oneself will bear the same result as impartially choosing what is best for everyone.⁴²

A universal right of emigration is asserted in both the United Nations’ Universal Declaration of Human Rights and the Helsinki Accords.⁴³ The liberal philosopher Anne Dummet argues that the “impeccably liberal right to exit one’s state logically entails a corresponding individual right to enter a new state if the former right is to be effective.”⁴⁴ This is perfectly rational for it is practically impossible for someone to leave one country without entering another, unless one is exiting an island nation, in which case the only way to not enter another country would be to drown in the ocean. Yet even then, Peter Singer’s “drowning child” argument comes in to play which states that “if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it.”⁴⁵ Singer makes his point by arguing that if we walk past a pond with a drowning child in it, we are morally obligated to save the child since we sacrifice nothing that is comparably important of our own. Since North Koreans have the universal right to leave their own country, the liberal argument suggests that they also have the right to enter another country. Should they come across hardships in the process, such as hunger, illness, disease, or detention, it is the obligation of the international community to provide aid and comfort not only since nothing “comparably important” is lost, but also due to the fact that a person’s birthplace is arbitrary (or as Rawls would put it, a circumstance rather than a choice). As Gibney asks, “Why should something so arbitrary as where one is born determine where one should be allowed to live?”⁴⁶ From the liberal perspective, it should not; in order for those of us to justify living with the advantages of certain freedoms, we

42 Ibid., 58-65.

43 Weiner, *The Global Migration Crisis*, 171.

44 Matthew J. Gibney, “Liberal Democratic States and Responsibilities to Refugees,” *American Political Science Review* 93:1 (March 1999), 172.

45 Peter Singer, “Famine, Affluence, and Morality,” *Philosophy and Public Affairs*, 1:3 (Spring 1972), 231.

46 Gibney, 172.

must ensure that the least fortunate benefit from these advantages as well. Thus, from the liberal point-of-view, there is a moral obligation to provide assistance to those fleeing North Korea.

The Utilitarian Perspective

Utilitarianism claims that the morally right act is that which produces the best, the most “utility,” for the greatest number of people in society. In reference to refugees, Gibney states that equal consideration of all interests must be considered and “that in a conflict between the interests of refugees and those of citizens, the more fundamental interests should take precedence of the less fundamental.” He then puts forth a cost-benefit argument and says that states are obligated to admit refugees until there is equilibrium between marginal utilities gained and marginal cost incurred, considering the benefit and cost of both the refugees and citizens. States should therefore admit refugees up to the point where “the costs... of admitting one more individual would be greater than the benefit to the individual concerned.”⁴⁷

Under utilitarian philosophy, China should admit and protect the North Korean defectors. The benefits gained to the refugees far outweigh any cost incurred by Chinese society as a whole, especially considering that many of the refugees may either stay among the *choseonjok* communities,⁴⁸ working for sub-par wages for as little as a dollar a day, or are looking to reintegrate into South Korea. While the Chinese welfare system may be minimally impacted, torture, starvation and death await the North Koreans if sent back. Any cost incurred by the Chinese government therefore pales in comparison to the cost the refugees face upon returning. On the other side of the coin, however, were China to suddenly allow a massive influx of refugees, it could lead to the collapse of the Pyongyang government, similar to when East German refugees were allowed to defect to West Germany via Hungary. It could perhaps create more utility by maintaining a more secure border in order to prevent the region from destabilizing. Speculating on what might happen, however, is not a valid reason for denying definite utility to those most in need. Furthermore, given the North’s consistently erratic behavior, such as the sinking of the *Cheonan*, the shelling of Yeongpyeong-do Island, and various nuclear tests and rocket launches, the sensible way to gain maximum utility is to aid in the collapse of the Pyongyang government by allowing massive refugee flows across the Chi-

47 Ibid., 171.

48 *Choseonjok* refers to communities of Chinese citizens of Korean decent in northeast China.

nese border. Even if the regime does not collapse, thousands of oppressed people will be liberated; if the North Korean government does collapse, even more oppressed people will be liberated. Potential instability (including violence) is merely one interest to consider among many in a calculation that equally cogitates the needs and desires of both members and strangers of a society.⁴⁹

