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# Why do democratic societies tolerate undemocratic laws? Sorting public support for the National Security Act in South Korea

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## ABSTRACT

This study investigates why anti-democratic laws persist in democratic societies, focusing on South Korea's National Security Act (NSA). Enacted in 1948, the NSA restricts freedom of expression and movement to deter pro-North Korea behaviour. Despite being at odds with the tenets of liberal democracy, the act remains in place. Existing public opinion data indicates modest to strong support for the law, but measurement concerns leave much to be desired. Using a choice-based conjoint, we test the impact of democratic norms and national security rationales on various policy propositions related to the NSA, including its abolition. Results show widespread support for the Act, driven by both democratic norms and security concerns. Progressives are more likely to support revisions limiting the scope of the Act on the basis that it safeguards democracy, but they agree with conservatives that it should not be abolished. This research contributes to understanding South Korea's post-democratic transition and the balance between national security and democracy more broadly.




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## Introduction

Through fits and turns, South Korea has transitioned from dictatorship to democracy and then towards democratic consolidation. Since democratic reforms were conceded in 1986 by the ruling Democratic Justice Party<sup>1</sup>, there has been a relatively peaceful and successful transition of power from the ruling party to the opposition approximately once per decade.

Research institutes that rank and classify the world's political systems identify South Korea as a full democracy<sup>2</sup> or liberal democracy<sup>3</sup> with a comparatively free press<sup>4</sup> and robust civil society.<sup>5</sup> Besides system-level evidence, public opinion analysis finds that

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South Korean attitudes towards political and social rule are largely democratic,<sup>6</sup> especially among residents born and socialized under democratic institutions.<sup>7</sup> Democracy is probably the “only game in town”.

Yet hidden in plain sight beneath the country’s rapid shift towards democratic consolidation are anachronistic vestiges of an authoritarian past. Shin identifies some shortcomings, including suppression of dissent and free speech, focusing specifically on the Moon Jae-in administration.<sup>8</sup> Yeo provides a more balanced treatment, identifying institutional and cultural barriers around freedom of speech, abuse of presidential powers, and politicization of federal prosecutions (typically of government critics).<sup>9</sup> Others have raised many of the same points and identified other limitations on South Korea’s democracy, such as limits to political representation and a general lack of party institutionalization.<sup>10</sup>

In South Korea, like in many democratic societies, there is an ongoing debate about the trade-offs between liberty and security. The challenge lies in protecting civil liberties while ensuring national security, a balancing act that often results in contentious policies and legislation.<sup>11</sup> A representative example of institutional limits to democratic deepening is the country’s anti-communist and anti-North Korea security legislation, the National Security Act (hereafter NSA, or the Act). Born at a time when violent left-wing nationalist resistance was common and the South Korean state was nascent and weak, the NSA forbids South Koreans from having contact with North Koreans and travelling to North Korea, as well as all public expressions of support for North Korea and possession of publications from the country. The Act is at odds with South Korea’s modern, increasingly liberal, and information-saturated society. Why, then, is the National Security Act still on the country’s statute book, and what might this say about the persistence of anti-democratic legislation in otherwise democratic societies?

Existing public opinion data indicates that South Koreans are, at best, split over the Act and more than likely still support it. But the evidence is unclear. We contend that commonly used survey instruments do not accurately measure preferences. To address this methodological problem and the resulting knowledge gap, we use a choice-based conjoint that explores South Korean preferences towards the National Security Act. This experimental instrument measures attitudes towards various policy proposals, including abolishing the law, leaving it as is, revising it to limit its scope, or expanding its reach. We also test the impact on public opinion of political endorsements by the country’s major political parties and the effect of democratic norms and security concerns as competing rationales for amending (or not) the NSA. Further, we conduct subgroup analysis by political identification and generations and analyse open-text answers to understand better respondents’ rationales for the attitudes they express.

Overall, our results show firm opposition to abolishing the law, with leading preferences to either leave the NSA as it is (the status quo) or revise it to limit its scope. Preferences are strongly motivated by democratic norms and security concerns, and political party endorsements diminish support for any given position. Progressives are more likely to support revisions limiting the Act’s scope because it is necessary to safeguard the country’s liberal democracy. Still, even they agree with conservatives that it should not be abolished. There are no significant generational differences. The findings further our understanding of South Korean society in the post-democratic transition era, attitudes towards the National Security Act, and the trade-offs between democracy and security more generally.

From here, the article proceeds as follows. We first review the history of the National Security Act, tracing its origins, developments, revisions, and failed attempts to abolish it. We then review what existing public opinion tells us about South Korean attitudes towards the law before turning to our experimental design. Following an explanation of the survey experiment, we present and analyse our results. We conclude with a summary of our findings.

### Brief history of the national security act

Arguably South Korea's most infamous piece of legislation, the National Security Act is almost as old as the state itself – 74 years and counting. Enacted on 1 December 1948 following the formation of the Republic of Korea on 15 August that year, the Act's roots are found in the Japanese colonial system, modelled as it was on a repressive security law that Tokyo used to clamp down on the activities of pro-independence activists during Japan's occupation of Korea between 1910 and 1945.<sup>12</sup>

Drawing uncomfortable lessons from the immediate past, at its inception the NSA was Seoul's response to the challenges posed by the political and ideological inclinations of many southern Koreans in the aftermath of 35 years of frequently brutal colonial rule, as well as the existence of a highly antagonistic, Soviet-backed competitor state in the north of the peninsula. The Act was a “product of the acute struggle between antagonistic ideological forces and the legal expression of anti-communism and anti-North Korea ideology.”<sup>13</sup>

