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DIFFICULTIES OF THE HUMAN RIGHTS DISCOURSE

What explains its failure in the case of North Korea?

Dukalskis argues that human rights language has failed with regard to North Korea for three main reasons: lack of information about abuses, historical forces and the de-prioritization of the issue by other states. By diagnosing shortcomings in current human rights discourse, Dukalskis opens the door for further research on rights-based approaches to authoritarian governments.

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The mettle of the human rights discourse is judged on its ability to confront the worst situations the world has to offer. Unfortunately, there is a litany of complex challenges keeping human rights scholars and activists busy, one of which is how to confront strong, centralized governments who regularly flout human rights norms. While there has been much innovative thinking in the human rights discourse¹ on other topics such as minority rights or the rights of internally displaced persons, for example, there is still a severe dearth of effective options available to confront repressive and unresponsive governments.

The Democratic People's Republic of Korea (DPRK), led by Kim Jong-Il, is generally identified as one such government and has been labeled everything from "evil" to an "outpost of tyranny" to "the hermit kingdom." One noted scholar remarked acidly that the general consensus in the American political discourse is that the DPRK is a "rogue-terrorist-communist-Stalinist-totalitarian-Oriental-nightmare."² This thinking does nothing to advance understanding about the problems in

of North Korea, but it makes the point clear: almost nowhere is the DPRK viewed as a human rights-respecting state, yet there is very little that can be pragmatically done. Watchdog and advocacy nongovernmental organizations (NGOs) such as Amnesty International, Freedom House, and Human Rights Watch regularly rate the DPRK as amongst the worst human rights violators in the world, while governmental reports, such as the annual United States Department of State *Country Reports on Human Rights Practices* are equally harsh. Yet we seem to hit a conceptual brick wall in the human rights discourse in cases like this. Offering an immediate solution in this paper would certainly be premature, as there is a deficiency in of analysis as to *why* the human rights language has failed in the case of the DPRK. In an attempt to fill that gap, I will argue that human rights language has failed with regard to North Korea for three main reasons: lack of information about abuses, historical forces, and the de-prioritization of the issue by other states. Through this analysis, I hope to diagnose some shortcomings of the human rights discourse such that further research

may lead to innovations in rights-based approaches to authoritarian governments.

The Foundations of Human Rights Claims:

Access to Information

A common problem of deploying the human rights discourse to pry open closed societies is the relative lack of information. Although this may seem an obvious and innocuous point, it should not be taken lightly given the questionable information on which the United States and United Kingdom, among others, invaded Iraq in 2003. Few doubt that severe human rights violations occur in North Korea, but without access to the country or its people, there is no way to know for sure the condition of human rights in the DPRK. In short, credible human rights claims, aside from general calls for openness, cannot be made effectively without detailed and corroborated information, a luxury that the DPRK is not eager to disseminate. In the void of information, policy makers and the media are easily able to map stereotypes and sound bites onto the imaginative geography of North Korea.³

What little credible information that does exist often has as its main thrust a plea for openness, followed by a specific list of abuses. One of the most recent United Nations Commission on Human Rights resolutions concerning the DPRK was primarily about access for the Special Rapporteur for North Korea and other UN bodies and monitors.⁴ Human Rights Watch, for example, acknowledges that it has no direct access to the country but bases its claims of human rights abuses on interviews with escapees.⁵ Amnesty International notes that the government repeatedly denies entry to UN

officials and human rights monitors.⁶

Furthermore, there are several potential problems with human rights-related information that finally does escape the country. First, there is a lack of systematic understanding of any human rights abuses that may occur in the DPRK due to the refusal of United Nations or NGO monitors. This means that the majority of information comes in the form of anecdotes, one-time observations, or interviews with escapees, rendering it difficult to construct knowledge of systemic patterns. Second, the subjective and often uncorroborated nature of such information lends itself more easily to fraudulent, false, or exaggerated information. Beal documents a handful of high-profile cases that have been exposed as false for political or personal reasons.⁷ Third, some information from outside observers is severely outdated.⁸ Fourth, the relative openness of the Republic of Korea (ROK) juxtaposed against the inaccessibility of the DPRK has meant that attention has been drawn away from the poor human rights record of the North, rendering information that does manage to escape less prone to the international spotlight.⁹ Fifth, much information on the DPRK comes from sources unequivocal in their opposition to the North Korean government, debasing the credibility of such reports.¹⁰ Finally, the information that comes from the DPRK government itself is certainly of questionable credibility given its unwillingness to allow observers and near unanimous agreement amongst watchdog NGOs that the North's human rights record is appalling.

