

Why Do Democratic Societies Tolerate Undemocratic Laws? Sorting Public Support for the National Security Act in South Korea

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Abstract

Why do clearly anti-democratic laws persist in otherwise democratic societies? To address this puzzle, we explore public support for South Korea's National Security Act, a controversial law designed to deter pro-North Korea behavior and speech through restrictions on freedom of expression and movement. With foundations in the colonial era, the Act is mainly a product of the country's national division and Cold War-era competition with North Korea, representing a legal manifestation of anti-Communist ideology. Broad in scope and open to arbitrary application, the Act runs contrary to the spirit and institutions of liberal democracy. Why, despite heavy criticism of the Act from progressive politicians and several decades of democratic deepening in the country, has it yet to be abolished? To answer this question, this paper uses a choice-based conjoint to test the impact of democratic norms and national security rationales on various policy propositions regarding the Act, which include abolishing it altogether. Differences in opinion by political identification and by political generations are also tested. Results show broad-based support for the act, motivated by both democratic norms and security concerns. Progressives are more likely to support revisions limiting the scope of the Act and the basis that it safeguards democracy, but they agree with conservatives that it should not be abolished. This paper will interest those concerned with South Korea's political culture and democratic society and the trade-offs between national security and democracy more generally.

Keywords: South Korea, democratization, political culture, national security, experiments

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1 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 (Slater and Wong 2013), 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 (EIU 2021) or liberal democracy (Boese et al. 2022) with a comparatively free press (Freedom House 2022) and robust civil society (Herre and Roser 2021). Besides system-level evidence, public opinion analysis finds that South Korean attitudes toward political and social rule are largely democratic (Denney 2020; cf. Chull 2021), especially among residents born and socialized under democratic institutions (Denney 2019a; Denney 2019b: 38-58; Dalton and Shin 2014). Democracy is most 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 (2020) identifies some shortcomings, including suppression of dissent and free speech, focusing specifically on the Moon Jae-in administration. Yeo (2020) 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). Others, including Pak and Park (2019), Mobrand (2018), Lee (2017), and Haggard and You (2015) 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.

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 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 traveling 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 toward 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 analyze 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 Korea's political culture, attitudes toward the National Security Act, and the trade-offs between democracy and security.

From here, the paper 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 toward the law before turning to our experimental design. Following an explanation of the survey experiment, we present and analyze our results. We conclude with a summary of our findings.

2 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 – 73 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; it was modeled 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 (Cho 1997: 132; Haggard and You 2015: 172).

Drawing uncomfortable lessons from the unified Korean state's 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, per Cho (1997: 132), “A product of the acute struggle between antagonistic ideological forces and the legal expression of anti-communism and anti-North Korea ideology.”

Kim (2015: 288) and Son (2011: 239-240) are among those to assert that anti-communism, which in the South Korean case is better described as anti-North Korea-ism, was formed into a national guiding principle, or *guksi*, during the early years of the state. If so, the NSA became the legal mechanism for that guiding principle's implementation. Kim (1998) recalls in *Weolgan Mal*, a South Korean magazine popular with activists in the 1980s, how under the government of Syngman Rhee, “Just using the expression ‘peaceful unification’ infringed

anti-communist laws.”

The bellicose anti-communism of the Rhee era set the tone for subsequent military governments to follow. For the duration of his regime (1961-1979), Park Chung-hee instrumentalized the overly broad language of the NSA to ruthlessly suppress all kinds of left-wing and pro-unification sentiment at home (Han 2012: 173-185). Park was killed by his own secret police chief in 1979, but his preferred method of using and abusing the NSA to suppress left-wing or anti-regime dissent in this way lived on as another military general, Chun Doo-hwan seized power in 1980 following a brief interregnum known as the Seoul Spring. Chun would hold it 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 in earnest, as the “military-authoritarian regime’s excessive abuse of the NSA led South Koreans to understand the NSA’s true function” (Cho 1997: 135). 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. There are semi-regular calls from civil society actors – mostly from the left, but occasionally from the right (see Green 2012) for the Act’s abolition and/or radical amendment to its most controversial and anti-democratic section, Article Seven, which violates the right to free speech by forbidding praise of North Korea, but there has never been a successful attempt to abolish it.

What is the current use of the Act? Throughout the democratic era and into the 21st century, prosecutions under the NSA continued unabated, though they have declined markedly in number. As Figure 1 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.

However, that average of 62.7 prosecutions annually hides significant variation. The number of prosecutions under the NSA fell during the aforementioned 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 21st-century high

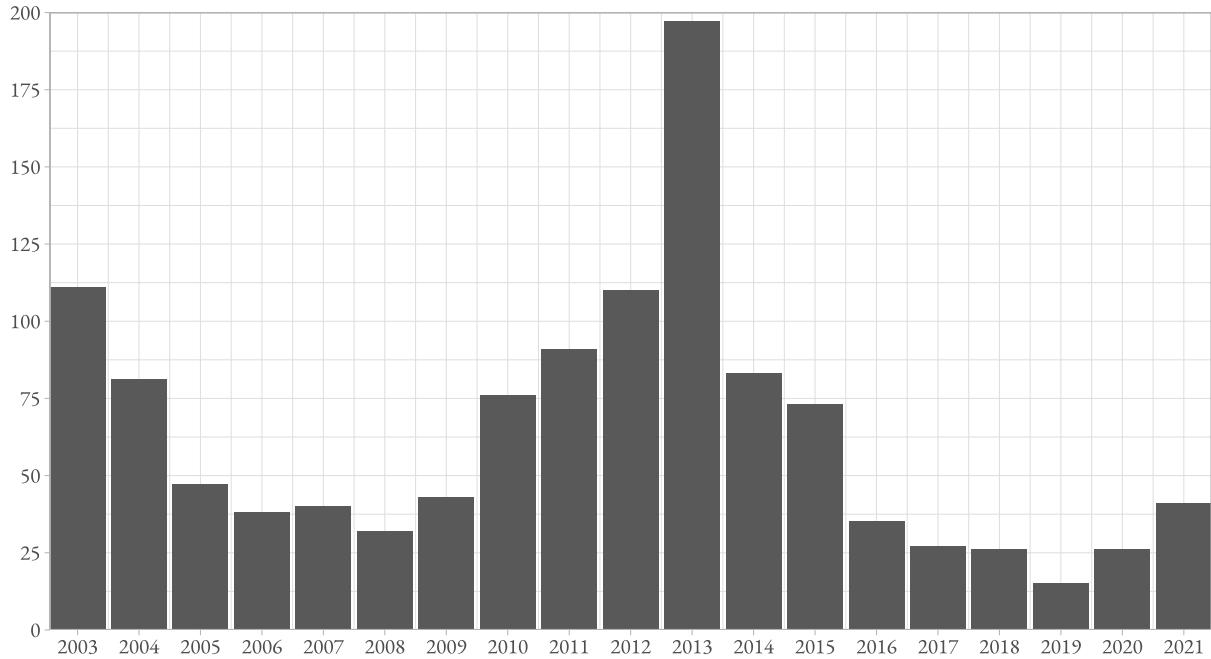


Figure 1: Prosecutions under the National Security Act, 2003-2021

Note: Data from the Ministry of Justice. Most recent statistics used.

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 (Green 2015; Choe 2014). 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.

Despite its legislative dominance, Moon's ruling Minjoo Party did not address the NSA directly during his term, which ended in the second quarter of 2022. This despite 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. Accordingly, the party faced no serious political obstacles to its chosen course. It is telling, therefore, that the administration set its sights on the National Intelligence Service Act (NISA), and in December 2020 it was this act that underwent dramatic revision (primarily to strengthen political oversight via the National Assembly Intelligence Committee). Assuming no further

changes to the NISA are made, it will deprive the NIS of the authority to conduct criminal investigations into violations of the NSA as of January 2024. But the NSA itself lives on. Figure 2 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.