Kim and Son are among those to assert that anti-communism, which in the South Korean case should be thought of as anti-North Korea-ism, was formed into a national guiding principle, or *gukssi*, during the Rhee Syngman (1948–1960), Park Chung-hee (1961–1979), and Chun Doo-hwan (1979–1987) periods.<sup>14</sup> If so, the NSA became the legal mechanism for that national guiding principle's implementation, with the state intelligence agency as the vehicle for its enforcement. Kim recalls in *Weolgan Mal*, a South Korean magazine popular with activists in the 1980s, how under the government of Rhee, “Just using the expression ‘peaceful unification’ infringed anti-communist laws.”<sup>15</sup>

For the duration of his regime, Park Chung-hee followed in Rhee's footsteps, instrumentalizing the overly broad language of the NSA to ruthlessly suppress all kinds of left-wing and pro-unification sentiment at home, actions that the judiciary was powerless to address given a lack of independence.<sup>16</sup> Park was killed by his own secret police chief in 1979, but his method of using and abusing the NSA lived on as another military general, Chun Doo-hwan seized power in 1980 following a brief interregnum known as the Seoul Spring. Chun, who exploited the anti-democratic affordances of the Act via the Department of National Security Planning and was just as willing as Park had been to see violations of the NSA fabricated where politically expedient, would hold power until the democratization of the Republic of Korea in 1987.

As with many social issues, the post-democratization era is when contestation over the NSA broke out into the open, as the “military-authoritarian regime's excessive abuse of the NSA led South Koreans to understand the NSA's true function.”<sup>17</sup> The law soon came into dispute via the new Korean Constitutional Court, established in September 1988. Since then, the country's democratically elected legislatures have made several changes to the NSA, most notably in May 1991, and a single, abortive attempt at abolition in 2004.

Figure 1 provides a historical timeline for the Act. It is not a comprehensive historical overview but emphasizes selected inflection points when the Act either did change or when it was expected to undergo revision or possibly elimination.

In the democratic era, enhanced oversight of the state intelligence agency by democratic institutions, an empowered judiciary, and civil society has largely ended cases of outright fabrications of violations of the Act for political purposes. The risk that arbitrary application of the NSA poses to most South Korean citizens has thus declined markedly, although it has not gone away entirely, as the 2013 case of Yoo Woo-sung demonstrates.<sup>18</sup>

Meanwhile, throughout the democratic era and into the twenty-first century, prosecutions under the NSA have continued, though they have declined considerably in number. As Figure 2 demonstrates, using data published by the ROK Ministry of Justice, there have been an average of 62.7 prosecutions under the NSA each year since 2003.

That average of 62.7 prosecutions annually hides significant variation. The number of prosecutions under the NSA fell during the Roh presidency (2003–2008), reaching a low of 32 in the year Roh left office, but rose again under Lee Myung-bak (2008–2013), a conservative former mayor of Seoul. Numbers reached a twenty-first-century high point of 197 under Lee’s successor, Park Geun-hye (2013–2017) in 2013, when a ham-fisted but seemingly genuine plot was halted to overthrow the South Korean government in the event of war with North Korea.<sup>19</sup> Prosecutions under the act fell again thereafter and reached historic lows under the administration of Moon Jae-in, elected in mid-2017, before ticking up again towards the end of his term. Statistics for the administration of Yoon Suk-yeol are not yet available.

Official statistics do not reveal which articles of the law are salient in each case brought for violating the NSA, but evidence demonstrates that Article Seven is relevant to many, and quite likely most.<sup>20</sup> Article Seven is the most overtly anti-democratic article in the legislation; it violates the constitutional rights of South Korean citizens by forbidding them from public expressions of support for North Korea and possession or reproduction of publications from the country, stifling freedom of speech. It makes any recognition of North Korea as a political entity and any praise, incitement, or propagation of its activities or ideology a crime. Many people have been arrested, prosecuted, or convicted under Article Seven for engaging in legitimate and non-violent activities, such as sending humanitarian aid, conducting academic research, expressing sympathy or criticism, or participating in cultural exchange with North

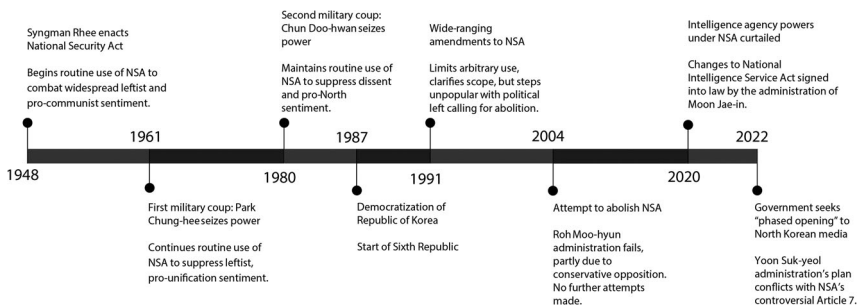
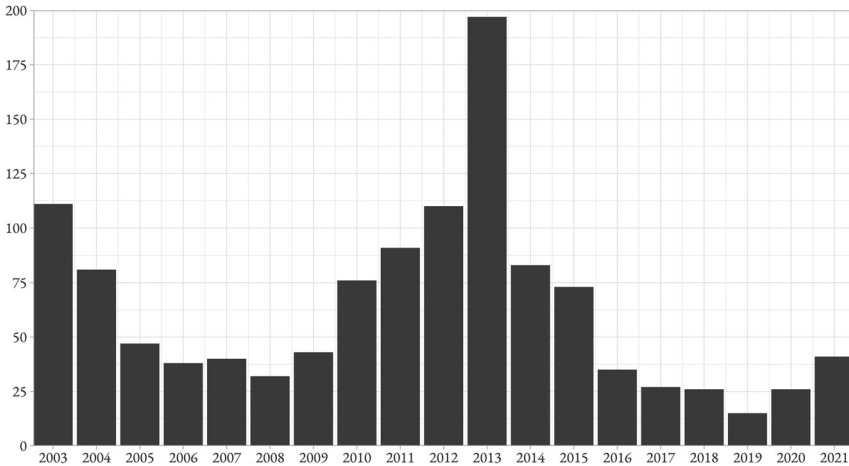


Figure 1. Historical timeline for the National Security Act.