The Communitarian Perspective

Communitarianism claims “political philosophy must pay more attention to the shared practices and understandings within each society.”⁵⁰ In communitarian thought, the needs of the community come before the needs of the individual, and the needs of each community are different, thus outsiders have no right to pass judgment on what is right or wrong. It is the rights of the group that triumph over the rights of the individual. Membership in this community is the primary good members choose to distribute and it is the members who decide whom to admit.⁵¹ As Gibney puts it, “the communitarian emphasis on the role that cultural communities play in shaping the lives of men and women has important implications for state claims to control entrance.”⁵²

Walzer uses the analogy of clubs to illustrate this notion. Clubs have admissions policies just like countries. Qualifications, categories for admission and exclusion, and quotas are established when considering whom to admit. Members are thus chosen by those who were members before them. The decisions, rules and regulations, therefore, are determined not by a single individual but by the community as a whole. Walzer also describes a concept of mutual aid to those in need. He argues that mutual aid transcends political, cultural, religious and linguistic frontiers and that positive assistance is required if urgent care is needed and “if the risks and costs of giving [aid] are relatively low.” He goes on to say that it is not necessary to house the stranger except briefly and there is no need to associate with the stranger for the rest of his life.⁵³

In applying this philosophy to refugees in general and North Korean defectors in particular, it makes little sense for China not to offer aid to the refugees because the refugees are not seeking membership into Chinese society but merely a path to the South or another third country. Indeed, it is the intent of

49 Gibney, 172.

50 Kymlicka, *Contemporary Political Philosophy*, 209.

51 Michael Walzer, *Spheres of Justice*, (Basic Books: September, 1984), 31-32.

52 Gibney, 172.

53 *Ibid.*, 33-41.

most North Koreans to eventually resettle in the South.⁵⁴ Furthermore, none of the safe houses providing shelter to North Korean defectors along the Underground Railroad are intended for permanent stays by defectors as they stop and rest only a little while before continuing on their way. Nothing in communitarian philosophy offers a legitimate reason for turning back these North Korean refugees. Critics might argue that several thousand will try to stay in China and thus upset a cultural, linguistic and ethnic balance, but this is a fallacious argument due to firstly China not being a uniquely cultural, linguistic, or ethnic state and secondly to the fact that the majority of those who do stay in China remain among the already established Korean-Chinese communities. Indeed, though North Korean refugees may be dependent on Chinese nationals for survival, 88 percent of refugees receive direct support from the Korean-Chinese community and 75 percent live within the Korean-Chinese community.⁵⁵ What this means is there is little to no strain on Chinese welfare or drastic change in the demographic makeup of Chinese communities.⁵⁶ Likewise, Walzer's club analogy over simplifies the situation. He is correct in saying that exiting a club does not grant the right to enter a new club; however as discussed earlier, it is virtually impossible to exit a state without entering a new one.

Walzer even recognizes that refugees are owed a special status, saying that "Surely, they should not have been forcibly returned—not when it was known that they would be murdered."⁵⁷ Though he is referring to refugees from the Soviet Union, the same principle is applicable to North Koreans arrested in China. As discussed earlier, those returned to North Korea are sent to detention centers where they face inhumane conditions in either labor or prison camps. Walzer goes on to say:

that the processes through which a democratic state shapes its internal life, must be open, and equally open, to all those men and women who live within its territory, work in the local economy, and are subject to local law.... Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given

54 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 10.

55 *Ibid.*, 21.

56 It is uncertain, however, how a sudden influx would impact the Korean-Chinese community. While a valid point, it falls out of the scope of this paper which currently addresses the impact on Chinese society as a whole as that is what Communitarian philosophy emphasizes, as opposed to sub-societies. For further overview of Communitarianism, see Will Kymlicka's *Contemporary Political Philosophy*, pages 208-283.