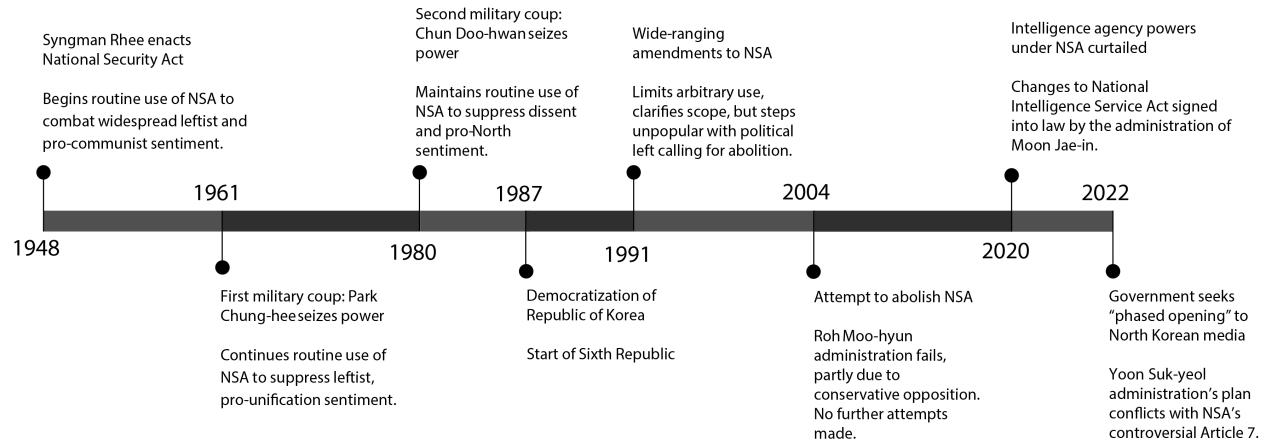


Figure 2: Historical timeline for the National Security Act

3 Measuring Support for the National Security Act

It is not the point of this paper to ask whether or not the NSA should be abolished, though given contestation over the act and its demonstrable challenges to democratic rule, logic suggests it should. The NSA is written too generally and has tended to be applied too broadly, as Amnesty International (2012; 2015) has emphasized. It has been used to stifle public discussion of North Korea over decades – during both authoritarian and democratic eras – resulting in non-trivial limits on freedom of expression for South Korean citizens. It is a salient piece of the puzzle of what International Crisis Group (2014) describes as “intelligence pathologies” in the South.

Nevertheless, that is not our focus. Rather, we wish to understand why, as the previ-

ous section demonstrates, so little political effort has been made to abolish the Act. As one aforementioned former senior intelligence official put it, “Is it nostalgia? A Pavlovian response?” Perhaps. But maybe it is more mundane than that? If we are to 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 (Figure 3). 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 percent disagreed (52 percent 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. Further, 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.

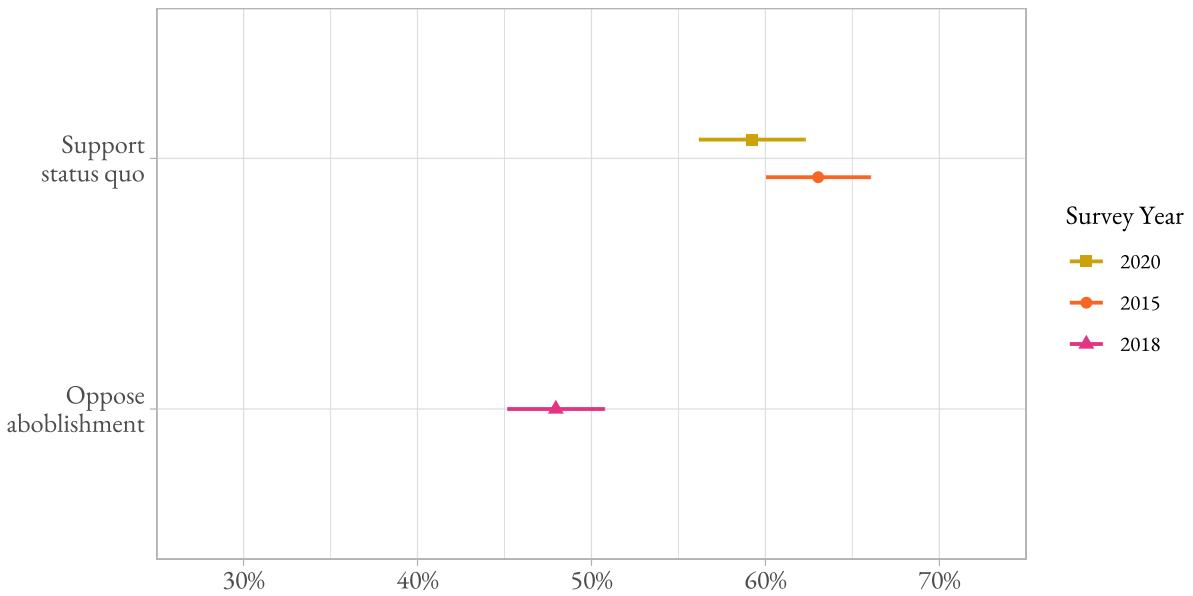


Figure 3: Support for the National Security Act

Note: Data comes from the East Asia Institute's national identity surveys (2020 and 2015) and Wave 7 (2018) of the World Values Survey (WVS). The error bars represent 95% confidence intervals.

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 (Hainmueller, Hopkins, and Yamamoto 2014), 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. Evidence also suggests that conjoint help mitigate measurement error caused by social desirability bias in public opinion surveys that ask about sensitive items (Horiuchi, Markovich, and Yamamoto 2022). The NSA qualifies as a sensitive subject in South Korea, as do other North Korea-related questions (Denney, Ward, and Green 2021).

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 2,009 South Korean respondents from an online opt-in survey panel. Recruitment sought to match known popu-

lation 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 (Bansak, Hopkins, and Yamamoto 2021). Amending the NSA will in all likelihood be an overtly politicized matter, as it has 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 (Bullock 2020; Nicholson 2012; Druckman, Peterson, and Slothuus 2013), thus political party endorsements will likely impact attitudes on policies like NSA reform. 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 the two motivations behind keeping the law on the books (national security) and revising or abolishing it (democracy). Given previous findings and our central concern in this paper, 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.

| Feature | Level |
|----------------------|--|
| Endorser of position | Some people Minjoo Party People's Power Party |
| Policy position | 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 |

Table 1: Attributes and Values for the NSA Conjoint Experiment

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). Each respondent completes eight unique tasks consisting of randomly generated attribute levels and attribute orders. After the seventh task, they 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. As per Leeper, Hobolt, and Tilley (2020). MMs are best suited for subgroup analysis as they are not reliant on reference categories. Analysis of the open-text answers is conducted using a topic modeling approach. Figure 4 shows an English-language approximation of a task. After the forced-choice response, respondents are prompted to rate their preference for each position on a 7-point scale.

1/8

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 |
|---|---|---|
| Main endorser | Some people | Minjoo Party |
| Policy goal | Leave it as is | Abolish it altogether |
| Policy instrument | It is the right thing to do | It will safeguard South Korea's liberal democracy |
| Which of the two policy proposals do you support? | Position A <input type="radio"/> | Position B <input type="radio"/> |
| Rate your agreement with Position A and Position B, 1=strongly disagree 7=strongly agree | | |
| Position A | 1 2 3 4 5 6 7 | |
| Position B | 1 2 3 4 5 6 7 | |

Figure 4: 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 (Hellmann 2014; Wong 2014), North Korea policy and (related) security concerns are among them. Even today, conservative political ideology in South Korea is defined in significant part by anti-communism (or 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 (Lee 2005). 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 (Evans, Heath and Lalljee 1996: 95-96). Thus, we expect that conservatives are more likely to favor freedom-limiting measures to prevent social disorder whilst progressives focus more attention on freedom of speech and opposition to censorship (Kang 2008: 467-472).

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 lifecycle. The conditions under which people come of age tend to be shared, defining what a 'political generation'.

Suppose the proposed relationship between political socialization and broader attitudes is true. In that case, we can expect those coming of age in an increasingly democratic and pluralistic South Korea to hold views consistent with democratic institutions (Kunovich 2009), namely: the protection of civil and political rights, as democratic theory holds (Nodia 1992). 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 over time (Verba 1965; Conradt 1980; Montero et al. 1997; McDonough et al. 1998; Neundorf 2010; Pop-Eleches and Tucker 2017; Denney 2019b). 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.

4 Findings

Figure 2 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 protecting democracy or strengthening national security strongly affect support for policy positions.

The average marginal component effects (AMCEs) show the relative 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.