**Figure 2.** Prosecutions under the National Security Act, 2003–2021. Note: Data from the Ministry of Justice. Most recent statistics used.

Korea or its people.<sup>21</sup> Due to cases such as these, Article Seven has come under harsh criticism from international human rights organizations.<sup>22</sup>

In light of this, it may appear counterintuitive that the ruling Minjoo Party of former President Moon did not make any attempt to amend or abolish the NSA during his term, which ended in the second quarter of 2022. This despite having signalled his opposition to the law amidst notably reduced resources devoted to enforcement and the fact that in 2020 there came an opportunity to act after the party won a thumping victory in parliamentary elections that gave it an absolute majority in the legislature and thus no serious political obstacles to whatever course it chose.<sup>23</sup> Instead, the administration set its sights on the National Intelligence Service Act (NISA), which provides the legal basis for the actions of the state intelligence agency.<sup>24</sup> In December 2020 it was this act that underwent dramatic revision (primarily to strengthen political oversight via the National Assembly Intelligence Committee). But the NSA survived. Indeed, it was never under serious threat.

### Measuring support for the national security act

In this article, we wish to understand why, as the previous section demonstrates, so little political effort has been made to abolish the Act. As one former senior intelligence official put it, “Is it nostalgia? A Pavlovian response?” Perhaps fear also plays a role; for a South Korean politician, public criticism of the NSA may bring one under suspicion, and news media coverage serves to amplify that suspicion, invariably with detrimental consequences for career prospects. But we suspect there is more to it than any of that. If we take seriously the notion that in a democracy public policy broadly reflects popular will, then the answer may be found in public opinion data.

The most recent data on public support for the National Security Act shows that support for abolishing the law may not be as high as expected. It also indicates that, as ever, answers are sensitive to question-wording. Data from the 2018 World Values Survey shows that the public is evenly divided on the matter. When asked to

evaluate the statement, “The National Security Act should be abolished,” 48% disagreed (52% agreed, as there was no other option). The East Asia Institute’s national identity survey, which asks respondents whether they think the act “should be kept as it is” or “should be revised or abolished,” finds in 2015 and again in 2020 that significantly more than half of all respondents expressed a preference to maintain the status quo. The question wording leaves much to be desired, and the difference in responses suggests that, given more choices, South Koreans would respond differently. For starters, maintaining the law as it is or abolishing it is a false dichotomy. Worse, including revision and abolition as a single choice in a question is problematic, as these are two very different policy options. Revisions, after all, have occurred throughout the law’s and the country’s history, whereas it has never been abolished.

To address the methodological shortcomings of existing public opinion research and in order to better explore public attitudes in South Korea towards the NSA, we employ a choice-based conjoint. An increasingly common experimental approach in the social sciences, the conjoint is ideal for testing the simultaneous effects of different attribute levels in a multidimensional design; in this case, the effects that different policy positions have on support.<sup>25</sup> Evidence also suggests that conjoints mitigate measurement error caused by social desirability bias in public opinion surveys that ask about sensitive items.<sup>26</sup> The NSA qualifies as a sensitive subject in South Korea, as do other North Korea-related questions.<sup>27</sup>

In this experiment, we test the effects of various levels across three attributes on the willingness of respondents to support a policy position on the NSA with 2009 South Korean respondents from an online opt-in survey panel. Recruitment sought to match known population parameters at the time of the survey to achieve national representativeness. Appendix A in the Supplementary Information (SI) document provides more information on the sample. There is an endorser, the policy position, and the rationale for the position. Endorser includes the two main political parties, the progressive Minjoo Party and the conservative People’s Power Party. The point of this attribute is to first approximate reality, a major priority in conjoint design.<sup>28</sup> Amending the NSA will in all likelihood be an overtly politicized matter, as it has been in the past, with one of the two major parties endorsing some policy proposal. Relatedly, research finds that citizens are impacted by cues from political elites, thus political party endorsements will likely impact attitudes on policies like NSA reform.<sup>29</sup> The policy positions themselves reflect realistic proposals that have either been tabled before, such as revision or abolition, or reflect the current state of things (i.e. the status quo). Lastly, the rationales are meant to test the effects of persuasion and the two general motivations behind keeping the law on the books (national security) and revising or abolishing it (democracy).<sup>30</sup> Given previous findings and our central concern in this article, the main item of interest is the policy position, “abolish it [the NSA] altogether”. Our analysis will focus on this point below. [Table 1](#) lists the attributes and their levels.

Following a brief introduction that provides context about the NSA, survey takers are presented with two hypothetical policy positions and asked to choose which among them they would most prefer (see Appendix B in the SI for more information). Following the forced-choice outcome, respondents are asked to rate their preference for each position on a 7-point scale. Each respondent completes eight unique tasks consisting of randomly generated attribute levels and attribute orders. After the seventh task, they



**Table 1.** Attributes and values for the NSA conjoint Experiment.

Feature	Level
Endorser of position	Some people Minjoo Party People’s Power Party
Policy positions	Leave it as is Revise to limit its scope Expand its scope Abolish it altogether
Rationale	It is the right thing to do It will safeguard South Korea’s liberal democracy It will strengthen South Korea’s national security

are prompted with an open-text question asking them to explain why they made the choice they did.

