

The National Security Law and Anticommunist Ideology in Korean Society

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Abstract

Some Korean power groups suffered from a lack of political legitimacy, so they tried to control the thoughts of citizens. Those in political power relied on unconstitutional, antidemocratic violence, and went further to mobilize anticommunist ideology to justify this violence. Especially, since the Korean peninsula was divided into North and South, emphasis on national security from foreign adversaries was easily coupled with anticommunist ideology. From liberation until the 1980s, freedom of thought and freedom of expression were not fully guaranteed in Korean society.

Abuse of thought-control laws was naturally met with resistance. Citizens' resistance against the military dictatorship in June 1987 brought about the June 29 Declaration. As democratization progressed, the question of whether to repeal or revise the National Security Law was very frequently discussed whenever political power shifted. However, it should be kept in mind that in order to consolidate democracy and guarantee human rights, a mere revision or repeal of the National Security Law is insufficient. More importantly, genuine democratization can be achieved only when the state apparatus that implemented thought control laws, as well as the judiciary branch that applied the law to many cases, both confess their antidemocratic acts and guarantee that similar cases will not recur in the future.

Keywords: National Security Law (Gukga Boanbeop), freedom of thought, human rights, anticommunist ideology, thought control laws, military dictatorship, purge of the past

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Introduction

From liberation to the mid-1980s, freedom of thought and freedom of expression were not fully guaranteed in Korean society. This was due to the undeniable existence of different forms of thought control laws (*sasang tongjebeop*) including the National Security Law (Gukga Boanbeop) that violated the right to freedom of thought. Although discussion about whether to revise or repeal the law has continued since the mid-1980s, the law still remains in effect, and not a few citizens have been punished for violating the law. This incomplete form of democratization allows political power to exploit the law as a means to create a political situation favorable to itself. Accordingly, it is urgent that the question of how to deal with this antidemocratic law be properly addressed.

However, it should be kept in mind that in order to consolidate democracy and guarantee human rights, a mere revision or repeal of the National Security Law is insufficient. More importantly, genuine democratization can be achieved only when the state apparatus that implemented the thought control laws, as well as the judiciary branch that applied them to many cases, both confess their antidemocratic acts and guarantee that similar ones will not recur in the future. This paper explores how the thought control laws have functioned, and what should be done to achieve full Korean democratization.

Modern Korean History and Thought Control Laws

Thought control laws in modern Korean history have taken different forms depending on the following historical contexts: liberation from Japanese colonial rule, the establishment of the United States Army Military Government in Korea (USAMGIK), national division, the Korean War, the emergence of anticommunism, and the struggle for democracy.

As widely recognized, some Korean power groups suffered from a lack of political legitimacy, which is why they often tried to control

the thoughts of citizens. Those in political power relied not on democracy as defined in the Constitution but on violence, and went further to mobilize anticommunist ideology to justify this violence. Especially, since the Korean peninsula was divided into North and South, emphasis on national security from foreign adversaries was easily linked with anticommunist ideology.¹

Laws that restricted freedom of thought in Korea were set up to legally regulate the forces that threatened the national polity or were interconnected or sympathized with communist groups. However, these laws were actually applied not only to “clear and present dangers” but also to any preparations for or conspiracy with these dangers; so even non-dangerous thoughts were constrained. Moreover, these laws were ambiguous and comprehensive and could be indiscriminately abused. Such abuse is vividly confirmed by the Anticommunist Law (Ban-gongbeop, ACL) of the past or the National Security Law. Thought control laws in Korea were so abusive, they even extended to conservative opposition parties, not to mention anti-authoritarian groups.

Abuse of thought control laws was naturally met with resistance. As time passed, a systemically organized resistance against this abuse went beyond criticizing anticommunist ideology to attacking liberal democracy. Thought control laws were also abused when they were used to suppress the pro-democracy movement. In a word, these laws, which originally served as a tool to spread anticommunist ideology, were transformed into a tool to help maintain the power of authoritarian rule.