57 *Ibid.*, 51.

a say, and ultimately an equal say, in what that authority does.... The determination of aliens and guests by an exclusive band of citizens... is not communal freedom but oppression.... The rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history.⁵⁸

North Korean defectors detained on Chinese soil are therefore either subject to Chinese authority, or they are not. If they are not, then they should be freely allowed to pass. If they are, then they should be given an equal say in determining how they are handled. This means access to legal counsel or a representative of the UNHCR. Deporting them back to North Korea without doing so is analogous to convicting them without the due process of a trial. Alternative to a trial, which would bear a cost on Chinese public expenditures, is allowing the refugees to seek asylum. The UNHCR, not China, would bear this cost, as it is the UNHCR which conducts refugee status determinations in China through its Beijing and Hong Kong offices.⁵⁹

Walzer recognizes that communities have responsibilities of “mutual aid” to refugees as they are persons constituting dire need and assistance. Though the mutual aid argument would claim China is by no means obligated to shelter and associate with the refugees forever, it is of no consequence for the majority of North Korean refugees plan on only temporarily residing in China before moving on to a third country, thus satisfying Walzer’s criteria of only briefly caring for the non-Chinese strangers.⁶⁰

Walzer also argues that a community has “obligations of the same sort that [it has] toward fellow nationals. This is obviously the case with regard to any group of people whom we have helped turn into refugees.”⁶¹ China, the United States, Russia and Japan all share responsibility in this manner due to the fact that each state had a hand in creating the divided Korea there is today. The Soviet Union and United States occupied the Korean peninsula following the surrender of Japan at the conclusion of WWII. Directly due to Japanese colonization, competing governments were installed which eventually culminated in the Korean War. The warring parties included not only North and South Korea, but the United States and China as well. Without Chinese involvement in the Korean War, there would be no North Korea. Though this historical “what if” is

58 Ibid., 60-61.

59 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 37.

60 Ibid., 14.

61 Walzer, *Spheres of Justice*, 49.

debatable depending on how strong a theoretically sovereign Korea would have been, the fact of the matter remains that the aforementioned chain-of-events did occur, resulting in a divided Korea. In keeping with communitarian philosophy, China, as well as the US, Japan and Russia (and arguably, the UN), therefore owes a duty to North Koreans defecting through China for it was their actions and interventions that both created a partitioned peninsula and enabled the Korean War to result in a stalemate between the two sides and thus prolonged the life of the Kim dynasty. The United States, for its part, supports Seoul's measures to support the North Korean defectors. US undersecretary for civilian security, democracy and human rights Maria Otero stated that the United States shares the concerns Korea has over the treatment of the "refugees and asylum seekers from the DPRK in third countries."⁶² The United States has also passed the North Korean Human Rights Act of 2004, which states among its purposes "to promote respect for and protection of fundamental rights in North Korea."⁶³ Additionally, the North Korean Adoption Act of 2012 has been passed which allows for the adoption of stateless, North Korean orphans who have escaped to a third country by United States citizens.⁶⁴ Japan has likewise passed legislation with the aim to "deter human rights abuses" in North Korea and to "endeavor... to provide protection and assistance to defectors from North Korea."⁶⁵ Russia, for its part, has an established protocol to help North Korean defectors proceed to Seoul via humanitarian perspectives through consultations with the United Nations High Commissioner for Refugees. North Korea often sends loggers to eastern Siberia to earn hard currency. There have been numerous defections by the loggers, fleeing from the logging camps in search of freedom. The process of Russia sending the defectors to South Korea is well institutionalized based on the United Nations standards.⁶⁶ The United Nations has also passed resolutions 2003/10 and 2004/13 condemning rights violations inside the DPRK and call-

62 Yoon-mi Kim, "Pressure mounts on China over N.K. defectors," *The Korea Herald*, February 29, 2012, 1.

63 108th Congress of the United States of America, H.R. 4011, North Korean Human Rights Act of 2004, January 20, 2004, <http://www.gpo.gov/fdsys/pkg/BILLS-108hr4011enr/pdf/BILLS-108hr4011enr.pdf> (accessed October 28, 2012).

64 112th Congress of the United States of America, H.R. 1464, North Korean Adoption Act of 2012, September 12, 2012, <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1464rfs/pdf/BILLS-112hr1464rfs.pdf> (accessed October 28, 2012).

65 Life Funds for North Korea, "Outline of North Korean Human Rights Act (From Japanese Law)," <http://www.northkoreanrefugees.com/2007-08-nkhr-act.htm> (accessed October 28, 2012).