None of these considerations are meant to justify what abuses do occur in the DPRK, but rather to highlight the problematic aspects of

criticizing the human rights record of an ultra-secretive government. It is certainly the case that democratic rights, as conceived in the West, do not exist and it is potentially the case that more violent human rights abuses tied to labor camps or executions take place as well. We cannot, however, be sure about the nature or extent of human rights abuses in the DPRK, and thus we cannot construct reliable claims about specific abuses. To exchange openness for aid and privileges is perhaps the most coherent way to fill the gaps in information and credibility while still pressuring the government. While access to information is a serious impediment to the effectiveness of the human rights discourse in this case, it certainly is not the only difficulty. After all, even with the luxury of verified information about government abuses, such as in Belarus or Russia, the human rights discourse often struggles for other reasons. The real question with regard to North Korea then shifts: even with credible information, what factors would still stifle the effectiveness of the human rights language? I will move on to argue that historical forces and the political priorities surrounding the peninsula are two important obstacles.

*The Role of History: Former Abusers &
the Moral High Ground*

Arguing against the idea that there is one overarching history of humanity, Popper favored the contrasting viewpoint that there is an “indefinite number of histories of all kinds of aspects of human life.”¹¹ In this spirit, the following analysis will not be a comprehensive overview of the history of the DPRK, but rather a historical argument: I aim to analyze particularly relevant aspects of history and

argue that they help render human rights language impotent when coming from particular sources. The most significant of these is the historical construction of enemy relationships with regard to the DPRK, the United States, South Korea, and Japan. Japanese colonialism and the backlash against it, the legacy of the 1950-53 war, and post-war political developments have all played key roles in debasing the legitimacy of human rights pressure on the DPRK. These historical trends have created a climate in which the importance of human rights takes a back seat to suspicion and scorn. In short, the source of human rights condemnation matters as much as the claim itself – criticism of human rights is not apt to be taken well when coming from an “enemy.”

Any attempt to understand the DPRK must begin with Japanese colonialism. Japan occupied the Korean peninsula from 1910 to 1945 and subjected it to vicious colonial rule, dealing especially harshly with perceived communists and armed opposition groups, such as Kim-Il Sung’s Northeast Anti-Japanese United Army in Manchuria, and those who allegedly or genuinely supported them.¹² Upon assuming leadership of the newly formed North Korean nation in 1945,¹³ Kim chose many of his anti-Japanese guerilla comrades to help run the DPRK and by the mid-1950s had ousted rivals for power, solidifying Japan as an enemy of the nation.¹⁴ The institutionalization of such bellicose anti-colonialism can be seen in reports that the DPRK has divided its population into 3 classes: the core class - loyal supporters of the regime, the wavering class, and the hostile class - people who openly oppose the government or who possess credentials which might brand them as enemies,

such as a family history of collaboration with Japanese colonialism.¹⁵ The DPRK's recent history of test-firing missiles into the Sea of Japan and over the Japanese archipelago itself do nothing to mitigate the perception that North Korea does not view Japan kindly.¹⁶

The implications of this contentious of history are manifold, but clear in the case of human rights: in the eyes of Korea, Japan has almost no credibility to exert human rights pressure on the peninsula. This means that an economically powerful and democratic Japan is tied down by its own brutal history, rendering requests for the DPRK to respect human rights or even to honestly and faithfully engage in the six-party nuclear talks ineffective.¹⁷ Although a 2002 summit between Kim Jong-Il and former Japanese prime minister Junichiro Koizumi saw a thawing of hostilities and a surprising admission by Kim that the DPRK had abducted roughly two dozen Japanese for espionage training in the 1970s, relations have since cooled as talk of economic sanctions resurfaced. Furthermore, a resurgence of Japanese nationalism with regard to its wartime past, epitomized by Koizumi's repeated visits to the Yasukuni Shrine honoring Japan's war dead, adds another complex layer to the relationship.¹⁸