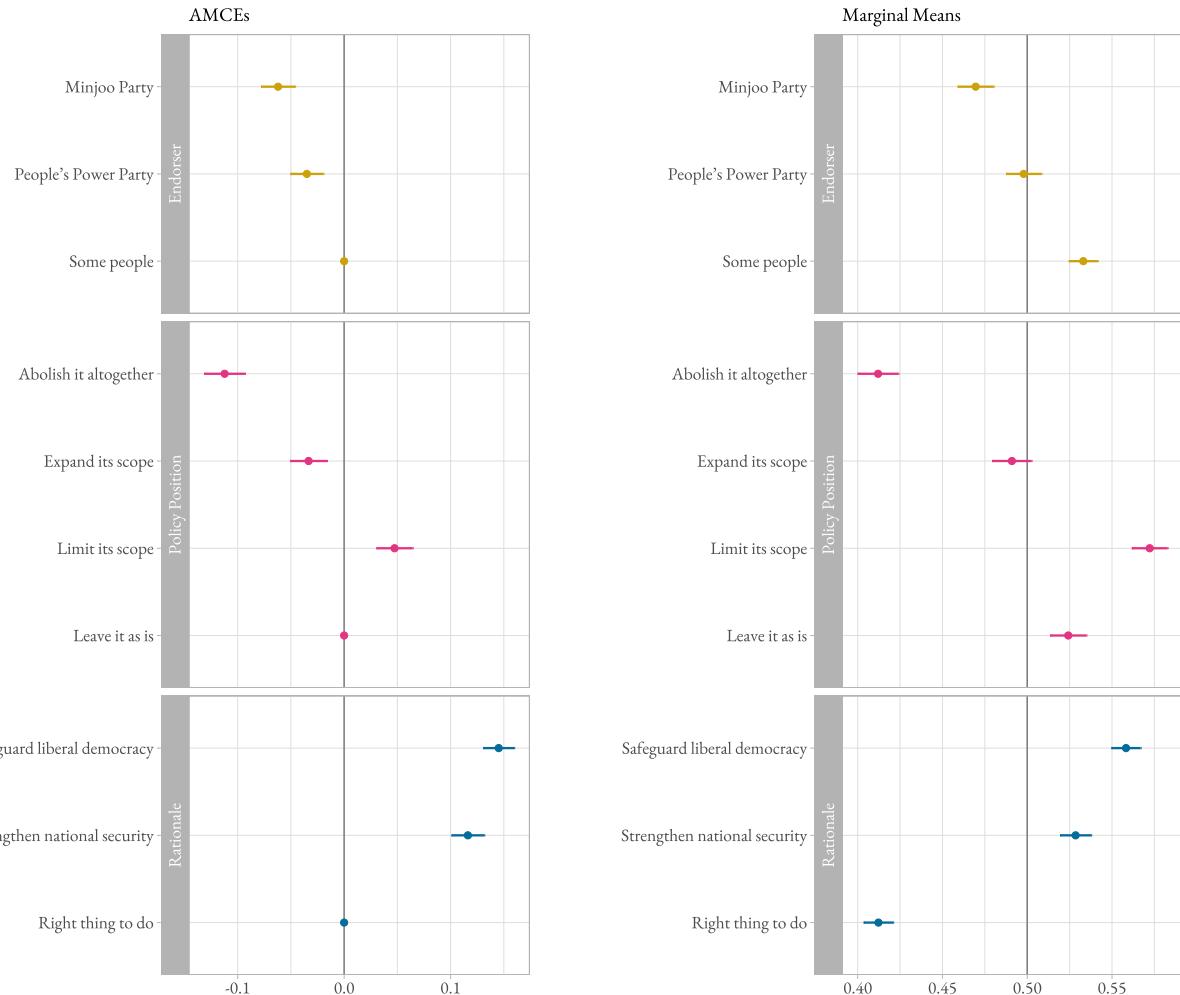


Figure 5: Effects of NSA policy positions on the probability of being preferred

Note: For average marginal components effects (AMCEs), the estimates show the effects of the randomly assigned information attribute values on the probability of use. 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; bars represent 95% confidence intervals.

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. Using the ratings-based measure of preferences, which allows for an expression of mutual favorability or disagreement, the findings are effectively similar.

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 percent 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 percent 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).

To better illustrate the substantive meaning of our findings, we present the estimated probabilities that policy positions would be supported by selected profiles (Figure 6). We hold the endorser attribute constant at ‘some people’ and plot probabilities for our main position of interest (abolish) and revise. Both of these positions are also those which elicit the strongest effects. We can see here that respondents are strongly swayed by policy rationales. For example, when motivated to support a policy position on the basis that it safeguards democracy, respondents are strongly affected. Abolishing the NSA is not a particularly appealing proposition to South Koreans, but if abolishing the law is argued to be good for democracy, it is considerably more appealing than simply being the ‘right thing to do’.

However, the maximum level of support for abolishing the law is only 50 percent. When the same rationale is applied to revisions limiting the scope, the estimated probability of support is 66 percent, which is the maximum level of support any given mix of attribute levels can achieve. A national security rationale also motivates strong support for revision. The estimated probabilities for supporting any given policy position underscore the main findings of this paper: South Koreans do not wish to abolish the NSA.

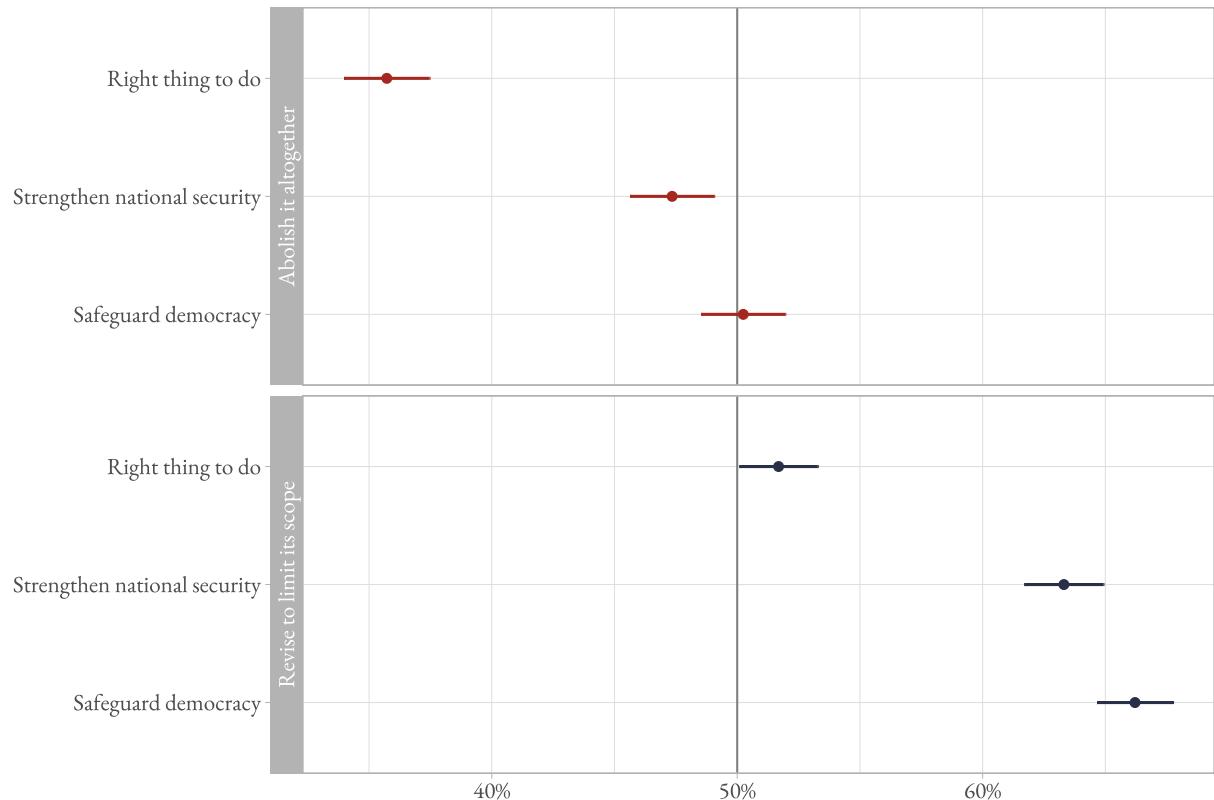


Figure 6: Estimated probabilities of selected NSA positions being preferred

Note: The point estimates represent the probability that the position is preferred with the endorser 'some people' held constant. The estimates are based on the benchmark OLS model with clustered standard errors. The errors bars represent 95 percent confidence intervals.

4.1 Subgroup Analysis: Political Identification and Generations

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 7 reports the marginal means of the conditional average treatment effects by political identification and generations to resolve the uncertainty empirically.

For political identification, we find that conservatives are the least likely to support abolishing the law, as we expect. Instead, they favor 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 favor of supporting scope limitations. Expanding the scope dissuades support, also expected, while leaving it as is neither motivates nor discourages them from supporting the position. Most notably, we find that while progressives are 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. 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. Differences in the understanding of democracy notwithstanding, democratic safeguarding is equally important.