For analysis, we use average marginal component effects (AMCEs), which estimate the causal effect that each attribute level has on the probability that the policy position is chosen, averaged across the effects of the other attributes. We supplement AMCEs with marginal means (MMs). These are the mean outcomes of each attribute level average across the others. MMs are best suited for subgroup analysis as they are not reliant on reference categories.<sup>31</sup> Analysis of the open-text answers is conducted using a topic modelling approach. Figure 3 shows an English-language approximation of a task.

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**There are many different positions regarding the National Security Act. Below you will read two positions on the Act, in addition to who endorses the view and the rationale behind it. Please evaluate the two positions and choose the one that you most support. You will be shown eight pairs in total.**

**This exercise is purely hypothetical. Even if you aren’t entirely sure, please indicate which of the two you prefer.**

	Position A	Position B
<b>Main endorser</b>	Some people	Minjoo Party
<b>Policy goal</b>	Leave it as is	Abolish it altogether
<b>Policy instrument</b>	It is the right thing to do	It will safeguard South Korea’s liberal democracy
<b>Which of the two policy proposals do you support?</b>	<b>Position A</b> <input type="radio"/>	<b>Position B</b> <input type="radio"/>

**Rate your agreement with Position A and Position B, 1=strongly disagree 7=strongly agree**

	1	2	3	4	5	6	7
<b>Position A</b>							
<b>Position B</b>							

**Figure 3.** The experimental design.



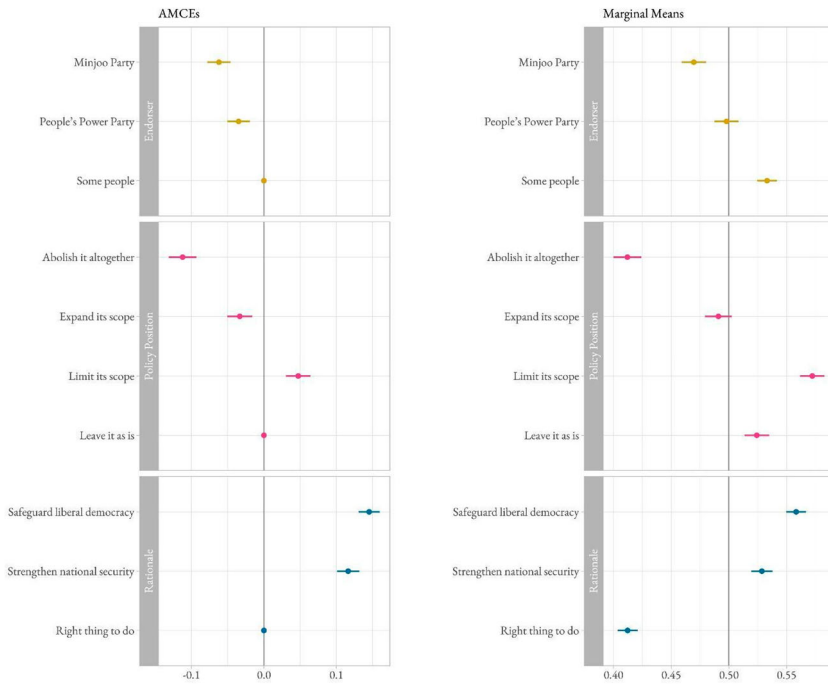
In addition to the main effects, we also explore conditional average treatment effects by select subgroups and test theoretically and empirically informed expectations. First, we consider the relationship between political identification and NSA support. While there are relatively few programmatic issues in South Korean politics that are strongly associated with either political ideology, North Korea policy and (related) security concerns are among them.<sup>32</sup> Even today, conservative political ideology in South Korea is defined in significant part by anti-communism (or rather, anti-North Korea-ism). It is squarely rooted in the authoritarian tradition of ruling parties of the pre-democratic era. In contrast, progressivism is defined more by opposition to a strong anti-communist/North Korea agenda and the authoritarian excesses of the country's past.<sup>33</sup> Viewed through the lens of the libertarian-authoritarian dimension of ideology, South Korean conservatives are on the more authoritarian end of the spectrum, whilst progressives tend towards libertarian.<sup>34</sup> Thus, we expect that conservatives are more likely to favour freedom-limiting measures to prevent social disorder, whilst progressives focus more attention on freedom of speech and opposition to censorship.<sup>35</sup> Furthermore, the conditional interaction between the preferred policy position on the NSA and the rationale for holding the position between conservatives and progressives is likely to reveal the meaning of the rationale. For example, in the case of "safeguarding democracy," how this attribute level interacts with various policy positions will indicate *what democracy is being safeguarded from*. Or, in the case of "protecting national security," what it means to protect the nation's security.

Second, we examine NSA support among different political generations. Work in political socialization underscores the importance of formative experiences, arguing that events that take shape during the critical formative years of one's life (approx. ages 12–25) play a constitutive role in forming ideas, attitudes, and preferences that are resilient over the course of the life cycle. The conditions under which people come of age tend to be shared, defining a "political generation".

Consistent with the theory of political socialization, we expect those who came of age during South Korea's authoritarian and democratic eras to hold views derived from those systems. We expect those coming of age in an increasingly democratic and pluralistic South Korea to hold views consistent with democratic institutions<sup>36</sup>, namely: the protection of civil and political rights, as democratic theory holds.<sup>37</sup> In other words, we expect to find greater support for abolishing the NSA, or at least limiting its scope. Those who came of age under authoritarianism, we surmise, will have internalized the logic and rationale of the regime, especially an anti-communist/anti-North Korea state and national identity. Research finds that, even under authoritarian regimes, political attitudes tend to reflect the values and ideas of the time and are resilient across the life cycle.<sup>38</sup> Authoritarians, then, are expected to be less supportive of abolishing or limiting the scope of the NSA; they may even support its expansion.