66 Min-uck Chung, "Russia more flexible than China on N. Korean defectors," *The Korea Times*, April 26, 2012, http://www.koreatimes.co.kr/www/news/nation/2012/01/116_109742.html (accessed May 27, 2012).

ing for state authorities to abide by their international obligations.⁶⁷

No matter which philosophy is used in the argument regarding North Koreans fleeing into China, all roads lead to the same destination; that is asylum. Having discussed the matter of North Korean defectors being forcibly repatriated through the human rights framework of liberalism, utilitarianism and communitarianism, I will illustrate in the next section how the North Korean state uses entitlement rights and poverty as a coercive mechanism to impose political loyalty to the Kim regime.

Poverty as a Coercive Mechanism

North Korea co-opts its elites to protect itself from a coup. Economic rewards are distributed not to the country as a whole, but to a few politically important “selectorate.”⁶⁸ As a command economy heightens dependence on the regime, co-opting elites, rewarding those loyal to the state, shifts the brunt of economic hardship to the opponents of the state, those perceived as disloyal. North Korea’s social engineering has divided society into three classes—the core, wavering and hostile. “At the top is the working class with family members who fought against Japan or South Korea. The bottom caste includes those with relatives who had been landed elites or Japanese collaborators, who fought for the South, or who were judged as disloyal to Kim Il-Sung.” Class in North Korea determines where one lives, the amount of food one receives to eat, and also employment opportunities. Those deemed disloyal to the regime are banished to the country side or imprisoned in camps where rates of malnutrition are high and where most of the famine deaths occurred. Political loyalty, on the other hand, is rewarded with safe and desirable jobs, comfortable housing and higher quality of food. Indeed, during the mid-nineties famine, Kim Jong-Il used the class system to transfer the burden to those considered disloyal.⁶⁹ This type of social construction is a means of economic warfare that the Kim regime uses to stay in power.

The North Korean constitution promises its citizens material well-being. Each person is guaranteed “food, housing, clothing, basic education, employment and health care.” Enormous failures of the Kim regime’s economic projects, however, resulted in negative economic growth throughout the 1990s.⁷⁰

67 108 Congress, North Korean Human Rights.

68 Daniel Byman and Jennifer Lind, “Pyongyang’s Survival Strategy: Tools of Authoritarian Control in North Korea,” *International Security* 35:1 (Summer 2012), 58.

69 *Ibid.*, 60-62.

70 Christie and Roy, *The Politics of Human Rights in East Asia*, 257.

Large scale border movements have also been attributed to famine that has struck the region since the mid-1990s. Andrei Lankov calls the Great Famine of 1996-1999 the “worst humanitarian disaster since the end of the Korean War.”⁷¹ Ordinary citizens were reduced to eating tree-bark soup, rats and insects in order to consume enough daily calories to survive. The World Food Program estimates more than 6 million people do not have enough to eat.⁷² Based on interviews conducted with North Korean refugees hiding in China, Chang et al found that the vast majority of those leaving North Korea stated hunger and the search for food was their primary reason.⁷³ Though this would appear to support China’s claim that North Koreans in China are economic migrants, famine situations are a result of North Korea’s economic warfare it has routinely waged against its citizens.

All economic assets are under state ownership in North Korea. Additionally, the North Korean government has outlawed markets and all economic activity is subject to central planning. This means that the North Korean people are reliant upon the government for food, which is distributed through the Public Distribution Service (PDS). Before the famine, however, the PDS delivered food to only 60 percent of the population; after the famine struck, this number was reduced to six percent. The North Korean government has clearly failed in its constitutional obligations to provide food to its citizens. This is intentional, though, because “economic circumstances in North Korea, as well as the distribution of food, are very closely tied to the political order.” This is not surprising, however, as Chang notes that “family background is a key determinant of life in North Korea.”⁷⁴

North Korea has divided its population into three distinct categories; core supporters of the government, the basic masses and an impure class. Economic opportunities and access to food are divided among these classes:

Those lucky enough to be considered as “core” supporters of the government, such as party members or families of war martyrs, are given preferences for educational and employment opportunities, allowed to live in better-off areas, and have greater access to food and other material goods. Those with a “hostile” or disloyal profile, such as relatives of people who collaborated with the Japanese during the

71 Andrei Lankov, “North Korean Refugees in Northeast China,” *Asian Survey* 44: 6 (November/December 2004), 857-859.

72 “North Korean shares his life story,” *The Korea Herald*, February 26, 2012, 13.