Secondly, the 1950-53 Korean War and the tenuous peace that followed still exert influence on negotiations with North Korea. In 1950, the DPRK invaded South Korea and quickly fought the ROK army to the extreme south of the peninsula. The United Nations coalition, led by the US, joined the war and pushed DPRK forces back to near the Yalu River, which today divides North Korea and China. The People's Republic

of China (PRC) joined the war and by July 1951 the fighting had reached a stalemate near the 38th parallel, the sight of today's De-Militarized Zone (DMZ). After two years of continued skirmishes and negotiations, the parties signed an armistice on 27 July 1953.¹⁹ The fighting itself was extremely brutal, with napalm widely used by American forces against North Korean civilians and serious consideration by the American administration of a nuclear option.²⁰ American air bombing destroyed almost the entire urban infrastructure of the North and a significant portion of the population was homeless by the end of the war.²¹ The war and ensuing armistice achieved little progress towards peace or reunification, but rather only made armed invasion a more difficult, if not impossible, route to reunification.²²

The implications of the nasty war and tenuous armistice in the context of Cold War ideological polarization can still be seen on the Korean peninsula. The fact that the armistice line, or DMZ, has come to be commonly understood as the "border" between two distinct nation-states as opposed to a military demarcation line is itself indicative of the influence that the war still exerts. The existence of the DPRK as we know it is a product of years of warfare, and in a very real way, the DPRK still views both the US and South Korea as enemies. This perspective has translated its way into political developments on both sides of the DMZ since 1945, as the constant promise and threat of war has influenced "political thinking and state policy at almost every turn."²³ In this context, it is not surprising that one clearly articulated goal of the DPRK over the past 10 years has been a complete security assurance that the US

will not attack.²⁴ Lest we dismiss this request as the simple self-interest or political expedience of a repressive government, something it very well may be, we ought to remember the “pre-emptive” attack of Iraq in 2003 led by the US and the United Kingdom. The present US administration has thus far been unwilling to provide such a guarantee, and in fact has deployed the saber-rattling language of “evil” against North Korea, rendering a human rights dialogue between the two countries nearly impossible, despite the US Congress’ stance that such a dialogue should be a “key element in future negotiations” between relevant parties.²⁵ We must wonder, however, how a US special envoy for human rights in North Korea, as is established in the 2004 act, will be received given the modern history of hostility between the two nations.

Finally, the post-war era until Kim Jong-il’s ascendancy in 1994 is important because it saw a pattern of mistrust and covert hostilities develop between the two Koreas. The North aggressively militarized over this period, launched an attack on the ROK presidential compound and landed guerilla fighters on the South’s eastern coast in 1968,²⁶ and killed 17 ROK diplomats in a 1983 bombing in Rangoon, Burma.²⁷ The South, for its part, trained and deployed 10,000 spies to the North. The intense anti-Communist politics of the ROK during this period criminalized support or praise of the DPRK, put hundreds of political activists in prison, and caused a massacre of demonstrators in 1980 in the southern city of Kwangju. Human rights were not on the agenda above or below the 38th Parallel.

Despite the relative and rather tenuous warming of relations between North and South

in recent years, important remnants of hostility still remain, such as debates surrounding the ROK National Security Law of 1949, which grants wide police and government powers, or the North’s prickly negotiating tactics in the ongoing six-party talks. Lee argues that the extreme anticommunist discourses of South Korea and the actions of the Korean Central Intelligence Agency (KCIA) during the decades following the war helped mold an “orientalist” discourse with regard to the DPRK.²⁸ On this view, anticommunism helped create the self-identity of the South Korean state, which was constructed, compared, bolstered, and sustained against the North. The legitimacy and “sovereignty of the South Korean state were contingent upon the existence of North Korea as the Other,” culminating in the ROK definition of the DPRK as “an anti-state organization, which illegally occupies a part of the territory of the Republic of Korea.”²⁹ Former ROK prime minister Kim Dae-Jung’s Sunshine Policy of openness towards the North is a step away from such thinking, but the South is still in an awkward post-colonial, post-civil war stage with regard to the DPRK.³⁰ Although the domestic human rights situation in the South has improved dramatically over the past 50 years, an honest human rights discourse between the two Koreas has not yet emerged due to the historical weight placed upon the relationship.