Modern Korean history since liberation can be chronologically divided into three stages:² First is the period from liberation to the pre-May 16 military coup (1945-1961), when Syngman Rhee held political power. In this period, power relations were rearranged mainly by right-wing groups, and thought control laws were utilized as a means

1. Park (1992, vol. 1, 45).

2. Periodization of modern Korean history differs from scholar to scholar. This paper demarcates different periods according to each characteristic of the thought control laws.

for nation-state building. The second stage dates from the military coup to just before the beginning of the grand struggle for democratization in 1987 (1961-1987), when the Park Chung-hee and Chun Doo-hwan administrations held political power. At the time, thought control laws were exploited to maintain the developmental dictatorship. The third period spans the period from the 1987 struggle for democratization to the present. In this period, we witnessed the laws being abused for the benefit of political powers; at the same time, a discussion began as to whether to revise or abolish the law. This period can be also divided into two sub-periods: during the Roh and Kim Young-sam administrations, the National Security Law was selectively applied to create a situation in which the National Security Law and violent repression controlled the political arena; the Kim Dae-jung and Roh Moo-hyun administrations are characterized by discussions over whether to revise or abolish the law. But the resistance of conservative forces was too strong for these discussions to bear any fruit.

Syngman Rhee and Thought Control Laws

Syngman Rhee regime's establishment of thought control laws and the ensuing legal abuse can be explained in terms of the regime's undemocratic nature. However, more important is the post-liberation U.S. policy that strove to secure Korea as a bulwark against the Soviet Union.³ In order to include Korea in the capitalist system and maintain her strategic interest, the United States utilized the colonial apparatuses left behind by the Japanese and allowed the pro-Japanese bureaucracy to stay in office. Furthermore, the United States tried to protect the ownership rights of pro-Japanese landlords and wealthy businessmen, while allocating Japanese government-vested land to USAMGIK and handing it out to right-wing forces and pro-American bureaucrats.⁴

As a result, it was inevitable for the Syngman Rhee regime and

3. See Hess (1987).

4. Ahn (2005, 85, footnote no. 16).

anti-Japanese nationalist and socialist camps to confront each other. While the former had been supported by Japanese colonial power, and maintained their political power under the aegis of the U.S. military government, the latter had resisted Japanese colonial rule. The two forces entered the stage of total struggle beginning with separate elections and the establishment of separate governments on the Korean peninsula in 1948. The South Korean government was supported by a triple alliance among the United States Army Military Government in Korea, the Korean Democratic Party (Hanmindang), and the Syngman Rhee group.

For Korean society, which had been liberated from thirty-six years of Japanese colonial rule, the most urgent task was punishing the antinationalist Japanese collaborators. The Law to Punish the Pro-Japanese (LPPJ) was a rationale for effectively attacking the Syngman Rhee regime that had been built upon the pro-Japanese group. The Korean constitutional parliament established this law on September 7, 1945, and President Syngman Rhee unwillingly promulgated the law.⁵

In October 1945, the Special Committee for Punishing the Pro-Japanese launched its activities. Groups, bureaucrats, and the police, who worked for Japanese colonial rule, violently and systemically resisted.⁶ In February 1949, Syngman Rhee defined the committee's activity as unconstitutional, and while utilizing an accusation of espionage within the parliament, he revised the law to stop this activity. The Rhee regime employed anticommunism to attack the committee or the anti-collaboration law by stigmatizing congressmen who supported the LPPJ as communists.⁷

In this context, the National Security Law was born with the aim

5. Ahn (2003, 158).

6. Ahn (2003, 161).

7. O Ik-hwan (1980, 110). On June 2, 1949, while claiming, "Committee members are communists who captured the anticommunist patriots," the National Enlightenment Society (Gungmin Gyemong Hyeophoe) demonstrated in the streets, and called for the dissolution of the Special Committee for Punishing the Pro-Japanese and the release of Japanese collaborators. Based on the investigation of those who led the demonstration, this committee found that pro-Japanese senior police officials steered the demonstration from behind the scenes. See also Ahn (2005, 378).

of protecting the national polity. When the sixth and fourteenth regiments of the South Korean army refused to embark on a mission against the Jeju rebellion, the National Security Law, which acted for the elimination of the left, was passed. On December 1, 1949, the National Security Law was put into effect less than one month after it was proposed on November 9 of the same year.⁸ In a sense, the law was very similar to or, more exactly, taken directly out of the Japanese law, the Public Security Law (Chian Yijibeop), which was a tool to repress the national independence movement during Japanese colonial rule.⁹ The law was designed to "prohibit all activities that aimed at subverting the state and denying private property" and "preventively detain" those suspicious of "being dangerous and possessing unsound thought." The law was typical of antidemocratic laws during the Japanese colonial era. The two laws were very similar in that they could punish people not only for their actions but also for their very thoughts. Initially focused on punishing civil war activities, the National Security Law was changed to deal even with the punishment of associations and groups, the goals of which were deemed to be civil war. Following the Yeosu-Suncheon Incident, even legal assembly was prohibited, with freedom of thought being denied.