## Findings

Figure 4 reports the main findings. We find that proposing to abolish the law generates strong opposition relative to the reference category (the status quo). In contrast, a proposal to limit the law's scope receives moderately positive support. Party endorsements have small to moderate negative effects and unambiguous policy rationales about



**Figure 4.** Effects of NSA policy positions on the probability of being preferred. Note: For average marginal component effects (AMCEs), the estimates show the effects of the randomly assigned information attribute values on the probability of a policy proposal being preferred. The point values from the marginal means (MMs) show the mean outcome of any given attribute level, averaged across all others. Estimates are based on the benchmark OLS model with clustered standard errors. The error bars represent 95% confidence intervals.

protecting democracy or strengthening national security have strong and positive effects on support for a given policy position.

The average marginal component effects (AMCEs) show the effect of each attribute level relative to the baseline value. Regarding the policy position, which is our main quantity of interest, we see that relative to the status quo (“leave it as is”), a proposal to limit the NSA’s scope motivates modest support by five percentage points (pp), whereas proposals to either “abolish it altogether” (–11pp) or “expand its scope” (–3pp) are unfavored. Notably, abolition is the least preferred option relative to the baseline and considerably less preferred than expanding the scope of the law. We expand on the importance of this finding more below. Appendix C in the SI provides the tabular output for the main findings.

Furthermore, any political endorsement reduces respondents’ support for the NSA policy position. If the liberal-progressive Minjoo Party endorses the position, the probability of the policy position being supported decreases by 6pp, and a conservative People’s Power Party endorsement decreases the probability by 3.5pp. The policy rationales show that pro-democracy or security rationales strongly motivate policy support, by an additional 15pp and 12pp, respectively.

While the AMCEs show the relative effects of attribute levels, marginal means (MMs) clearly show which levels are part of winning proposal positions. The point

values represent the mean outcomes of any given attribute level on the probability that a profile containing it is preferred. In a choice-based conjoint, the average is .50 (50%) by design, thus any value below indicates that level discourages support and above it motivates it.

We see that, while relative to “some people”, political endorsements are relatively less preferred, only for Minjoo Party endorsements are such proposals more likely than not to be rejected (i.e. not chosen). The MM of .47 means that only 47% of proposals, including this attribute level are supported. In other words, proposals containing this attribute level are more likely than not to be rejected. A conservative party endorsement shows mixed results; it does not motivate support, but neither dissuades respondents from supporting the position.

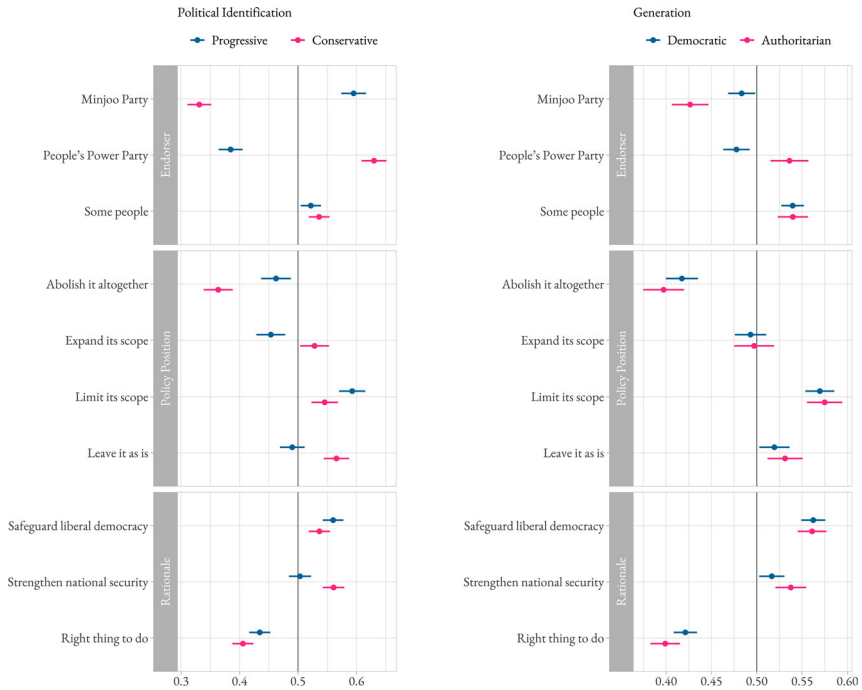
We also find that the rationales have strong effects. Notably, respondents are dissuaded from supporting a policy position on the NSA if they are told it is “the right thing to do” (a MM of .41). However, telling respondents the position protects democracy or improves national security are winning propositions, especially the idea that the NSA policy position is a democratic safeguard. A full 56% of proposals that included this attribute level are supported. The marginal means for the policy position reinforces the point that abolishing the law is clearly not supported (MM of .41). Still, proposals that limit its scope are deemed appropriate (.57). Notably, expanding its scope, while not a position that motivates support, elicits effectively no opposition. Maintaining the status quo shows only modest but statistically significant support (52% of all profiles with this value are supported). The main effects are effectively replicated using the ratings-based measure of support (see Figure D.2 in the SI).

Do opinions differ significantly by the chosen subgroups? As a matter of national security and identity, positions on the NSA are likely to diverge in the ways predicted above. However, given the nuance the conjoint design provides, and the findings presented already, we cannot be certain. Figure 5 reports the marginal means of the conditional average treatment effects by political identification and generations to resolve the uncertainty empirically.