The response to these historical forces, along with the collapse of the Soviet Bloc, from the North has been the elaboration of *Juche*,³¹ the central political ideal of the DPRK. The North has sought to be nationalistic, self-reliant and independent, almost to the point of complete autarky, and certainly to the detriment of its people. This response

to complex historical forces has left little room for a human rights dialogue either domestically or at the inter-governmental level. Tiny cracks, such as the June 2000 inter-Korean summit, however, have emerged: the DPRK has paradoxically made increasing requests to Japan, the US, the UN, and NGOs for aid following famines and economic collapse in the mid-1990s, but has been skittish about allowing the organizations to commence their work unimpeded.³² Unfortunately, the rarity of such potential breakthroughs only serve to reinforce the rule: the DPRK government still views the US, Japan, and the ROK with suspicion and is thus not ready to heed broad calls for openness or human rights. The phase of the six-party talks following the North's October 2006 nuclear test, for example, seemed like a promising breakthrough, only to return to normality with the controversy surrounding release of DPRK funds from a Macau bank account in the Spring of 2007. The lack of trust on all sides reinforced by such developments only contributes to the difficulties of the human rights discourse.

Human Rights: a perpetual back seat?

Wrestling with the implications of Nazi atrocities, Jaspers argued that the crimes of some sovereigns are so heinous that “the halo round the heads of states has vanished.”³³ Even if the goodness of the state-centric system is no longer assumed, it is still the predominant method of international organization, meaning that state sovereignty remains an important conceptual and practical obstacle to exerting pressure on strong, centralized governments. The case of North Korea could hardly make this argument clearer: one

authoritarian government, the DPRK, refuses to respect human rights claims while the outside states most able exert pressure on it – notably China, the US, and South Korea – prioritize other issues in their negotiations with the state in question.

My analysis thus far has attempted to show that both the lack of credible information and the tangled history of interrelationships between the DPRK and its perceived enemies have devalued the effectiveness of the human rights discourse. It may not, however, be utterly bankrupt. One analyst of the North argues that the DPRK government may be more responsive to international pressure than often assumed. This logic would entail diplomatic, economic, and political pressure from relevant states and the UN, while simultaneously linking aid and economic assistance to more openness and respect for human rights.³⁴ China, the US, and South Korea, however are taking different approaches which all place human rights lower on the list of priorities.

The six-party nuclear talks illustrate this approach well. Human rights are not featured in these high-level talks designed explicitly to dismantle the North's potential to acquire or use nuclear weapons. The fear is that holding the DPRK accountable for human rights abuses would “antagonize the North Korean government and jeopardize chances for a nuclear agreement.”³⁵ Christopher Hill, the former US ambassador to South Korea and the current US envoy to the talks, addressed the US House International Relations Committee on 6 October 2005 about progress, goals, and difficulties of the talks and mentioned human rights a total of two times, making it clear both times that denuclearization of the DPRK was

the overarching goal.³⁶

Such testimony illustrates clearly the US position: human rights in the DPRK are important, as noted in the 2004 North Korean Human Rights Act (NKHRA), but not nearly as important as denuclearizing the peninsula. It would be gratifying, Waldron notes, if the intense focus on North Korea over the past decade came due to human rights pressure, but nuclear politics have instead dominated the American political discourse surrounding the DPRK.³⁷ Former president Clinton's staff presented the Bush administration transition team with a blueprint for negotiation and engagement with the DPRK in 2000, which was promptly rejected in favor of demanding complete and irreversible denuclearization before discussion of other issues could proceed.³⁸ The US, despite the admirable passage of the NKHRA, continues to de-prioritize human rights on the Korean Peninsula – a pattern that has entrenched itself over the past six decades of engagement.

China, despite a lack of complete agreement within the party, does not envisage human rights as integral to its relations with the DPRK. Different motivations drive China to keep the Kim regime under control, from avoiding the difficult diplomatic situation that a nuclear DPRK would present to, perhaps most of all, maintaining DPRK stability in order to avoid massive refugee flows into northeastern China, however human rights are nowhere on the agenda.³⁹ The US has petitioned the PRC to respect the rights of those North Koreans fleeing into Chinese territory, even offering to provide money to ease the economic cost of the refugee presence in northeastern China.⁴⁰ The top Chinese priority still seems to be, however,

the maintenance of stability so as to both control the North's nuclear ambitions and stem the tide of migrants into China.