Conflict over the LPPJ came to an end with the victory of Syngman Rhee, who unlawfully utilized the National Security Law. Some younger lawmakers including Kim Yak-su and No Il-hwan, who actively engaged in the establishment of the LPPJ, were punished under the National Security Law.¹⁰ Thus, it is ironic that the pro-

8. The National Security Law was hurriedly legislated five years before the Criminal Law was created. Moreover, it was a temporary emergency act, as confirmed by Minister of Justice Kwon Seung-ryeol and Supreme Jurist Kim Byeong-ro.

9. The original title of the National Security Law was "Special Act on Antisubversion." Cho (1992, 67).

10. Seo Yong-gil, who was associated with the incident, argued that it was fabricated. The investigation relied on only what suspects allegedly confessed. It is probable that it was fabricated, since they were forced to confess their crimes under torture. For more details, refer to Han (1975, 145ff). The fabricated incident brought the committee's investigation to a complete stop. Then, on September 21, 1949, a bill abolishing the LPPJ was passed in the National Assembly.

Japanese group, armed with the National Security Law, punished nationalists who were acting for national independence, while also failing to purge the last vestiges of Japanese colonial rule. For modern Korean history, it is unfortunate that anticommunist ideology and the National Security Law came into being. It was not unusual to see political powers accuse their opponents of engaging in communist activities for the benefit of maintaining political hegemony; as a result, democracy almost disappeared. Instead, the National Security Law became a tool of maintaining dictatorial rule.

In 1949, 118,621 persons were arrested and imprisoned. In the same year, from September to October, 123 social groups were dissolved.¹¹ As the National Security Law cases increased and the number of those arrested from the left grew, President Syngman Rhee revised the National Security Law to alleviate the burden of dealing with the increased cases. The first revision was characterized by the introduction of a single-trial system instead of a three-trial system, the death penalty, and detention camp¹² for ideological conversion.¹³ Of course, this revision encountered public criticism and was amended again before being implemented.¹⁴ However, this vividly demonstrated the fact that the Syngman Rhee regime was willing and able to distort the law as it found necessary. The third revision is an example of this.

At the end of the Liberal Party administration in 1958, revision of the National Security Law was retried. President Syngman Rhee argued that in order to defeat the North Korean plan of aggressive invasion into South Korea and to protect human rights, the National Security Law had to be revised. However, this revision was only

11. MINBYUN (2004, 13).

12. Detention camp for ideological conversion refers to a system in which left-wing offenders were imprisoned while being forced to recant their political beliefs. Later, the system was included in the Social Security Act. The number of those who were released from prison after being judged as sufficiently converted was over 300,000.

13. Park (1992, vol.1, 106).

14. It refers to the second revision dated April 21, 1950.

intended to extend his presidential term. In 1954, President Rhee revised the Constitution to enable himself to be elected president once again in the 1956 presidential election.¹⁵

However, the Syngman Rhee regime had begun to collapse. This can be seen from the fact that he barely defeated Jo Bong-am, a candidate from the Progressive Party. To cope with this difficulty, the Rhee regime arrested ten politicians from the Progressive Party in 1958 who had been suspected of allegedly violating the National Security Law. Jo Bong-am was first sentenced to a five-year prison term by a local court, then sentenced to death by the Supreme Court and executed on July 31, 1959.¹⁶

The third revision was a typical case of the Syngman Rhee regime bending the law to maintain political power.¹⁷ Although his regime successfully passed the National Security Law, he was expelled from power with the advent of the April Revolution brought about by the unlawful election on March 15, 1960.¹⁸ The law escaped abolition even under the Democratic Party administration due to the ideology of anticommunism, with only the clause regarding the crime of public seduction being deleted.

The reason thought control laws could be maintained was due mainly to the ultra-rightist political topography, as well as the fact that the intelligence agency and judiciary branch actively employed these laws. The present court originated in the judiciary system formed during the United States Army Military Government in Korea, which was based on the judiciary system of the Japanese Govern-

15. Park (1992, vol.1, 129).

16. Park (1992, vol.2, 362).

17. The third revised National Security Law, despite the grand-scale propaganda of the Syngman Rhee government, was not easy to revise and pass because opposition parties, social organizations, and the press had already pointed to the problems found in the revision. Thus, President Syngman Rhee inevitably relied on violent antiparliamentary procedures. During the absence of opposition party members, the Liberal Party first processed the revised bill in the Legislation and Judiciary Committee, and finally passed it during the plenary session while the opposition party members were confined in the basement of the parliamentary hall.