73 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 19.

74 *Ibid.*, 16-26.

Japanese occupation, landowners, or those who went south during the Korean War, are subjected to a number of disadvantages, assigned to the worst schools, jobs and localities, and sometimes winding up in labor camps.⁷⁵

Chang's research indicates that 75 percent of refugee respondents were among the "wavering" class and 8-12 percent from the "hostile" class. This is clear evidence that the 1951 Convention applies to North Korean refugees in China as they are part of government-constructed political and social groups that are specifically targeted by the government with regards to food distribution in addition to economic opportunities. As Chang explains, nearly everyone in North Korea is dependent upon the PDS for basic food rations. Yet access to these food supplies, "including domestic agricultural production, imports and aid is determined by status, with priority given to the government and ruling-party officials, important military units, and urban populations." This further illustrates the discriminatory economic policy the Pyongyang government implements against its ordinary citizenry in order to repress economic entitlement rights of the masses.⁷⁶ By not being members of the elite, Worker's Party, or military, the majority of North Korean people are subsequently deprived of their constitutionally guaranteed entitlement to food, even if it is available via aid or government distribution. As Kurlantzick and Mason put it, "food is distributed by the North Korean regime based on political loyalty, which means that the famine and subsequent food shortages have had an element of persecution."⁷⁷

The 2009 currency reform is another example of economic policy designed to deny entitlement rights. In November of 2009, North Korea revalued its currency to "crack down on burgeoning private markets and [revive] socialism."⁷⁸ While it is not uncommon at all for a state government to intervene in its market and revalue its currency in order to gain price stability or combat inflation, North Korea went beyond this sort of control and limited the amount of money people could exchange. In capping the amount of old notes people could trade for new notes the North Korean government effectively wiped out a substantial amount of private savings and wealth its citizens had accumulated. Additionally, the limited amount of currency citizens were allowed to exchange was

75 Ibid.

76 Ibid., 15-28.

77 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 41.

78 Marcus Noland, "Currency reform may unsettle North Korean leadership," *BBC*, February 05, 2012, <http://news.bbc.co.uk/2/hi/8500017.stm> (accessed June 03, 2012)

barely enough to purchase a 50 kilogram sack of rice.⁷⁹

The abolition of markets is another state policy preventing North Koreans from attaining basic necessities for life. Though Pyongyang implemented economic policies decriminalizing markets in response to the spontaneous rise of an underground market economy in response to the mid-1990s famine, it reversed these reforms in the fall of 2005 and banned the private trade of grain.⁸⁰ Since the death of Kim Jong Il, market controls have somewhat loosened. As Kim Jong Eun consolidates his power, however, there remains the risk that these market freedoms will once again be rescinded. There are also rumors that another currency redenomination will soon take place.⁸¹

A documented history of waging economic warfare against its citizens is evident. North Korean economic policies rob people of any entitlement rights they can hope to attain. Crossing into China for food and work has therefore become a means of survival and for China to simply label them economic migrants oversimplifies the matter. China insists, however, that North Korean refugees are economic migrants similar to Mexican nationals crossing the US border for work. In asserting this position, China takes a blind eye to the fact that Mexico is a representative democracy that does not imprison, torture, or kill its deported citizens. Moreover, neither does Mexico wage intentional economic warfare against its people. In fact, Mexico “celebrates its emigrants and remittances they send home.”⁸² Mexico also does not criminalize the act of exiting the country as North Korea does. I now wish to focus on the legal framework China is contained in and discuss why China cannot repatriate North Korean defectors even if they are, as China deems, economic migrants.