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

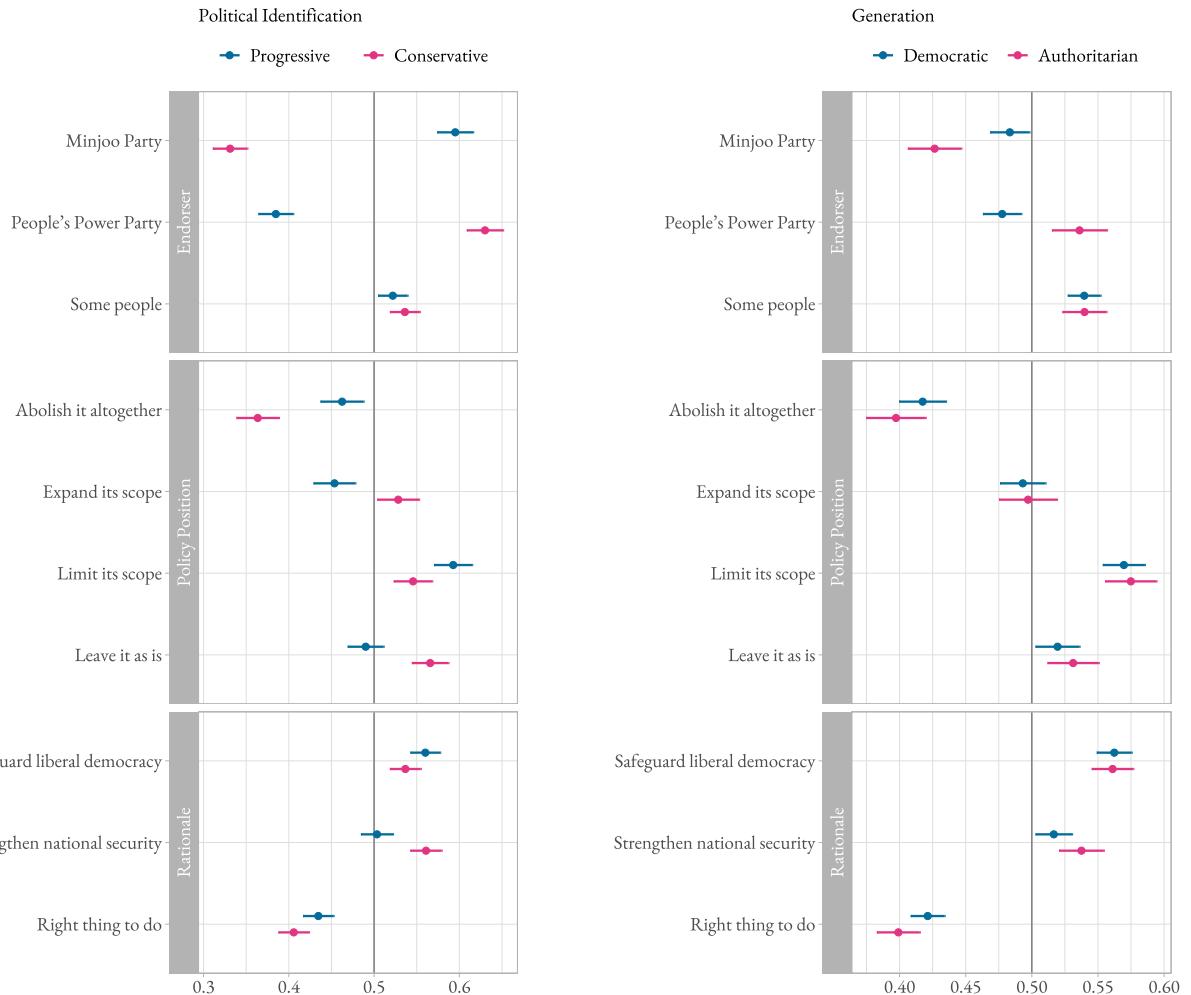


Figure 7: Marginal means of the policy attributes for subgroups

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.

Finally, we look at the interaction effects between the rationale and policy position conditional on political identification (Figure 8). This last look at effects is motivated by the finding immediately preceding this, whereby, conditional on political identification, the national security rationale impacts support for the policy position. It addresses the question, then, as to whether democratic and national security rationales can motivate political subgroups to adopt positions we might not otherwise expect them to. Our findings suggest this is not the case. While ‘safeguard democracy’ and ‘strengthen national security’ can motivate conservatives and progressives in favor of scope limitations, that is the only policy position for which either rationale motivates progressives. In fact, ‘safeguarding democracy’ much more strongly motivates progressives than conservatives. For conservatives, these rationales encourage them to do anything but abolish the law, and contrary to progressives, it motivates them to either expand the law’s scope or leave it alone.

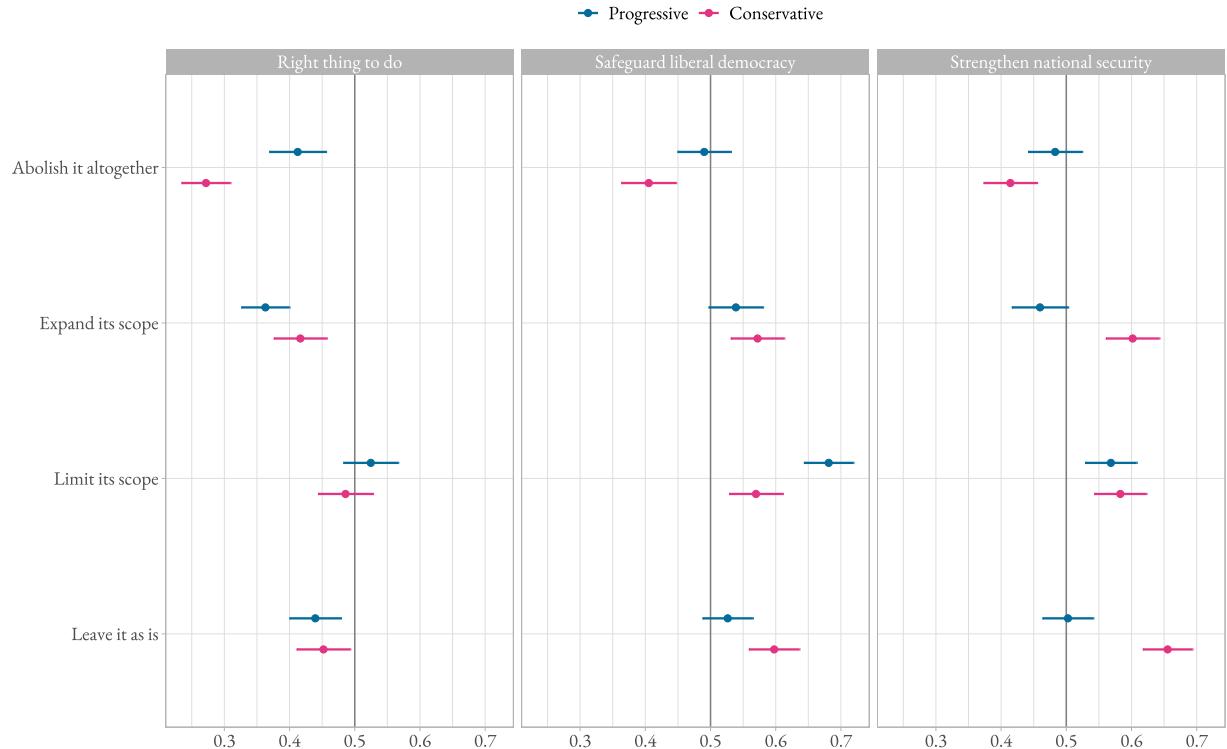


Figure 8: Marginal means of the interaction (rationale * policy position) by political identification subgroups

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.

5 Conclusion and Discussion

Consolidated and vibrant 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. Moreover, the Act is not even a dead letter. It has been used to prosecute citizens an average of more than 60 times a year for the last two decades: to prosecute South Koreans who have contact with North Koreans or travel to North Korea without prior authorization, and to punish those who make public expressions of support for North Korea or are found in possession of, publish, or re-publish publications from the country. In comparison with the era of South Korean military dictatorship, the Act has not been widely applied during the 21st century, even by those conservative administrations generally more hawkish on North Korea and unsympathetic to its local supporters. Still, there can be no question that prosecutions under the NSA form an active segment of the judicial landscape.

The clearly incompatible relationship between the continuing existence and judicial utilization of the National Security Act and South Korea's status as a liberal democracy is the conundrum under consideration in this paper. The paper asks why the National Security Act is still on the country's statute book, 73 years after it was enacted and long after it ostensibly ceased to reflect the political culture of the modern Republic of Korea. The Act has been periodically watered down by administrations of the left, but 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 in this paper, as recently as 2020-21 the ruling Minjoo Party enjoyed dominance of South Korean politics so total that it could have abolished the law if it had decided to do so. Yet, even as it made sweeping changes to the similarly problematic National Intelligence Service Act, it did not touch the NSA.

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 paper demonstrates. The Act remains relatively popular among the South Korean public. Or,

perhaps one had better put it, the Act is insufficiently unpopular. As the former senior South Korean intelligence service official cited earlier in this paper 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 indisputably anti-democratic, 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 this paper shows clearly that the numbers are in favor of retaining the NSA. It is not possible to produce a majority in favor 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. We find that self-identifying progressives are motivated by pro-democracy and national security rationales towards the NSA in a way that conservatives are not. The two rationales impact the opinions of both groups, but, for progressives, only in the direction of limiting the scope of the NSA, a position that is especially strongly motivated by the idea of safeguarding democracy. Conversely, conservatives can be motivated to expand the law’s scope, but they are most

strongly motivated by a national security rationale to maintain the status quo.

These slightly divergent attitudes are broadly consistent with expectations, and moreover, reflect domestic political realities. It is the progressive-liberal parties, after all, who have passed several amendments limiting the NSA's scope. Conservative governments have never pursued reforms, ostensibly on the grounds that they see this as undercutting the country's national security. The findings analyzed here support their political intuitions..

Via an innovative research design to sift through the determinants of public support for the National Security Act, the research findings presented in this paper contribute to a new body of research on limits to South Korea's democracy (Yeo 2020; Shin 2020; Pak and Park 2019; Mobrand 2018; and Lee 2017; Haggard and You 2015). Our work supports, first, Yeo's (2020) contention that certain institutional and cultural factors explain the persistence of anti-democratic behavior in South Korea, specifically curtailments on free speech and executive overreach, and that South Korean political culture acts as a source of opposition to further democratic deepening. Second, it concurs with the claim of Haggard and You (2015) that curtailment of free speech on national security grounds hinders further democratic development.