The South Korean position with regard to the DPRK is certainly the most complex because it has by far the most to gain or lose from North Korean stability or collapse. Taking a hard-line stance on human rights abuses in negotiations with the North is not viewed as the most fruitful way to progress with the South's current strategy of gradual engagement with measures of trust-building. Human rights are not mentioned in the ROK Ministry of Unification list of eight goals – humanitarian assistance comes closest. The Ministry rather leans toward dialogue and trust building, as can be seen with the joint DPRK-ROK Gaeseong Industrial project just north of the DMZ. This industrial enclave of South Korean-owned companies currently employs over 15,000 North Korean workers at roughly USD\$68 per month. ROK companies and the government hope to extend this arrangement to 350,000 North Korean workers, thus providing extraordinarily cheap labor to South Korean companies while simultaneously nudging the DPRK toward openness.⁴¹ The South argues that this allows for greater leverage over the North, while US Ambassador Vershbow holds that to go forward with the project without progress on nuclear talks undermines peace and stability in the region. Again, there is little mention in the public discourse about the human rights or labor implications of the project. The symbolic May 17, 2007 test run of two passenger trains across the DMZ was greeted with much fanfare and international news coverage, although the North extracted a considerable aid package in exchange

for allowing the project to go forward. The test run featured no spotlight on the North's human rights situation, but rather served merely as a symbolic and trust-building measure. Although not entirely satisfactory, such gradual measures may very well be the most pragmatic policy given the knotted modern history on the peninsula and the potential difficulties reconciling a stated ROK policy goal of complete reunification with an apparent "orientalization" of the North. From this perspective, the human rights discourse may not have a prominent role to play within this strategy to pry open the DPRK.

Conclusion

Exploring the difficulties of the human rights discourse with regard to authoritarian governments leads to daunting and often frustrating conceptual and practical difficulties. How do we get around the idea that it is simple political expediency for such regimes to disregard human rights? Can such governments be convinced that it is in the interest of their state to join the human rights discourse? I have purposely left questions of this nature aside and instead have examined facets of current and past history surrounding the DPRK to explore the

limitations of the human rights discourse in this case. It is certainly not my intention to undermine the values inherent in the discourse with this analysis – quite the contrary – it is my goal to analyze and expose limitations such that future research may more fruitfully devise solutions.

Practical concerns, historical relationships, and political priorities have all conspired to create a climate in which the human rights discourse has not thrived. A lack of credible, verifiable information about an authoritarian and secretive regime makes it difficult for NGOs, the United Nations, or diplomatic negotiators to make requests for improvement. A tangled web of modern history has entrenched a tragic suspicion in negotiations with the North. Finally, the political priorities of China, the US, and South Korea do not feature human rights as prominently as other concerns. Ultimately, however, it is the responsibility of the Kim regime to treat its people with dignity, using the help that the UN, NGOs, and South Korea are all offering. Until this occurs, however, the ineffectiveness of the human rights discourse with regard to potentially the most abusive government in the world will continue.



ENDNOTES

- 1 I will use the phrases "human rights discourse," "human rights language," and "human rights" interchangeably throughout this paper to refer to the corpus of international agreements and treaties, as well as the mere invocation of human rights values – the usage here is intentionally broad and multi-disciplinary.
- 2 Bruce Cumings, *North Korea: Another Country* (New York: The New Press 2004), preface viii.
- 3 Bruce Cumings, *Korea's Place in the Sun: A Modern History*, updated edition, (New York: WW Norton & Company 2005), 401.
- 4 United Nations Commission on Human Rights, *Situation of Human Rights in the Democratic People's Republic of Korea, Human Rights Resolution 2005/11*
- 5 Human Rights Watch, "Human Rights Overview: North Korea", <http://hrw.org/english/docs/2005/01/13/nkorea9850.htm>
- 6 Amnesty International, "North Korea: Briefing on Present Situation", ASA 24/002/2005, <http://web.amnesty.org/library/Index/ENGASA240022005?open&of=ENG-PRK>
- 7 Tim Beal, *North Korea: The Struggle Against American Power* (London: Pluto Press 2005), 134-146.
- 8 Barbara Lynne Rowland Mori, "Book Review: Kim Il-Sung's North Korea," *Korean Studies*, vol. 24 (2000), 183-187.
- 9 Denny Roy, "North and South Korea," in Kenneth Christie and Denny Roy, eds, *The Politics of Human Rights in East Asia* (London: Pluto Press, 2001), 234-259.
- 10 The US Department of State reports may be included in this group.
- 11 Karl Popper, *The Open Society and its Enemies* (London: Routledge 1945), 547.