18. It refers to the fourth revision made in June 10, 1960.

ment-General in Korea. While releasing the first decree, USAMGIK allowed the Korean judiciary bureaucrats, who worked during the Japanese colonial rule, to keep their offices.¹⁹ They constituted major parts of the prosecution office and court, which made possible anti-democratic oppressive laws, such as the National Security Law, to be unrestrictedly applied.

The Anticommunist Law and the National Security Law during the Military Dictatorship

Although some poisonous articles or clauses were deleted, the clause punishing those who failed to report suspected communist activities was newly included in the National Security Law even following the April Revolution. The Democratic Party government, fearing an unconstrained burst of democratization fever, submitted a bill for a temporary anticommunist law. The bill included articles on crimes of “joining and inducement to join an anti-state organization,” “escape and infiltration to areas ruled by an anti-state organization,” and “preparation and conspiracy.” However, it was met with violent dissent and was not able to pass.

Yet, the bill was adopted when Park Chung-hee took power via the May 15 military coup.²⁰ Having succeeded in holding power, the military coup forces upheld anticommunism as the first rationale of the coup, and to this end, the Supreme Council of National Reconstruction, an emergency junta assembled after the coup, passed the Korean Central Intelligence Agency Law on June 10, 1961. In addition to the existing National Security Law, the council drafted the Anticommunist Law, another thought control measure, which laid the foundation for the military junta to initiate long-term dictatorship. Born out of the above-mentioned temporary anticommunist law,²¹

19. Ahn (2003, 175ff).

20. Park (1992, vol. 2, 158).

21. The law included articles on crimes of joining and inducement to join an anti-state organization (Article 3), praising and encouraging an anti-state organization and

the Anticommunist Law was also abused to maintain the political power of the Park Chung-hee regime. Among the many cases of abuse were the People’s Revolutionary Party (PRP) Incident (August 1964), National Democratic Youth and Student Alliance (NDYSA) Incident (April 1974), and Reconstruction Committee for People’s Revolutionary Party (RCPRP) Incident (April 1974).

The PRP Incident, referred to as to Inhyeokdang Incident, took place when President Park announced martial law in response to the struggle against the Korea-Japan Diplomatic Normalization Talks in 1964, or the so-called June 3 Incident. The Korean Central Intelligence Agency then explained that it had discovered the PRP had been ordered by North Korea to try to plot a national disturbance, and that the PRP was an underground organization that opposed Korea-Japan diplomatic normalization.²² The court declared all thirteen members associated with the incident guilty.

The NDYSA Incident, referred to as the Mincheong Hangnyeon Incident, took place between 1973 and 1974 soon after university students violently resisted the Yusin Constitution, which President Park legislated in 1972 under martial law. In 1974, the KCIA arrested 1,034 persons and prosecuted 253 while stating that NDYSA was ordered by RCPRP to cause a national disturbance. Among those were arrested, one was sentenced to death. Furthermore, KCIA arrested those who were associated with the first PRP incident, and seven were sentenced to death in court. Eight were executed only eighteen hours after the judiciary decision was made.²³

However, many doubts have been raised regarding whether there

its activities (Article 4), forming and joining an enemy-benefiting organization or anti-state organization (Paragraph 1, Article 4), producing, keeping in custody, and acquiring unsound, illegal expressions (Paragraph 2, Article 4), meeting and communicating with an anti-state organization or members belonging to communist groups outside Korea (Article 5), and failure to report suspected communist activities (Article 8). The new Anticommunist Law preceded the National Security Law in legal application.

22. National Intelligence Service Development Committee for Clarifying the Past (NIS Committee) (2005, 2).

23. NIS Committee (2005, 2-3).

was issues of national security conspiracy, such as whether the KCIA report was true and whether torture was practiced by the KCIA. On December 7, 2005, the National Intelligence Service Development Committee for Clarifying the Past (NIS Committee) announced that President Park Chung-hee had ordered the fabrication of these incidents.