We suggest here that both national security conservatism – favoring controls on free speech on national security grounds – and the imperative to defend a democratic system for which some Koreans fought and died enjoy rather significant popular support among those raised in both the authoritarian and democratic eras. We also show, however, that there are significant underlying differences in how progressives and conservatives understand the role of the Act in South Korea, consistent with both the expectations of the groups and the realities of domestic politics in the country today. Progressives are, in fact, considerably more open to revising the NSA and for reasons linked to safeguarding democracy. But, vitally, neither group wishes it to be abolished.

Overall, the findings and analysis presented here suggest how, in a consolidated democracy like South Korea's, an anti-democratic statute remains in the legal code. A sustained

existential threat, in the form of North Korea, combined with a highly militarized authoritarian legacy has likely conditioned South Korean society to be more conservative and cautious than it otherwise might be. Such logic, we claim, has been internalized as part of the country's national identity. There is, and will remain, opposition to the National Security Act. Still, it does not appear that the country has yet come close to the point where popular opinion demands its dissolution.

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Ethics Declaration

Ethics approval was granted by the ethics committee from the Faculty of Humanities and Faculty of Archaeology, Leiden University.

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Supplementary Information for “Why Do Democratic Societies Tolerate Undemocratic Laws? Sorting Public Support for the National Security Act in South Korea”

Appendix A Additional survey information

2,009 South Koreans were surveyed between August 26 and September 27, 2021. Recruitment took place first using a Rakuten Insights panel of online opt-in participants ($n=1,666$) with quotas set by age, region, and sex based on the July register of legal residents.¹ To supplement the Rakuten panel and to address poor uptake for older respondents (age 60+), additional participants were recruited from Cint's panel of online participants ($n=343$).² Survey weights were created to correct for over- and under-sampling. Table A.1 shows the sample statistics for the combined survey. Table A.2 shows the differences by panels.

¹See data from the Ministry of Public Administration and Security at: <https://jumin.mois.go.kr/ageStatMonth.do>.

²More information about Rakuten Insights survey panels can be read here: <https://insight.rakuten.com/>. Information for Cint can be read here: <https://www.cint.com/market-research-and-insights/>.

| | Counts (unweighted proportions) | Weighted proportions |
|---|------------------------------------|----------------------|
| Age | | |
| 20-29 | 318 (16%) | 16% |
| 30-39 | 319 (16%) | 16% |
| 40-49 | 387 (19%) | 19% |
| 50-59 | 410 (20%) | 20% |
| 60+ | 575 (29%) | 30% |
| Gender | | |
| Women | 990 (49%) | 50% |
| Men | 1,019 (51%) | 50% |
| Region | | |
| Busan, Ulsan/Gyeongnam | 303 (15%) | 15% |
| Daegu/Gyeongbuk | 198 (9.9%) | 10% |
| Daejeon, Sejong/Chungcheong | 219 (11%) | 11% |
| Gwangju/Cheolla | 203 (10%) | 10% |
| Kangwon/Jeju | 78 (3.9%) | 4.0% |
| Seoul, Incheon/Gyeonggi | 1,008 (50%) | 50% |
| Education | | |
| No Formal Education | 3 (0.1%) | 0.2% |
| Elementary school or lower | 10 (0.5%) | 0.5% |
| Middle school | 24 (1.2%) | 1.2% |
| High school | 354 (18%) | 18% |
| Some college (including technical school) | 44 (2.2%) | 2.2% |
| University | 1,342 (67%) | 66% |
| Graduate school and above | 230 (11%) | 11% |
| Other (e.g., Seodang) | 2 (<0.1%) | 0.1% |

Table A.1: Sample statistics

| | Cint | Rakuten |
|---|----------------|------------------|
| | N = 343 | N = 1,666 |
| Age | | |
| 20-29 | 4 (1.2%) | 314 (19%) |
| 30-39 | 13 (3.8%) | 306 (18%) |
| 40-49 | 1 (0.3%) | 386 (23%) |
| 50-59 | 78 (23%) | 332 (20%) |
| 60+ | 247 (72%) | 328 (20%) |
| Sex | | |
| Women | 204 (59%) | 786 (47%) |
| Men | 139 (41%) | 880 (53%) |
| Region | | |
| Busan, Ulsan/Gyeongnam | 42 (12%) | 261 (16%) |
| Daegu/Gyeongbuk | 7 (2.0%) | 191 (11%) |
| Daejeon, Sejong/Chungcheong | 14 (4.1%) | 205 (12%) |
| Gwangju/Cheolla | 31 (9.0%) | 172 (10%) |
| Kangwon/Jeju | 18 (5.2%) | 60 (3.6%) |
| Seoul, Incheon/Gyeonggi | 231 (67%) | 777 (47%) |
| Education | | |
| No Formal Education | 1 (0.3%) | 2 (0.1%) |
| Elementary school or lower | 1 (0.3%) | 9 (0.5%) |
| Middle school | 7 (2.0%) | 17 (1.0%) |
| High school | 81 (24%) | 273 (16%) |
| Some college (including technical school) | 10 (2.9%) | 34 (2.0%) |
| University | 202 (59%) | 1,140 (68%) |
| Graduate school and above | 39 (11%) | 191 (11%) |
| Other (e.g., Seodang) | 2 (0.6%) | 0 (0%) |

Table A.2: Sample statistics by panel

Appendix B Survey questions

In this section, we provide the text used to introduce the experiment. Then, the survey questions used for background and subgroup analysis, which were asked following the experiment, are provided.

Prior to respondents doing the conjoint experiment, they were told the following:

In this section, we are going to ask you to evaluate hypothetical proposals regarding the National Security Act. The law is principally designed to protect the national security of South Korea and the freedom of its citizens, but it is sometimes criticized for being too broad in scope and has been used for political purposes in the past. Carefully consider the proposals and answer the questions.

Direct and background questions are listed below.

- (Following a prompt to evaluate statements...) The National Security Act should be abolished.
 - Strongly agree
 - Somewhat agree
 - Somewhat disagree
 - Strongly disagree
- What was your assigned sex at birth?
 - Man
 - Woman
- Where do you currently reside?
 - Seoul
 - Busan
 - Daegu
 - Incheon
 - Gwangju
 - Daejeon
 - Ulsan

- Sejong
 - Gyeonggi
 - Kangwon
 - Chungbuk
 - Chungnam
 - Cheonbuk
 - Cheonnam
 - Gyeongbuk
 - Gyeongnam
 - Jeju
 - Overseas [redirected to end]
- Please select your date of birth
 - (calendar choice)
- What is the highest level of education you have achieved?
 - No Formal Education
 - Elementary school or lower
 - Middle school
 - High school
 - Some college (including technical school)
 - University
 - Graduate school and above
 - Other (e.g., Seodang)
- How do you identify politically?
 - Very progressive
 - Somewhat progressive
 - Centrist
 - Somewhat conservative
 - Very conservative
 - Don't know
- Which party would you vote for if there was a national election tomorrow?
 - People's Power Party

- Minjoo Party
- People's Party
- Open Minjoo Party
- Justice Party
- Other
- Don't know
- Prefer not to say

Appendix C Benchmark regression tables

The tables for the main AMCE estimates and marginal means from the manuscript are provided in Tables C.1 and C.2.

| Feature | Level | Estimate | Std.error | P-value | Lower | Upper |
|-----------------|------------------------------|----------|-----------|----------|----------|----------|
| Endorser | Some people | 0 | NA | NA | NA | NA |
| Endorser | People's Power Party | -0.03498 | 0.007943 | 1.07E-05 | -0.05054 | -0.01941 |
| Endorser | Minjoo Party | -0.06205 | 0.008171 | 3.11E-14 | -0.07806 | -0.04603 |
| Policy Position | Leave it as is | 0 | NA | NA | NA | NA |
| Policy Position | Limit its scope | 0.047378 | 0.008681 | 4.83E-08 | 0.030363 | 0.064392 |
| Policy Position | Expand its scope | -0.03338 | 0.008802 | 0.000149 | -0.05063 | -0.01613 |
| Policy Position | Abolish it altogether | -0.11226 | 0.009739 | 9.70E-31 | -0.13134 | -0.09317 |
| Rationale | Right thing to do | 0 | NA | NA | NA | NA |
| Rationale | Strengthen national security | 0.116247 | 0.00785 | 1.28E-49 | 0.100861 | 0.131632 |
| Rationale | Safeguard liberal democracy | 0.145235 | 0.007408 | 1.42E-85 | 0.130715 | 0.159755 |