For political identification<sup>39</sup>, we find that conservatives are the least likely to support abolishing the law, as we expect. Instead, they favour either maintaining the status quo, merely limiting the scope, or even expanding it. While these positions may come across as contradictory, the takeaway is that conservatives can be persuaded to do anything but abolish the NSA. Progressives, on the other hand, are only positively moved in favour of supporting scope limitations. As expected, expanding the scope dissuades support, while leaving it as is neither motivates nor discourages progressives from supporting the position. Most notably, we find that while progressives are considerably more supportive of abolishing the NSA than conservatives, *neither group supports the position*.

Heterogeneous treatment effects are also observed for policy rationales. Between the two groups, only conservatives are positively moved by a national security rationale for supporting a policy position. This is consistent with what we know about conservatives in South Korea as described in our expectations above. At the same time, there is no substantive or statistically significant difference between the groups when they are told that the policy is meant to safeguard democracy. Democratic safeguarding is equally important, but not for the same reasons – something we explore more below.

For political generations, we find endorser effects reflective of the age composition of the generations. The authoritarian generation is motivated by the conservative

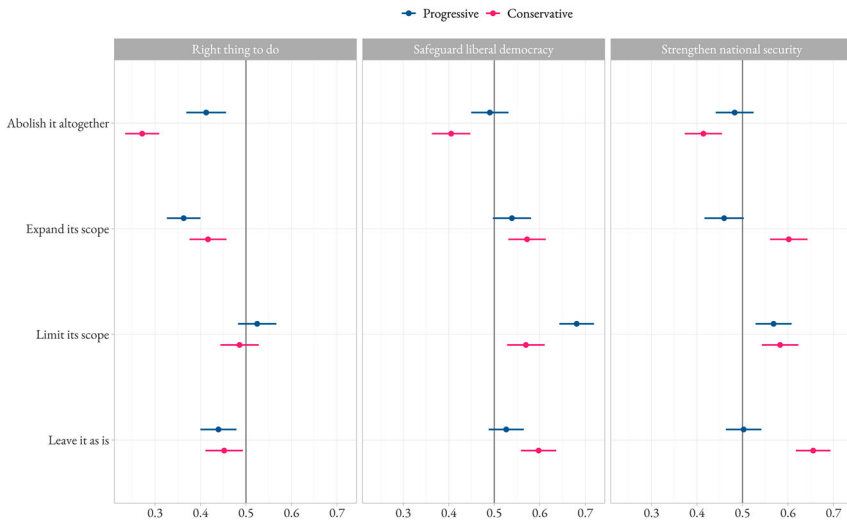


**Figure 5.** Marginal means of the policy attributes for subgroups. Note: Based on the benchmark OLS model with clustered standard errors, the marginal means (MMs) show the mean outcome of any given attribute level, averaged across all others. The error bars represent 95% confidence intervals.

People's Power Party, while the democratic generation is not. Notably, there is not an equal effect for the Minjoo Party on the younger democratic generation, which reinforces the fact that the conservative party represents the older age cohorts of contemporary South Korea.

Most noteworthy, there are no discernible differences in policy positions between the two generations. And while the authoritarian generation appears more swayed by a national security rationale, befitting of a generation that came of age under a more vulnerable security environment and authoritarian rule, the difference in effects between the two generations is not substantive or statistically significant. Additional subgroup analysis, including robustness checks on the subgroup analysis for political identification and generations, are provided in Appendix D of the SI.

Finally, we look at the interaction effects between the rationale and policy position conditional on political identification (Figure 6). This last look at effects is important as it addresses a potential source of ambiguity in the findings presented thus far. Namely, what does it mean to progressives and conservatives to safeguard liberal democracy or strengthen national security? We see here two crucial findings that substantively address *why* South Koreans support (or oppose) the NSA. First, when persuaded by a national security rationale, conservatives are motivated to support *expanding* the NSA's scope, whereas progressives are moved to oppose the position. This same rationale strongly motivates conservatives also to accept the status quo (leaving the law as is/on the books); progressives are indifferent. The takeaway here is that the



**Figure 6.** Marginal means of the interaction (rationale \* policy position) by political identification subgroups. Note: Based on the benchmark OLS model with clustered standard errors, the marginal means (MMs) show the mean outcome of any given attribute level, averaged across all others. The error bars represent 95% confidence intervals.

NSA is more strongly associated with the promotion of national security for conservatives.

Second, there are key and instructive differences in opinion by political subgroups when the policy rationale is to safeguard liberal democracy. We see that progressives are strongly motivated to limit the scope of the NSA when told it is for protecting democracy. This suggests that progressives see the NSA as a threat to citizens' political liberties in a way that conservatives do not. Further proof of this interpretation is shown in the fact that conservatives are dissuaded from abolishing the law if prompted with a pro-democracy rationale; although progressives are not persuaded to abolish the NSA altogether, they do not oppose it either (i.e. they are indifferent). Similarly, conservatives are motivated to leave the law in place when told the reason is to safeguard democracy, suggesting they see the law as protecting the democratic polity of South Korea from undemocratic forces from within or externally. While our design does not permit us to further unpack the meaning of this finding by specifying what these threats are exactly, we can reasonably infer that they are North Korea-related.

## Conclusion and discussion

Consolidated democracies should represent inhospitable terrain for repressive legislation of all types. And yet, liberal democratic South Korea has one such highly repressive piece of legislation, the National Security Act, on its statute. Far from a dead letter, the Act has been used to prosecute citizens an average of more than 60 times a year for the last two decades: it sweeps up those who have contact with North Koreans or travel to North Korea without prior authorization, and those who make public expressions of support for North Korea or are found in possession of, publish, or republish publications from the country. Compared with the South Korean military dictatorship

era, the Act has not been widely applied during the twenty-first century, even by conservative administrations generally more hawkish on North Korea and unsympathetic to its local supporters. There have also been considerable amendments made to the Act during the democratic era, which have mitigated its most egregious excesses. Still, there can be no question that prosecutions under the NSA are an active segment of the judicial landscape, and that the Act remains undemocratic.