The NIS Committee found that the PRP was not an anti-state organization and never engaged in a plot to cause a national disturbance. It can therefore be surmised that to maintain his government by dubbing the struggle against Korea-Japan diplomatic normalization as a pro-communist activity, President Park irrationally accused the PRP of forming an anti-state organization, while stating that the RCPRP was behind the NDYSA.²⁴

Although Koreans longed for democratization with the collapse of military dictatorship, they were frustrated by the December 12 military coup in 1979. Like former President Park Chung-hee, Chun Doo-hwan, who entered the political arena after violently repressing the Gwangju Democratization Movement, had no choice but to rely on thought control laws to maintain his power. Chun Doo-hwan formed the National Protection Legislation Assembly, which functioned similarly to the Supreme Council of National Reconstruction set up during the Park regime. The only thing that differentiated the former from the latter was the fact that while President Park added the Anti-communist Law to the existing National Security Law, President Chun Doo-hwan included the Anticommunist Law in the National Security Law.²⁵

24. The following evidence confirms that the incident was fabricated: Three prosecutors resigned from office while claiming unreasonable prosecution; the prosecution office, after reinvestigating the Inhyeokdang Incident, changed the prosecution letter to apply the crime of forming an anti-state organization found in the Anticommunist Law rather than the National Security Law. It should also be kept in mind that the National Security Law and the Anticommunist Law were applied not only to anti-governmental groups but also in order to constrain a broader range of activity, such as freedom of thought, academic research, and artistic endeavors.

25. Some articles that appeared in the Anticommunist Law were also found unrevised in the National Security Law. For example, Article 4 on praising and sympathizing

Table 1. Number of People Charged and Prosecuted for Violating the National Security Law by Specific Clauses

	1980	1981	1982	1983	1984	1985	1986	1987	Total
Forming and/or joining an anti-state organization		19	1	1			17		38
Infiltrating into and/or escaping from South Korea	3	7	11	7	2	2	7		39
Praising and sympathizing with an anti-state organization	148	225	201	106	2	2	7		2,072
Meeting and communicating	1			3	2	2	1		9
Aiding		2	8				3		14
Failure to report	13	12	11		2	4			42
False accusation	1	2		4	3	1		1	12
Total (Charge/ Prosecution)	167	270	234	121	106	127	527	489	2,232
	116	116	166	108	94	101	365	302	1,565

Source: Ministry of Internal Affairs, 1998, *Gukjeong gamsa jechul jaryo* (Documents for Parliamentary Inspection); quoted from MINBYUN (2004, 116).

found in the ACL was placed in Article 7 of the National Security Law, Article 5 on meeting and communication was moved to Article 8, and the Article 7 on aiding to Article 9. Article 8 on the crime of failure to report suspected communist activities was found in Article 10 of the National Security Law.

As resistance to the Chun regime became more systematic, the National Security Law was more frequently applied. During the Chun regime from 1980 to 1987, 2,232 people were charged with violating the National Security Law; among them, 1,565 were prosecuted. The majority were accused of the crime of praising and sympathizing with communism as proscribed in the National Security Law. Laws against forming and joining an anti-state organization were mostly enforced from 1981, the early stage of the Chun regime, to 1986, when the government was in crisis. One can see that those who were prosecuted for violating the National Security Law were scapegoats for the establishment and maintenance of authoritarian power.

Between 1981 and 1987, the number of those sent to court totaled 1,565, which suggests that the National Security Law was frequently abused. When viewed over the entire period, the National Security Law was widely abused after its initial establishment, after which application of the law temporarily shrank, before increasing again from 1985. Comparing 1984 with 1987, application of the National Security Law significantly increased by five times, to such extent that the Chun regime was nicknamed the "Era of the National Security Law."

From 1980 to 1987, democratization movement groups were actively organized, with lively theoretical discussions on movement strategy. Also, this period witnessed serious and frequent conflicts over political lines within movement organizations. During this period, the National Security Law was applied frequently to punish the movement organizations; it was even applied to ideological debates conducted in university circles. From this we can see that the law functioned to repress people's very thoughts. Even more, one could be punished simply for carrying books that were regarded as "unsound" by the authorities.²⁶

26. Park (1992, vol.2, 137).

Democratization and Thought Control Laws

The much-abused National Security Law during the Chun Doo-hwan administration paradoxically made the law meaningless as an anti-communist law. Instead of automatically accepting that violation of the law was anticommunist, the public began to associate violating the law with practicing democracy. In this context, the question of how to deal with the repressive, antidemocratic National Security Law was brought to the fore.²⁷