Table C.1: Table for AMCEs

| Feature | Level | Estimate | Std.error | Lower | Upper |
|-----------------|------------------------------|----------|-----------|----------|----------|
| Endorser | Some people | 0.533073 | 0.004366 | 0.524516 | 0.54163 |
| Endorser | Minjoo Party | 0.469608 | 0.005419 | 0.458988 | 0.480228 |
| Endorser | People's Power Party | 0.49791 | 0.005325 | 0.487472 | 0.508348 |
| Policy Position | Leave it as is | 0.524197 | 0.005459 | 0.513497 | 0.534896 |
| Policy Position | Limit its scope | 0.572247 | 0.005378 | 0.561705 | 0.582788 |
| Policy Position | Expand its scope | 0.490947 | 0.00592 | 0.479344 | 0.502551 |
| Policy Position | Abolish it altogether | 0.412033 | 0.006129 | 0.40002 | 0.424046 |
| Rationale | Right thing to do | 0.412237 | 0.004426 | 0.403561 | 0.420912 |
| Rationale | Strengthen national security | 0.528541 | 0.004677 | 0.519374 | 0.537707 |
| Rationale | Safeguard liberal democracy | 0.558266 | 0.004392 | 0.549657 | 0.566875 |

Table C.2: Table for marginal means

Appendix D Additional Analysis

To supplement the findings presented in the manuscript, additional analysis is provided here. First, we show the percentage of respondents who oppose the abolition. Following the experiment, respondents were asked to evaluate a replication of the World Values Survey (WVS) statement, "The National Security Act should be abolished." Figure D1 shows the proportion of respondents who said they either 'strongly' or 'somewhat' opposed to the position. We compare proportions to the WVS data and the East Asia Institute's responses (Figure 3 in the manuscript). At 52 percent, those opposing abolition is similar to that observed in the WVS survey (48%).

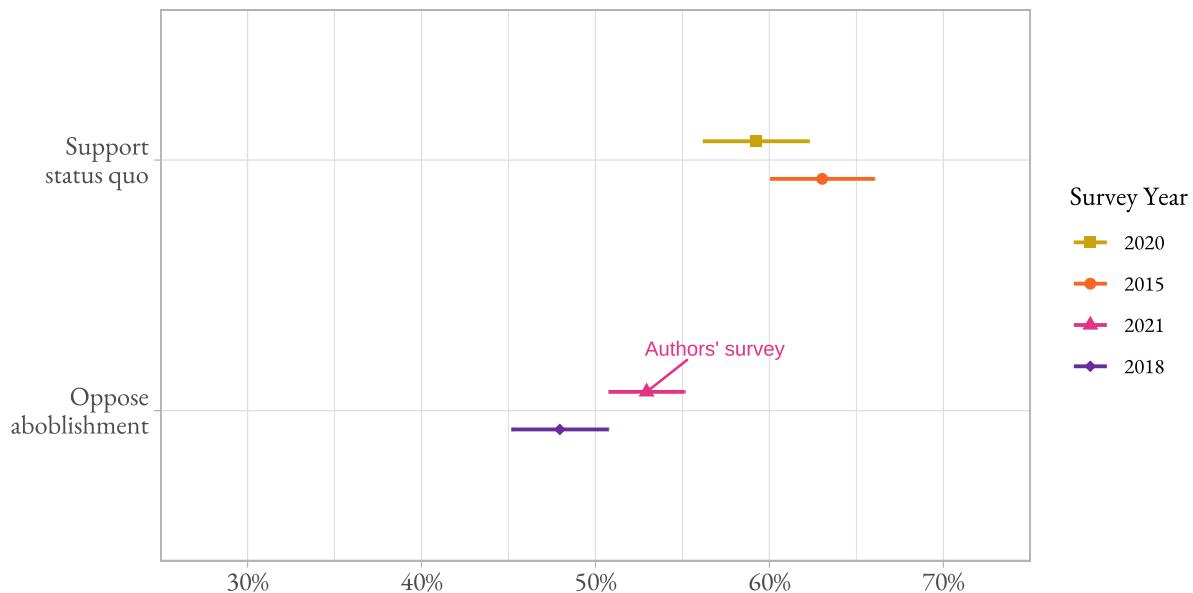


Figure D.1: Support for the National Security Act

Note: Data comes from the authors' own survey (2021), the East Asia Institute's national identity surveys (2020 and 2015), and Wave 7 (2018) of the World Values Survey (WVS). The error bars represent 95% confidence intervals.

Next, we examine responses based on the ratings-based measure of preferences for NSA positions. This serves as a robustness check on the forced-choice data, as it gives respondents an opportunity to express either mutual preference or dislike of any given position. We take ratings of greater than four as a measure of preference and generate a new dichotomous outcome variable. Figure D.2 shows the AMCEs for the new measure. The effects are effectively the same as those derived from the forced-choice responses.

Then, in Figures D3-D7, we provide additional analysis and robustness checks across selected socio-demographic subgroups. Figure D3 shows the conditional average treatment effects for partisanship measured by party support. This serves as a robustness check as well on the partisanship measured by self-expressed political identification.³ The effects are broadly similar to those found using political ID (see Figure 7 in the manuscript). However, we note that a national security rationale is not limited to only conservatives, even if it has a slightly stronger effect. Figure D4 shows subgroup effects by age cohorts, divided by the median age (49). This also serves as a robustness check on the generational analysis, as those belonging to the democratic generation are those born after 1975. Thus, all fully socialized adults under the age of 47 belong to the democratic generation. Then authoritarian generation is mostly comprised of those older. Except for heterogeneous endorser effects, which are entirely in line with expectations given the older generation is more conservative (i.e., People's Power Party voters or supporters), the other attribute levels show no difference in effects.

The remaining sub-group analysis does not yield any noteworthy findings. Figure D5, which examines preferences by sex, reveals more or less identical preferences. Figure D6, which shows the results of subgroup analysis by education (those with at least a university degree vs. those without), and Figure D7, which looks for heterogeneous effects by select

³We count progressives as those who supported the following parties: Justice Party, Minjoo Party, and Open Minjoo Party. Conservatives are counted as those supporting the People's Power Party. Supporters of the centrist People's Party are more likely to self-identify as conservative, but befitting its centrist position, there are a number of progressives who support this party, too. We choose to omit from the analysis supporters of this party. Coding them as conservative or progressive makes no discernable difference in outcomes.

regions,⁴ show only expected heterogeneous effects by differing political endorsers.

Finally, we model the open-text response data using Latent Dirichlet Allocation (LDA). Based on a three-cluster implementation of the LDA,⁵ we find corroboration of the analysis based on the conjoint data. Figure D.8 plots the top 10 terms per topic. Topic one shows an association between the law and words like 'abolish', 'scope', and 'limit', which reflect the positions that most clearly motivated preferences, namely: "abolish the law altogether" (opposed) or "limit its scope" (supported). We see, then, in topics two and three the national security and pro-democracy rationales, which strongly influenced whether respondents preferred any of the given NSA policy positions.

⁴We look at South Korea's southwestern jurisdictions ('Honam', or South and North Jeolla provinces and the city of Gwangju) and Yeongnam (the southeastern jurisdictions including North and South Gyeongsang and the cities of Busan, Daegu, and Ulsan).

⁵The optimal number of topics were based on a statistical measure of semantic similarity and interoperability. All responses were translated from Korean to English and cleaned for analysis before running the topic model.