A Legal Case for Economic Migrants

China staunchly denies that North Korean defectors in China are refugees, opting instead to label them illegal economic migrants. It is very possible that North Koreans in China are economic migrants. This, however, is not sufficient grounding to forcibly repatriate them. As explained above, the citizens of North Korea have routinely been denied their domestic and international rights as both North Koreans and human beings. The state has not only failed to protect its citizens’ basic needs, but has also waged continuous economic warfare against them, thus stripping its citizens of their economic well-being and entitlement

79 Ibid.

80 Ibid., 16.

81 Mi Jin Kang, “Free Market Policy Raising Public Expectations,” *DailyNK*, June 21, 2012.

82 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 73.

rights, and used poverty as a mechanism to coerce political loyalty. These reasons, juxtaposed to the egregious human rights conditions North Koreans face upon being repatriated, and also that China is a signatory to the 1951 Convention Relating to the Status of Refugees, Convention Against Torture and Universal Declaration of Human Rights are why North Korean defectors cannot be denied asylum status on the grounds that they are economic migrants.

1951 Convention Relating to the Status of Refugees

Even without the famines and economic warfare, North Koreans in China still have the right to refugee status. China is a signatory to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocols. Article 31 states that:

The contracting states shall not impose penalties on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.⁸³

Even if North Korean defectors enter Chinese territory illegally, as a “contracting state,” China cannot lawfully repatriate them back to North Korea. As article 33 states,

No contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.⁸⁴

As discussed above, North Korea has criminalized the act of exiting the state, even when the motives are purely for economical and survival purposes.⁸⁵ Kurlantzick and Mason explain that “the punishment of persons returned from China is both so severe and so closely related to one or more Convention grounds, that it clearly in itself gives rise to a refugee claim.” They explain the Convention grounds being political opinion, religious and racial as defection is considered

83 UN General Assembly, *Convention Relating to the Status of Refugees*.

84 *Ibid.*

85 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 22.

treasonous, persons coming in contact with Christians while in China receiving more severe punishments, and the forced abortions on pregnant women due to the presumptions that the babies they are carrying are Chinese.⁸⁶

Convention Against Torture

China is also a signatory to the Convention Against Torture. Article 1 defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁸⁷

Article 3 goes on to state that:

No party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.... For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁸⁸

China, as a party to the Convention Against Torture, consequently has a duty to ensure that any foreigner it forcibly repatriates will not face torture for any extrajudicial reasons, such as searching for food. What is important to note here is that the onus of determining whether or not returned North Koreans face tor-

⁸⁶ Ibid., 44-45.

⁸⁷ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, <http://www.unhcr.org/refworld/docid/3b00f224.html> (accessed June 03, 2012).

⁸⁸ Ibid.

ture falls on China, the host country. Yet China routinely returns North Koreans without giving them any chance at all to make a claim for asylum.⁸⁹ China even offers rewards to those who turn in North Korean refugees and imposes fines against those found supporting illegal entrants.⁹⁰ Chinese authorities have consistently maintained since the famine of the mid-1990s that no North Koreans are refugees. As Kurlantzick and Mason bluntly put it, by considering all North Koreans economic migrants, China is “attempting to define the North Koreans out of the Convention.”⁹¹

Universal Declaration of Human Rights

The Universal Declaration of Human Rights, though not binding, has been ratified by the United Nations General Assembly, of which China is a member and thus has an obligation to uphold. Article 14(1) clearly states that everyone has the right to seek asylum in other countries from persecution.⁹² Also among these human rights deemed international by the UN are various rights that the Chinese government violates when it forcibly repatriates North Korean defectors without allowing them to apply for asylum status, such as article 3, which states that “everyone has the right to life, liberty and security of person;” article 5, which states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;” article 7, which states that “all are equal before the law and are entitled without any discrimination to equal protection of the law;” article 9, which states that “no one shall be subjected to arbitrary arrest, detention or exile;” article 10, which states that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations;” article 11, which states that “everyone charged with a penal offence has the right to be presumed innocent until guilty according to law in a public trial at which he has all the guarantees necessary for his defence;” article 13, which states that “everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own;” and article 28, which states that “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁹³

89 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 19.

90 Tanaka, “North Korea: Understanding Migration to and from a Closed Country.”

91 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 37.

92 UN General Assembly, *Universal Declaration of Human Rights*, December 10, 1948, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3712c&skip=0&query=universal%20declaration%20of%20human%20rights> (accessed June 03, 2012).