Citizens' resistance to the military dictatorship in June 1987 brought about the June 29 Declaration, which accepted the citizens' demands for direct presidential elections. An end to the Chun Doo-hwan regime was called for, and every candidate who ran for the 1987 presidential election made the campaign promise of abolishing the National Security Law.²⁸ Unfortunately, the June 29 Declaration, an outcome of the June struggle, failed to achieve genuine political democratization, while only allowing people to sense the possibility of democratization. Both the ruling and opposition parties never considered repealing the law but rather argued over how much the law should be revised. In the end, the ruling Democratic Justice Party passed a revision of the bill with a closed vote.²⁹

This revision was not made to guarantee democracy and human rights, but rather it was only a meager revision that reflected the *nordpolitik*³⁰ of the Roh Tae-woo administration and the decision of the Constitutional Court. The National Security Law was the cheapest tool for the government, which did not feel the need to abolish it.³¹ The National Security Law satisfied political groups who did not want democracy to progress.

The National Security Law reemerged as an issue in 1989 during

27. Democratic Legal Studies Association (1989, 16-17).

28. Democratic Legal Studies Association (1989, 17ff).

29. Park (1992, vol. 1, 223).

30. The Inter-Korean Exchange and Cooperation Act was passed on August 1990.

31. Democratic Legal Studies Association (1989, 21).

the first “public security” situation, when the political atmosphere had become dominated by concern for public security, and citizens began demanding that those implicated in corruption and irregularities during the Chun regime be punished. It emerged a second time, during the second “public security” situation, when Bak Hong, then-president of Sogang University, argued that the student movement was oriented toward Juche ideology.

In 1989, the political situation became very unstable when an attempt was made to break away from the Chun regime, and citizens called for the abolition of the National Security Law and the Agency for National Security Planning Act. At the time, people’s unification theory was widespread. Intellectuals were organizing a mass struggle in combination with the labor movement and farmers’ movement to protect their livelihoods. At this time, Rev. Mun Ik-hwan, a renowned proponent of independent unification, visited North Korea without government permission, and the Roh Tae-woo declared total war against the democratization camps.³²

On April 3, 1989, the Roh Tae-woo administration set up the Public Safety Investigation Headquarters (PSIH) to deal a fatal blow to the left. The new headquarters brought all public safety agencies together, including the National Safety Planning Department, Military Security Headquarters, National Police Headquarters, and the Public Security Division at Prosecutors’ Office. The PSIH arrested Rev. Mun for the crime of praising and sympathizing with communism (article 7 of the National Security Law), and also arrested Professor Lee Young-hee for planning or contemplating escape into anti-state organizations. An all-out attack was also launched to suppress opposition party members and labor movement activists.³³

Within just a month, the PSIH arrested 350 persons, booked 215 on charges of violating the National Security Law, searched 87, and confiscated 11,471 publications. Accordingly, the National Security Law, of which the repeal or revision was considered, regained its

32. Democratic Legal Studies Association (1989, 1-2).

33. Democratic Legal Studies Association (1989, 16-20).

Table 2. Number of People Prosecuted for Violating the National Security Law (1993-1997)

Year	1988	1989	1990	1991	1992	Total
Number of people	104	312	414	357	342	1,529

Source: National Court Administration, *Sabeop yeon-gam* (Yearbook of Law) 1993-1997; quoted from MINBYUN (2004, 116).

previous status. When the Democratic Liberal Party launched a merger of the three conservative parties, antiviolence and anticommunism were included in the party platform. As a consequence, the restored National Security Law was applied in an undifferentiated manner. Among those prosecuted under the law included: student teachers, who had been engaged in “conscientization,” or “consciousness raising”; labor movement activists who had formed anti-state organizations; university organizations which were defined as anti-state groups; and their publications, including academic ones, defined as anti-state. As a result, the number of prosecutions under the National Security Law did not decrease compared to those during the Chun regime.³⁴

Legal abuse of the National Security Law to maintain political power did not decrease during the Kim Young-sam administration either. Although the early part of the administration saw discussion over whether the law should be repealed or revised, the sudden death of North Korean leader Kim Il Sung saw the National Security Law come back into play—the so-called second “public security” situation. As a result, the National Security Law came to exert an overwhelming influence.

The situation was created when lawmaker Yi Bu-yeong argued that a condolence visit had to be made to the North. In response, the conservative press identified this as a crime of praising or sympathizing and initiated an unproductive ideological controversy. On July 18,

34. Park (1992, vol. 2, 44).

President Bak Hong of Sogang University abruptly criticized students, stating that Kim Jong Il lay behind the student activists who adopted the Juche ideology. The press put the issue on the social agenda, as if they were revealing a concealed truth. Consequently, this helped create the second “public security” situation.