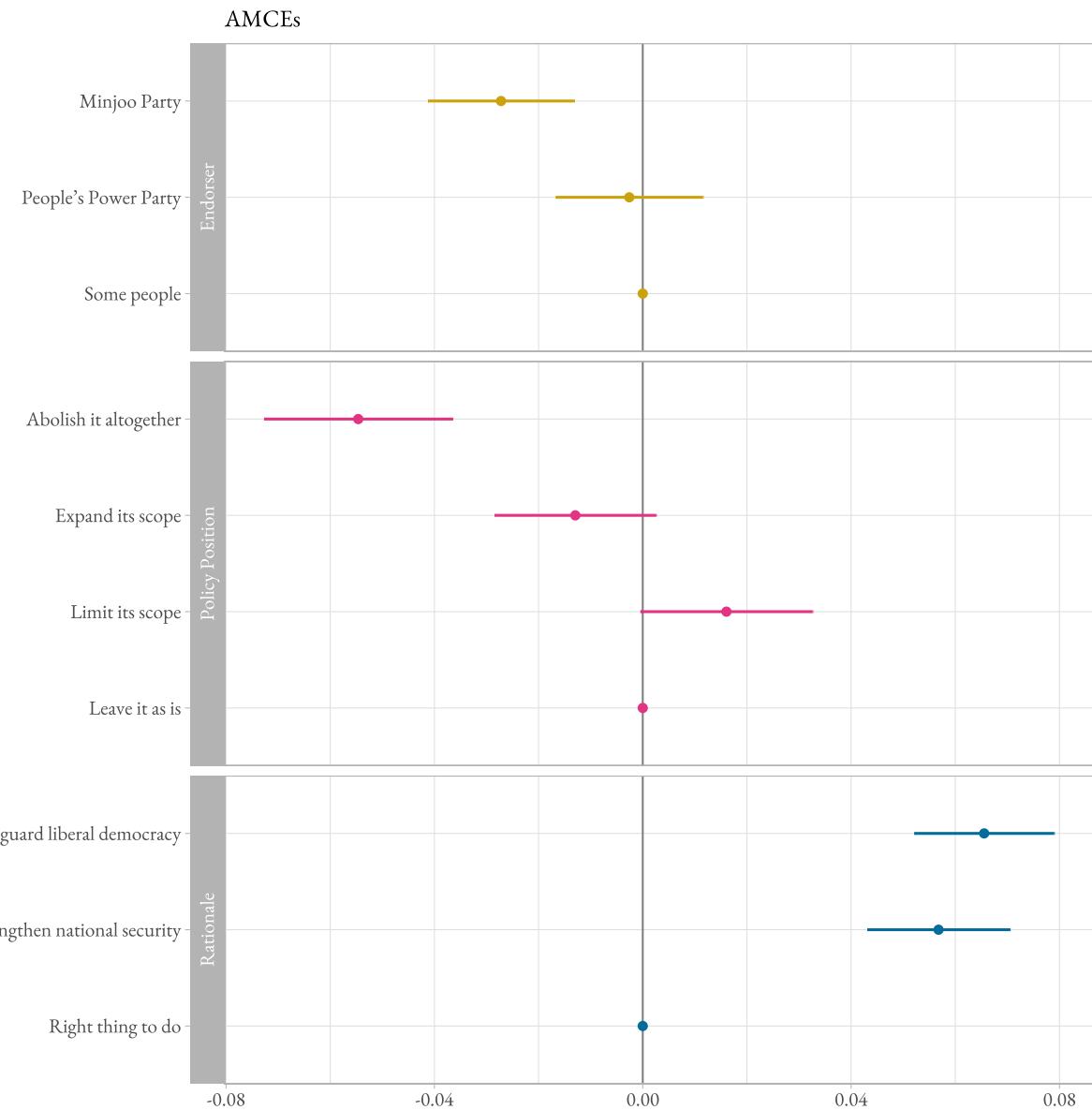


Figure D.2: AMCEs of the NSA position attributes, ratings-based measure

Note: Based on the benchmark OLS model with clustered standard errors, the average marginal components effects (AMCEs) show the effects of the randomly assigned information attribute values on the probability of use. The error bars represent 95% confidence intervals.

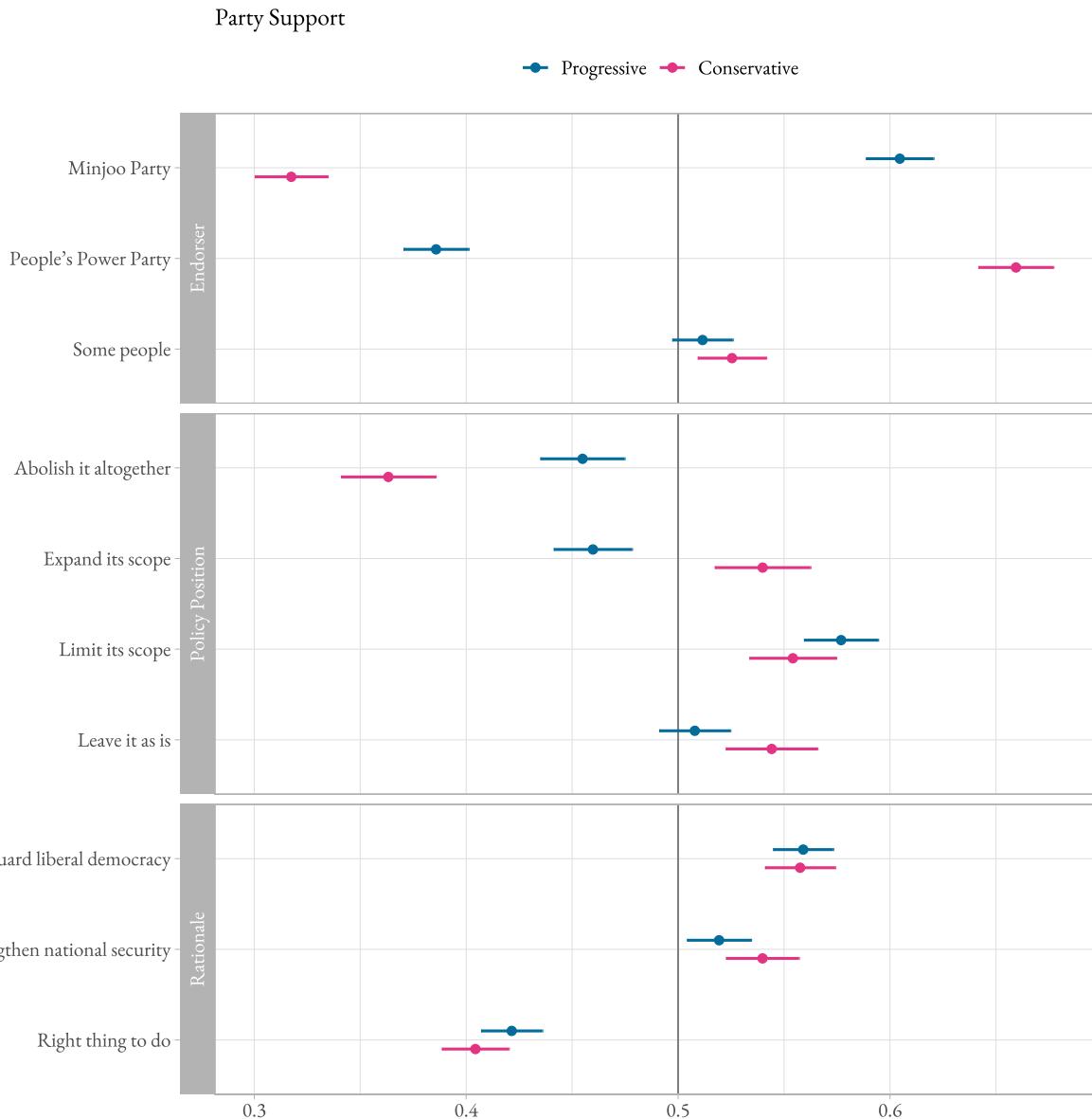


Figure D.3: Marginal means of the policy mix attributes for the selected groups

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.

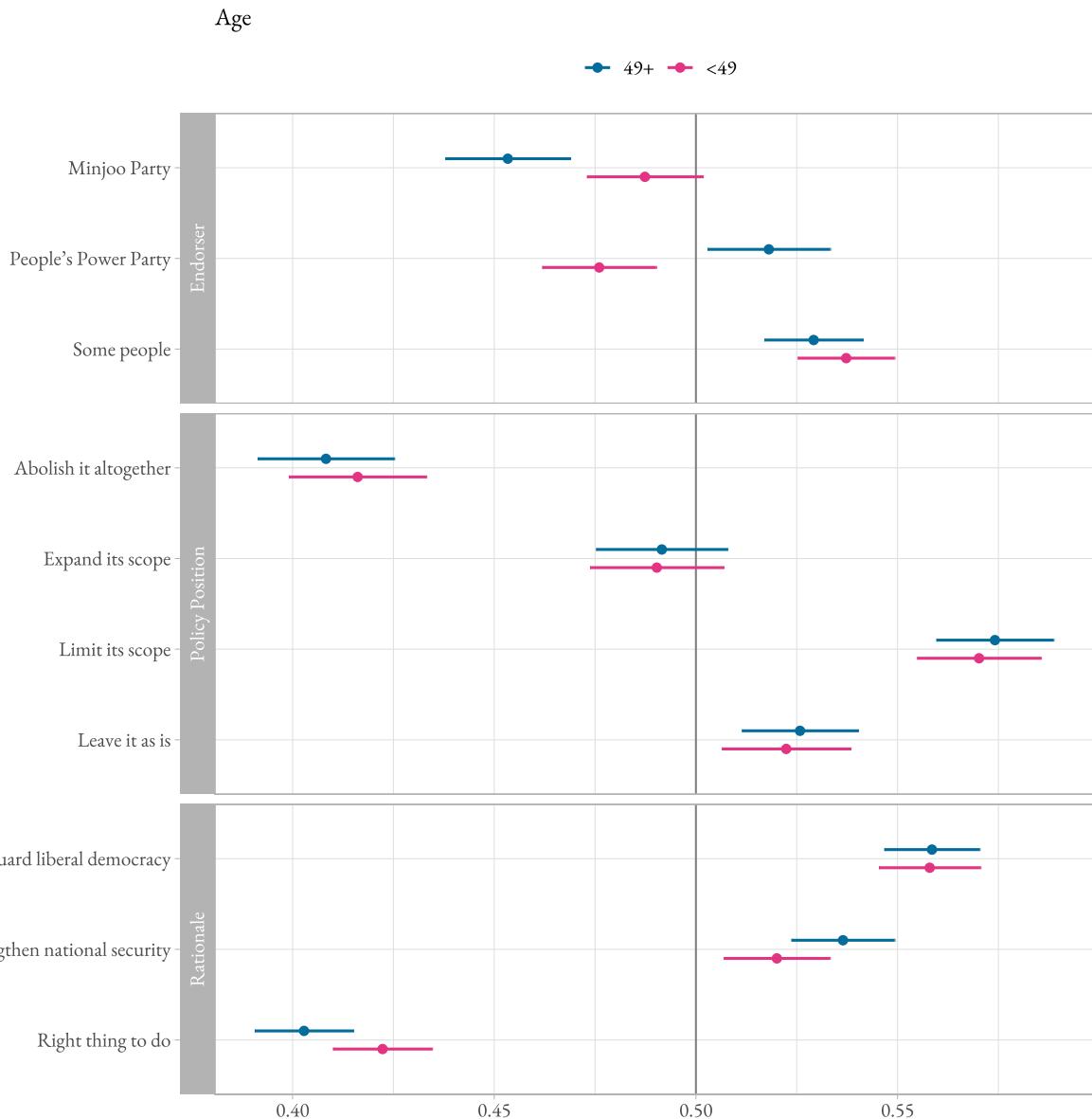


Figure D.4: Marginal means of the policy mix attributes for the selected groups

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.