The incompatible relationship between the continuing existence and enforcement of the National Security Act and South Korea's status as a liberal democracy is the conundrum under consideration in this article. It asks why the National Security Act is still on the country's statute book, 73 years after it was enacted and – more to the point – long after it ostensibly ceased to reflect the democratic values of the modern Republic of Korea. The Act has been periodically watered down by administrations of the left, but we see in this article that progressives tend still to see it as a threat. Then, why have there been so few attempts to abolish it, and none of them successful?

It is not for want of political capacity. As we note, as recently as 2020–2021 the ruling Minjoo Party enjoyed dominance of South Korean politics sufficient to abolish the law if it had decided to do so. Yet, even as it seized the opportunity to make noteworthy changes to the National Intelligence Service Act, which governs the scope of the activities of the country's main intelligence agency, the NSA was not touched.

Then, one must look elsewhere for an explanation. The Minjoo Party and former President Moon's reticence to try and abolish the NSA was politically astute, as this article demonstrates, because the Act remains relatively popular among the South Korean public. Or, perhaps one had better put it, the Act is insufficiently unpopular to incentivise efforts to abolish it. Even while progressives, in particular, appear motivated to limit the law's scope by a desire to protect the civil liberties that they see as being under some degree of threat, conservatives are convinced that the country's national security would be put in peril if the law was scrapped.

As the former senior South Korean intelligence service official cited earlier in this article put it, and we agree, "It is not worthwhile to waste political capital on a project like this." There is a robust intellectual argument for abolition – the NSA is undemocratic, especially its Article Seven – but the circumstances of modern South Korea, not least the continuing existence of North Korea on the upper half of a heavily militarized and divided peninsula, appear to trump these concerns in the eyes of many citizens.

The first law of politics is to learn to count, and accordingly, this article shows that it is not possible to produce a majority in favour of the abolition of the law either on the grounds that abolition would protect South Korea's national security, or that it would safeguard the country's democracy. Notably, this feeling of reluctance to abolish the Act bridges a generational divide that often separates South Koreans on matters of politics and national security. Time is very unlikely to punctuate that equilibrium.

That said, we do observe some notable differences in opinion on this issue by political identification. First, progressives are more amenable to changing the status quo. While they do not support abolishing the National Security Act, they are more strongly motivated by scope-limiting revisions and are opposed to expanding its scope. Conservatives, on the other hand, are far more supportive of the status quo and are even willing to consider expanding the Act's scope.

The conditional effect of political rationales provides additional insights, which we view as crucial given the character of the South Korean political sphere. While progressives are motivated to limit the law's scope by a desire to protect civil liberties, conservatives are convinced that the country's national security and democracy itself would be put in peril if the law was scrapped. Thus, the equilibrium favours the status quo, with some slack given for reigning in the law's excesses. And this is, by and large, a reflection of what we have seen transpire with the law in South Korea's democratic era.

Then, divergent political attitudes are broadly consistent with expectations and, moreover, reflect domestic political realities. It is the progressive-liberal parties who have passed several amendments limiting the NSA's scope, while conservative governments have never pursued reforms, ostensibly on the grounds that they see this as undercutting the country's national security. The findings analysed here support the political intuitions of both sides of the political spectrum.

These research findings contribute to the emerging body of research on limits to South Korea's democracy.<sup>40</sup> Our work supports Yeo's contention that certain institutional and cultural factors explain the persistence of anti-democratic behaviour in South Korea<sup>41</sup>, and echoes Haggard and You's assertion that the limitation of free speech, especially when justified by national security, poses a significant barrier to the further evolution of South Korean democracy.<sup>42</sup>

Comparatively, research indicates that as nations accumulate more democratic experience, their citizens may become less inclined to hold leaders accountable for undemocratic actions due to a decreased motivation to form opinions based on perceived threats.<sup>43</sup> Notwithstanding that, there is sometimes a trade-off to be made between national security and democracy, and it may be the case that secrecy laws or practices are necessary to protect a country from external threats, even if they entail some costs for civil liberties and human rights. Such logic was employed regularly in the United States after the 9/11 terrorist attacks. Interestingly, research finds that the US public was attuned to the liberty-security trade-offs in the post-9/11 political environment and was not necessarily supportive of trading civil liberties for greater security guarantees.<sup>44</sup>

The security literature suggests that where such a trade-off between national security and democracy is made, institutional mechanisms of retrospective oversight can mitigate the harms. This argument posits that secrecy laws or practices like the US maintaining Guantanamo Bay can be compatible with democracy if there are rules and procedures that allow the public to evaluate and sanction the government's foreign policy performance after the fact.<sup>45</sup> In other words, security-related policies need not necessarily entail a liberty trade-off but may enhance it.<sup>46</sup>

Then, what does it mean that we find support for the NSA among the South Korean public? Reflecting on these comparative findings, the evidence demonstrates that even as they eschew abolition, South Koreans on both the left and right can be motivated to reign in the NSA's anti-democratic excesses and thus support revising the law to limit its scope. This is especially true for South Korean progressives. This awareness and push for incremental change indicate an awareness of the potential trade-offs between national security and democracy, and that South Korean citizens are conscious of the need to balance preserving their democratic values whilst ensuring their nation's security.