93 Ibid.

Saving Face

Both China and North Korea have more than their fair shares of human rights issues. China, as an emerging world leader and super power, is obligated at the very least to meet international standards with regards for human rights, if not raise the bar. China's response to human rights violations have always been that human rights are a domestic matter and that other states should not interfere with China's internal affairs. Indeed, China has a long standing policy itself "of not interfering with the internal affairs of other countries."⁹⁴ The United Nations Charter, however, claims as its purposes:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in the conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and to be a center for harmonizing the actions of nations in the attainment of these common ends.⁹⁵

By ratifying the UN Charter, China "can no longer claim that such matters are exclusively domestic."⁹⁶ The issue of human rights has been elevated to the international sphere and China thus is responsible for protecting human rights—outside as well as inside their borders. China cannot use its own sovereignty or North Korea's sovereignty as an excuse to not aid North Korean defectors crossing the border. To fail to do so constitutes a gross violation of human rights. Additionally, by crossing the border and pleading for help, the defectors are effectively inviting intervention, thus the principle of non-interference cannot be

94 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 50.

95 United Nations, *Charter of the United Nations*, October 24, 1945, http://www.unhcr.org/refworld/topic_459d17822_459d179e2_3ae6b3930_0.html (accessed June 03, 2012).

96 Weiss, 17.

used as a sufficient excuse to ignore the very real dangers North Koreans face upon return.

China, however, has a long history of human rights abuses not only regarding North Korean defectors but also among its own people and often comes down hard on those who attempt to expose such abuses. Ni Yulan, a Chinese housing activist, was recently sentenced two years and eight months in prison.⁹⁷ Police beat her so severely in custody that she is now confined to a wheelchair.

Democracy activist Liu Xiaobo is serving an eleven-year prison sentence for subversion of state power, a charge that “came after he helped write a manifesto, called Charter 08, calling for political reforms.”⁹⁸ His wife, Liu Xia, is under house arrest despite never having been formally arrested, charged, or convicted of any crime.⁹⁹

Woesser, a prominent Tibetan writer who has written critically against Chinese policies in Tibet, was also placed under house arrest in March of 2012. Though she has committed no crime, security officers were placed outside of her building to prevent her from receiving a prize from the Dutch embassy for her contribution to development and culture.¹⁰⁰

Chen Guangchen, a blind, self-taught “barefoot” lawyer, served more than four years in prison for charges of disturbing public order. Chen has been an advocate for those with disabilities and has campaigned against forced abortions carried out to maintain China’s one-child policy. Upon being released from prison in 2010, he and his family were confined to their home where they were under surveillance 24 hours a day by plain-clothes guards who reportedly severely beat Chen and his family on multiple occasions.¹⁰¹ Chen escaped house arrest, however, and made his way to the US embassy in Beijing in April 2012. After his escape, China ferociously cracked down on online media outlets and internet searches related to him were blocked in mainland China.¹⁰² Chen subsequently pleaded to Hillary Clinton and the United States for help. China, not wanting the embarrassment of the US admitting a Chinese citizen on grounds of asylum, struck a deal with the US to allow Chen to travel to the United States

97 Josh Chin, “China Jails Housing Activist,” *The Wall Street Journal Asia*, April 11, 2012, 4.

98 Michael Bristow, “Liu Xiaobo: 20 years of activism,” *BBC*, December 09, 2010, <http://www.bbc.co.uk/news/world-asia-pacific-11492131> (accessed June 03, 2012)

99 Jeremy Page, “China Targets Detention Practices,” *The Asia Wall Street Journal*, March 11, 2012, 4.

100 Edward Wong, “House arrest for Tibetan writer in Beijing,” *International Herald Tribune*, March 02, 2012, 3.

101 Josh Chin, “Buzz Increases Chances Chen May Be Exiled,” *The Wall Street Journal Asia*, May 02, 2012, 5.

102 Josh Chin, “China Cracks Down After Chen Escape,” *The Wall Street Journal Asia*, April 30, 2012, 1.

and study at New York University.¹⁰³ The move was hailed as a “face-saving” solution for China.