The situation developed so irrationally, it became reminiscent of the witchhunts in medieval Europe. Social activists were arrested under the National Security Law because they supported free exchange between North and South Korea. All kinds of espionage activities were consequently investigated. Among the many cases, the most extreme was one in which the National Security Law was applied to a university textbook, *Hanguk sahoe-ui ihae* (Understanding of Korean Society).

At the time, the prosecutors stated that the textbook was possibly adversarial, and one or two of the authors were accused of advocating Juche ideology. However, the textbook did not explicitly represent North Korean Juche ideology, and even contained criticism of North Korea. Given that the textbook was based on research findings in Korean social science, applying the National Security Law to the book was nonsense, a typical act of thought control.³⁵

Table 3. Number of People Prosecuted during the Kim Young-sam Government (March 1993-February 1998)

Year	1993	1994	1995	1996	1997	1998	Total
Number of people	112	393	285	499	677	23	1,989

Source: Minkahyup quoted from MINBYUN (2004, 118).

A similar situation arose in 1996 during the latter part of the Kim Young-sam administration. Prior to the April 11 general election, many were prosecuted for organizing anti-state groups, thereby violating the National Security Law. From August 12 to 15, when the

35. See Kim J. (1994, 70-71, 91).

Pan Korean National Assembly and Festival for Reunification were held, 5,899 citizens, including university students, were arrested; of that number, 465 were prosecuted. At the time, the public security authority prosecuted them for joining anti-state organizations. The year 1997 will be remembered as a period when the student movement was the most harshly repressed. Thus, the number of cases that were related to National Security Law far exceeded that during the Roh Tae-woo administration.

In this manner, the National Security Law was employed to form a political environment in which public security was prioritized over all, and this did not change even during the Kim Dae-jung administration. President Kim Dae-jung claimed that he would not abuse the law, though he could not abolish it. However, statistics from the year prior to from the inception of the Kim Dae-jung administration found that the number of prosecuted totaled 413 and 90% of those were released at the first trial. Nonetheless, it deserves mention that the number of prosecuted dropped remarkably during the latter part of the administration.

Table 4. Number of People Prosecuted during the Kim Dae-jung Government (March 1998-February 2003)

Year	1998	1999	2000	2001	2002	2003	Total
Number of people	1,389	288	128	118	126	9	1,058

Source: Minkahyup quoted from MINBYUN (2004, 121).

Settling of the Past and Repeal of the National Security Law

As democratization progressed to a certain degree, the question of whether to repeal or revise the National Security Law was very frequently discussed whenever political powers shifted.³⁶ Although the

36. See Kim M. (1999, 11-12).

issue was actively discussed with the launch of the Kim Dae-jung administration in 1999, nothing was achieved except some pondering of options, such as abolition of the law, legislation of a substitute law, or partial amendment. This was also the case during the Roh Moo-hyun administration, which came into power in 2003.³⁷

Thus, it is necessary to see why any further development has not been made regarding the issue of revision or abolition of the National Security Law. Until the Kim Dae-jung administration, it was difficult to revise the National Security Law since civil organizations or human rights organizations led the discussion about its reform or abolition, while the government tried to maintain it. In contrast, the ruling Uri Party has decided to abolish the law, but it is facing a backlash from the opposition party and conservative forces at present.

Around the launch of the 17th National Assembly in 2004, the People's Solidarity for Abolition of the National Security Law was established, which included a wide range of 301 civil and human rights organizations. Even the National Human Rights Commission, a state organization, recommended abolition of the law to the congressional chairman and the Justice Minister. However, the number of lawmakers needed to pass a bill for National Security Law abolition could not be found. A poll conducted by the Voice of the People found that only 93 lawmakers were for abolition, 86 were for revision, and 4 for maintenance.³⁸

This confused the ruling Uri Party. Some party members tried to pass the law with ruling and opposition parties arriving at consensus by any means, and some Uri Party members, while preferring the partial revision of the National Security Law rather than a full repeal, even voiced that it was more desirable to just delete some articles found in the law, e.g. possession of anti-state publications. This argument was based on the people's perceptions and emotions. For example, a poll conducted after the appeal in the case of Professor Song Du-Yul found that when asked whether the law should be repealed, a

37. See Oh D. (2004, 128).

38. <http://www.voiceofpeople.org>.

large number of people supported maintaining it.³⁹ Finally, the Uri Party gave up on efforts to repeal or revise the National Security Law, thereby nullifying the persistent struggle against the National Security Law, which had been the strongest in fifty-six years, having included a thousand-person hunger strike.