## Notes

1. Slater and Wong, “The Strength to Concede.”
2. EIU, “Democracy Index 2021.”
3. Boese et al., “Democracy Index 2022.”
4. Freedom House, “South Korea: Freedom in the World 2022.”
5. Herre and Roser, “Democracy.”
6. Denney, “Political Order and Civic Space”; cf. Chull, “Democratic Deconsolidation in East Asia.”
7. Denney, “Democratic Support and Generational Change”; Denney, “Does Democracy Matter?” 38–58; Dalton and Shin, “Growing Up Democratic.”
8. Shin, “South Korea’s Democratic Decay.”
9. Yeo, “Has South Korean Democracy Hit a Glass Ceiling?”
10. Pak and Park, “Liberal Democracy in South Korea”; Mobrand, “Limited Pluralism”; Lee, “Popular Reset”; and Haggard and You, “Freedom of Expression in South Korea.”
11. Pavone et al., “Systemic Approach to Security.”
12. Cho, “Security for What,” 132; Haggard and You, “Freedom of Expression in South Korea,” 172.
13. Cho, “Security for What,” 132
14. Kim, *Anti-communism in Germany*, 288; and Son, *Contemporary Korean Politics*, 239–40.
15. Kim, “Current State and Controversies.”
16. Han, *Progressive’s Shadow*, 173–85
17. Cho, “Security for What,” 135
18. Borowiec, “The Spy Who Wasn’t a Spy”; Seo, “Yoon Taps Prosecutor.” Yoo, a North Korean defector-migrant, was accused of espionage, and a fabricated document was submitted as evidence. Astonishingly, Lee Si-won, the prosecutor who oversaw the investigation into Yoo’s case, was appointed as secretary for public office discipline in the government of Yoon Suk-yeol in 2022, raising further questions over the degree to which South Korea has overcome the tendencies of its authoritarian past.
19. Green, “What the Lee Seok-ki Case Doesn’t Mean”; Choe, “South Korean Lawmaker.”
20. Kim, “Three individuals accused of working with North Korean agents.” A 2023 case where officials from the Jeju Island branch of a minor left-wing political party were arrested.
21. Shim, “South Korean Receives Prison Term”; Shim, “North Korean Defector Arrested”; Yang, “South Korea Arrests Woman.”
22. Human Rights Watch, “Cold War Relic Law”; Amnesty International, “Curtailing Freedom of Expression.”
23. Choe, “Virus Delivers Landslide Win.”
24. Shaw and Yi, “Will Yoon Suk-yeol Finally.”
25. Hainmueller, Hopkins, and Yamamoto, “Causal Inference in Conjoint Analysis.”
26. Horiuchi, Markovich, and Yamamoto, “Does Conjoint Analysis Mitigate.”
27. Denney, Ward, and Green, “Limits of Ethnic Capital.”
28. Bansak, Hopkins, and Yamamoto, “Beyond the Breaking Point.”
29. Bullock, “Party Cues”; Nicholson, “Polarizing Cues”; Druckman, Peterson, and Slothuus, “Elite Partisan Polarization.”
30. Coppock, *Persuasion in Parallel*.
31. Leeper, Hobolt, and Tilley, “Measuring Subgroup Preferences.”
32. Hellmann, “Party System Institutionalization”; Wong, “Weakly Institutionalized Party System.”
33. Lee, “Democratization and Polarization.”
34. Evans, Heath and Lalljee, “Left-Right and Libertarian-Authoritarian Values,” 95–6
35. Kang, “How Ideology Divides Generations,” 467–72.
36. Kunovich, “Sources and Consequences.”
37. Nodia, “Nationalism and Democracy.”
38. Verba, “Comparative Political Culture”; Conradt, “Changing German Political Culture”; McDonough et al., *Cultural Dynamics of Democratization in Spain*; Neundorf, “Democracy in Transition”; Pop-Eleches and Tucker, *Communism’s Shadow*; Denney, “Does Democracy Matter?”

39. Skelley, “Few Americans Who Identify.” For the main analysis, we use self-reported “progressives” and “conservatives” and exclude those who identify as “centrist”, as derived from the political identification question (see Appendix B in the SI). We do not include “partisan leaners”, who will likely identify as “centrists”, in our main analysis as we are interested in those who are more politically engaged and not necessarily “turned off” by politics. As Skelley shows, using data from the United States, people who identify as centrist but have party ties/partisan voting behaviour (i.e., partisan leaners) are less engaged politically. We report findings by alternative measures of political subgroups in Appendix D of the SI.
40. Yeo, “Has South Korean Democracy Hit a Glass Ceiling?”; Shin, “South Korea’s Democratic Decay”; Pak and Park, “Liberal Democracy in South Korea”; Mobrand, “Limited Pluralism”; Lee, “Popular Reset”; Haggard and You, “Freedom of Expression in South Korea.”
41. Yeo, “Has South Korean Democracy Hit a Glass Ceiling?”
42. Haggard and You, “Freedom of Expression in South Korea.”
43. Frederiksen, “When Democratic Experience Distorts Democracy.”
44. Lewis, “Clash between Security and Liberty in the U.S.”
45. OECD/Korea Development Institute, “Understanding the Drivers of Trust”; Vermuele, “Security and Liberty”; Rosato, “Democracy Declassified.” The National Assembly Intelligence Committee may be considered one such mechanism in the South Korean case. However, it is not very transparent and almost comically susceptible to leaks. Moreover, the South Korean public is broadly sceptical of political oversight of government institutions.
46. Pavone et al., “A Systemic Approach to Security.”

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## Data availability statement

Research documentation and data that support the findings of this study are openly available at: <https://github.com/scdenney/South-Korean-support-for-NSA>.

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