Though these are but a handful of people with human rights grievances against China, the list could seemingly go on forever. Instead, I wish to point out that the common thread among all of these dissidents is that they were punished for shining a light on China’s proverbial skeletons and bringing awareness to the domestic and international communities. China prefers to keep these matters in house and considers them domestic, internal affairs that outsiders have no business discussing. In regards to the North Korean refugees, Chinese authorities have even gone so far as to express a desire for “relevant parties and individuals [to] stop discussing these issues.”¹⁰⁴ This, along with the fact that China guaranteed the safe passage of Chen Guangchen out of China and to the United States, suggests that China is not immune to pressure. Indeed, China even allowed a handful of North Korean refugees to defect after spending years holed up in South Korean consulates across China.¹⁰⁵ The decision came after a bilateral meeting between South Korean President Lee Myung-bak and Chinese president Hu Jintao.

Conclusion

North Korea has continuously used poverty as a coercive mechanism on its people for several decades. Defectors crossing the border are doing so because they have no other options if they wish to survive. To deny them asylum status simply because they are “economic migrants” not only overlooks the fact that they are trying to improve from absolutely nothing, but is also, for all intents and purposes, a death sentence and ignores the reality that they are economic migrants as a result of economic warfare waged against them by their government. The defectors did not choose to have their entitlement rights stripped from them nor did they choose to be born in a country where the government constantly promotes economic policies that benefit the few at the expense of the many. This, along with the criminalization of exiting North Korea and the severe punishments dealt to those returned are factors that also must be taken into account by authorities when handling North Korean defectors.

Additionally, economic motivations do not alleviate the international com-

103 Michael Wines and Jane Perlez, “China opens doors for dissident to study abroad,” *International Herald Tribune*, May 06, 2012, 1,5.

104 Ramstad, “Seoul Increase Heat On China Over Defectors,” 7.

105 Hee-jin Kim, “China to let 11 refugees in consulates to defect,” *Korea JoongAng Daily*, March 28, 2012, 1.

munity of its duties and responsibilities when refugees are treated as political refugees by the sending state and subject to punishment for defection upon return.¹⁰⁶ Under certain conditions, economic migrants must be granted asylum. Among these conditions is when states use poverty as a coercive mechanism against their peoples. Pyongyang's economic policies have done just this by targeting those deemed less deserving of food and other necessities. By deliberately being denied entitlement rights by their own government and by virtue of the criminalization of exiting North Korea, North Koreans are *prima facie* refugees as soon as they cross the border. It is China's best national interest to aid in the defection of North Korean refugees on Chinese soil. Neither the Chinese national community nor the face of the Communist Party of China is at risk from doing so. Though potential strained relations with North Korea and border instability are real possibilities, any sympathy felt for policy challenges faced by Beijing neither mitigates mistreatment of refugees in the countries to which they flee nor excuses China from its obligations under existing international agreements.¹⁰⁷

Unless the public continues to raise awareness, however, China will not feel pressure to change its policies towards North Korean defectors. As Haggard and Noland suggest, the best means of persuading China to shift its stance is to "appeal to China's growing sense of responsibility in the international community."¹⁰⁸ If China wants to continue to project a positive image of world leadership then it must stand by its commitment made when becoming a signatory to the 1951 Convention, Convention Against Torture and other international documents. Though the West may be in relative decline, it is by no means disappearing and still carries both large sticks and large carrots. Critics may ask why China should do for these North Korean defectors what it does not do for its own people—that is, recognize their rights. This thought process is inherently flawed as it tacitly implies that two wrongs make a right. Just because I do not steal from my neighborhood church, does not mean I should not rob a bank. Denying the rights of one group is not a license to deny the rights of another. The international community, governments and citizens alike, should continue to challenge China's forced repatriation of North Korean refugees in public discourse, for as we have seen with the safe passage of Chen Guangchen to the United States and with the release of the 11 North Korean defectors after bilateral negotiations between Lee Myung-bak and Hu Jintao, both internal and

106 Noland et al., *The North Korean Refugee Crisis: Human Rights and International Response*, 9.

107 *Ibid.*

108 *Ibid.*, 74.

external criticism increase the government's insecurity, and indicate that China is open to exploring face-saving options to correct its current lack of commitment to its international obligations. **YJIS**