Before thinking about for whom the National Security Law exists—whether for the protection of liberal democracy or the administration in power—what matters is arriving at a consensus. Currently, the National Security Law falls under the Korean Constitution. Therefore, the National Security Law should be judged in terms of the legal parameters of the Constitution, which guarantees freedom of thought. In other words, the National Security Law cannot but be found to be in violation the constitution.

In recent years, the National Security Law has not been easily applied. It is worth noting that the frequency of actual prison sentences for violation of the National Security Law has been remarkably reduced. For this reason, some argue that while the National Security Law cannot expect to play a role in maintaining political power during the post-democratization era, it still has meaning as a law that protects liberal democracy. However, the very fact that the law can be easily abused is testimony to the incomplete nature of Korean democratization and the underdevelopment of political democratization.

Moreover, the National Security Law issue cannot be said to have disappeared. Since the partial amendment of 1991, despite a governmental power shift, the law has remained intact in a way that has not allowed the change of even a single word. In addition, there are still problems with legal structures. Though quantitatively decreased, prosecution of the law continues. Recent changes to the

39. *Chosun Ilbo*, August 9, 2004. The survey was conducted on July 27. The maximum acceptable error rate should be $\pm 3.7\%$ at 95% confidence. Although this survey was problematic as it did not differentiate the concept of maintenance from revision, it provided a logical foundation on which the revised National Security Law bill could be established, in that the questionnaire recognized the very existence of the law.

application of the law were entirely attributed to the change in inter-Korean relations and regime change. Thus, it is possible for the law to be abused depending upon how the North-South relationship and political situation develops.

The international community has also been critical of the National Security Law. Amnesty International, an international human rights organizations, the United Nations Commission on Human Rights, and the United Nations Human Rights Committee asked the Korean government several times to repeal the National Security Law. Even the United States government has frequently pointed out the human right violations found in the National Security Law while releasing an annual human rights report produced by the State Department of the United States.

In light of further developments in North-South Korean relations, no justification can be found for maintaining the National Security Law. Actually, many new laws have passed concerning North-South Korean relations, including the Inter-Korean Exchange and Cooperation Act.⁴⁰ This legislation means that South Korea sees North Korea not as an anti-state organization but as an undeniable legal entity. This is irrefutable evidence that the National Security Law has not been legally effective. And yet, the only way to confirm the legal reality—that the National Security Law has become a dead document—is to repeal the National Security Law in the first place.

Although some perceive the law as inevitable for maintaining liberal democracy, this perception needs to be corrected. In order to do so, it is necessary to provide truthful information on the issue to the general populace, and more significantly, efforts to thoroughly rectify the past should be made. In the first place, factual truths about fabricated incidents should be uncovered, such as when the National Security Law was used to prosecute student activist organizations and pro-democracy group members. The National Intelligence Service (NIS) Committee already revealed the truth about the NDYSA and PRP incidents, and accordingly, the court called for a retrial of these

40. For more details about this, see Oh S. (1998, 46ff).

incidents last December.⁴¹ However, many other fabricated incidents await retrials.

In recent years, many laws have been passed with the aim of settling past wrongdoings. Included here are the Special Act on the Gwangju Democratization Movement (1995), the Special Act on the April 3 Jeju Incident (2000), the Act on Special Measurements for the Geochang Accident, etc. (1996), the Special Act to Find the Truth on Suspicious Deaths (2000), and the Restoration of Honor and Compensation for Democratization Movement Law (2000). In 2005, according to the Truth and Reconciliation Act (TRA), the Truth and Reconciliation Commission, Republic of Korea (TRCK) was formed. Likewise, many commissions were created to work on rectifying past wrongdoings, but the truth about most human rights violations has not yet been revealed.

In addition, some state organizations should be criticized for exploiting the law to violate human rights. At present, the National Intelligence Service Committee has been engaged in investigating human rights violations by the NIS, which has been dubbed a notorious anti-human rights organization. Moreover, institutional reform should be followed so as to prevent further human rights violations. In line with this, the National Intelligence Service should be deprived of its investigative power and legally prohibited from intervening in national politics. The judiciary branch that applied the law to many trials should also confess their antidemocratic acts and guarantee that any recurrence of similar incidents will be prevented. That would be a starting point.

41. A retrial of the Inhyeokdang Incident began in March 20, 2006.

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