- 12 Cumings, *North Korea: Another Country*, 108.
 13 After World War II, the Korean peninsula was divided into Soviet and American spheres of influence.
 14 Adrian Buzo, *The Guerilla Dynasty: Politics and Leadership in North Korea* (Boulder, CO, USA: Westview Press 1999)
 15 Roy, 254-255.
 16 British Broadcasting Corporation (BBC 2006), "North Korea 'tests new missile,'" <http://news.bbc.co.uk/2/hi/asia-pacific/4504041.stm>
 17 These talks are aimed at disarming the DPRK's military nuclear program. The "six parties" are the DPRK, China, the US, Russia, South Korea, and Japan.
 18 Alexis Dudden, "The Politics of Apology between Japan and Korea," in Mark Phillip Bradley and Patrice Petro, eds, *Truth Claims: Representations and Human Rights* (London: Rutgers University Press 2002), 73-92.
 19 William Stueck, *Rethinking the Korean War: A New Diplomatic and Strategic History* (Oxford: Princeton University Press 2002), 143-181.
 20 Cumings, *North Korea: Another Country*, 16-26.
 21 Cumings, *Korea's Place in the Sun*, 297-298.
 22 *Ibid.*, 471.
 23 Adrian Buzo, *The Making of Modern Korea* (London: Routledge 2002), p. 92.
 24 Michael Horowitz, "Who's Behind that Curtain? Unveiling Potential Leverage over Pyongyang," *Washington Quarterly*, vol. 28, no. 1 (2004), 21-44.
 25 North Korea Human Rights Act, H.R. 4011, One Hundred and Eighth Congress of the United States of America, Second Session, 2004, sec. 101.
 26 Buzo, *The Making of Modern Korea*, 99.
 27 Paul French, *North Korea: The Paranoid Peninsula – A Modern History* (London: Zed Books 2005), 59.
 28 Lee Namhee, "Anticommunism, North Korea, and Human Rights in South Korea: 'Orientalist' Discourse and the Construction of South Korean Identity," in Mark Phillip Bradley and Patrice Petro, eds, *Truth Claims: Representations and Human Rights* (London: Rutgers University Press 2002), 43-71.
 29 *Ibid.*, 44-47.
 30 Former South Korean president and Nobel Laureate Kim Dae-Jung's "Sunshine Policy," articulated in a 9 March 2000 speech in Berlin, followed by the first-ever summit between leaders of the North and South on 13 June 2000, have paved the way for such diplomatic warming, although real progress aside from confined joint economic or transportation projects, has been slow.
 31 Roughly translated, Juche means self-reliance.
 32 French, 106-111.
 33 Karl Jaspers, *The Question of German Guilt*, trans. E. B. Ashton (New York: Fordham University Press 2000), 49.
 34 Beal, 140.
 35 Roberta Cohen, "Talking Human Rights with North Korea," *Washington Post*, 30 August 2004, A23.
 36 Christopher Hill, The Six-Party Talks and the North Korean Nuclear Issue, Statement before the House International Relations Committee, Washington, D.C., 6 October 2005, <http://www.state.gov/p/eap/rls/rm/2005/54430.htm>.
 37 Arthur Waldron, "A Korean Solution?," *Commentary*, vol. 119, no. 6 (2005), 62-65.
 38 Cumings, *North Korea: Another Country*, 85-86.
 39 Andrew Scobell and Michael R. Chambers, "The Fallout of a Nuclear North Korea," *Current History*, vol. 104, no. 683 (2005), 289-294.
 40 North Korea Human Rights Act, sec. 304.
 41 International Herald Tribune, 29 May 2007, 1 & 10.

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