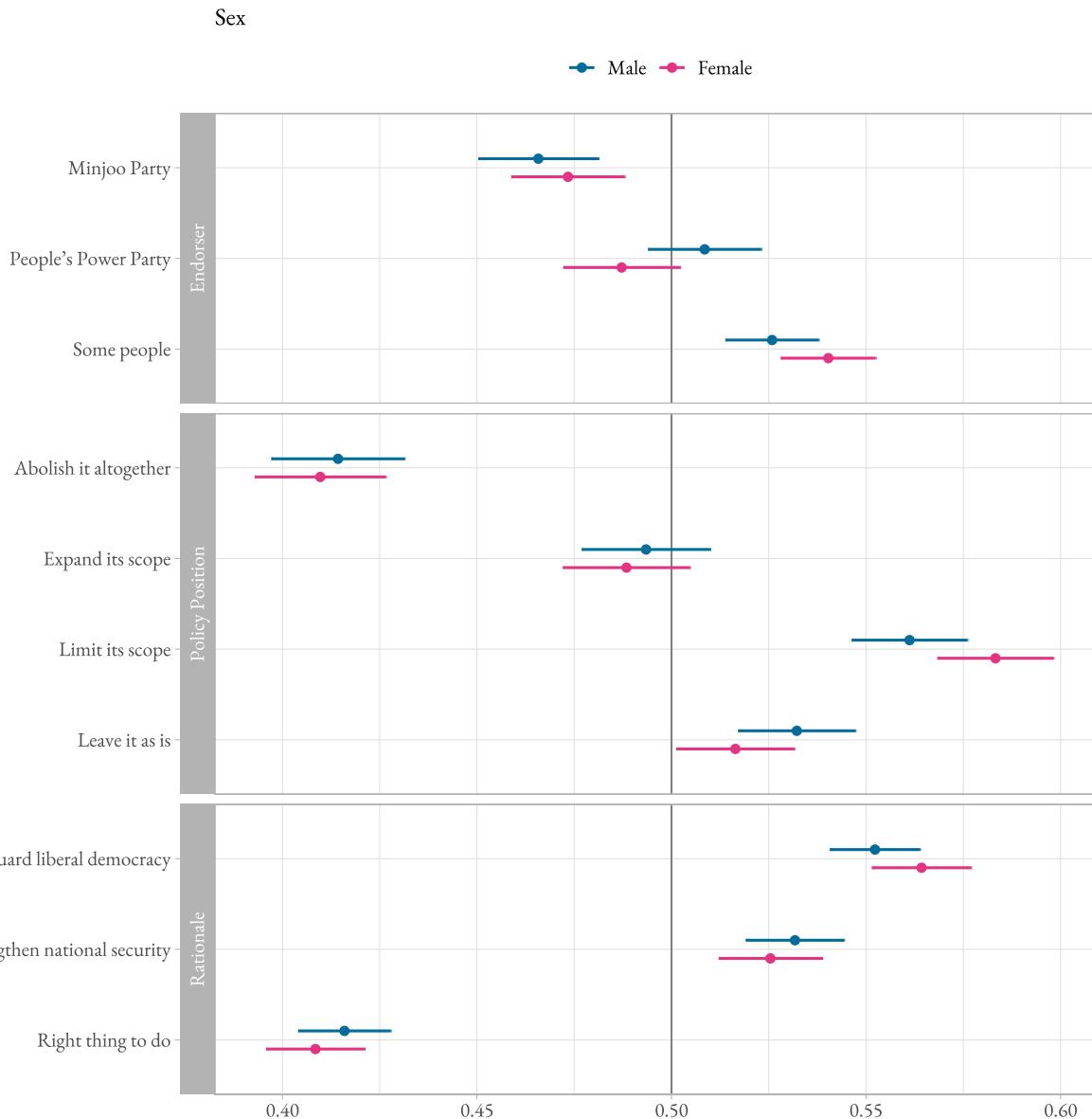


Figure D.5: Marginal means of the policy mix attributes for the selected groups

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.

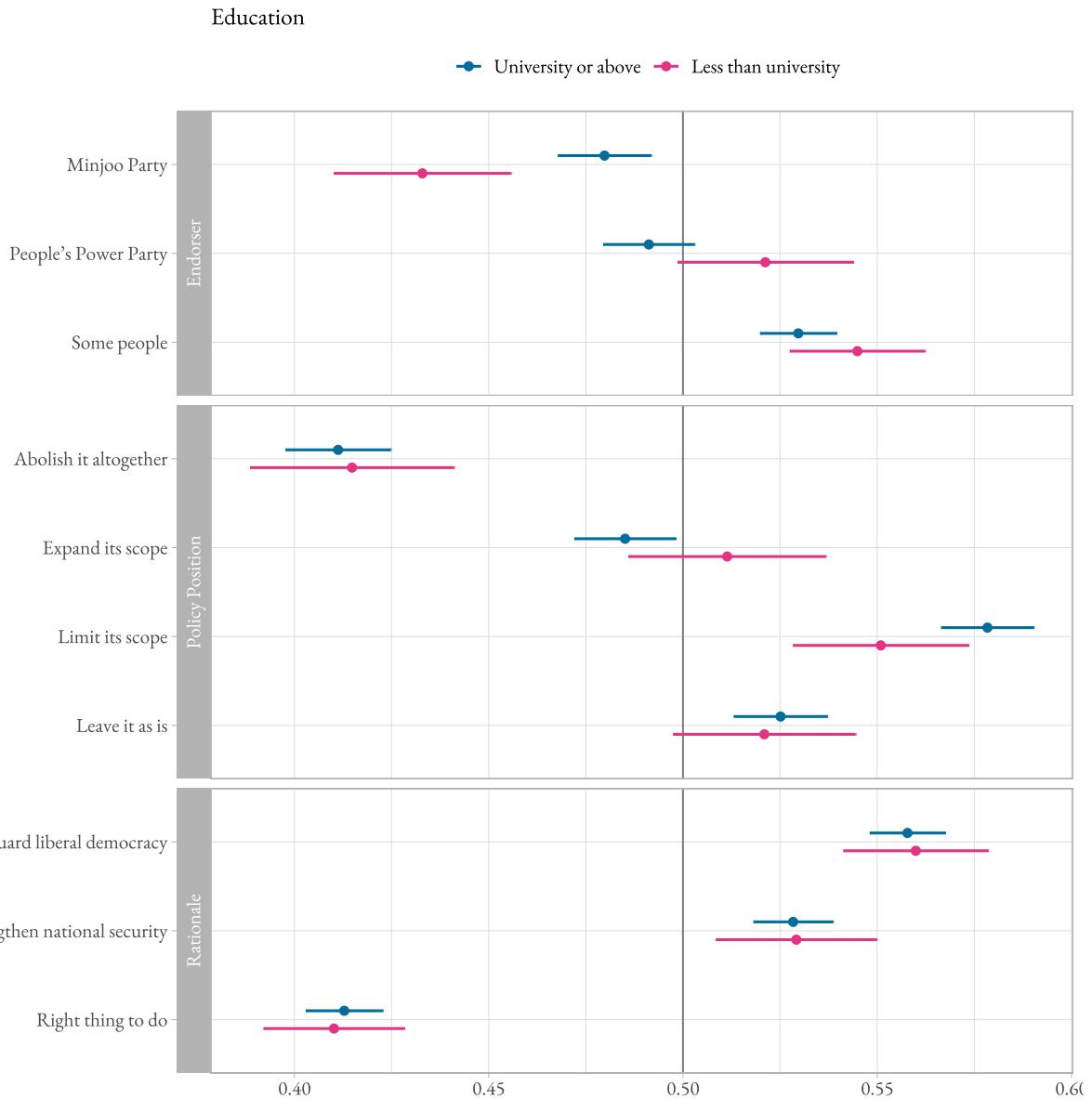


Figure D.6: Marginal means of the policy mix attributes for the selected groups

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.

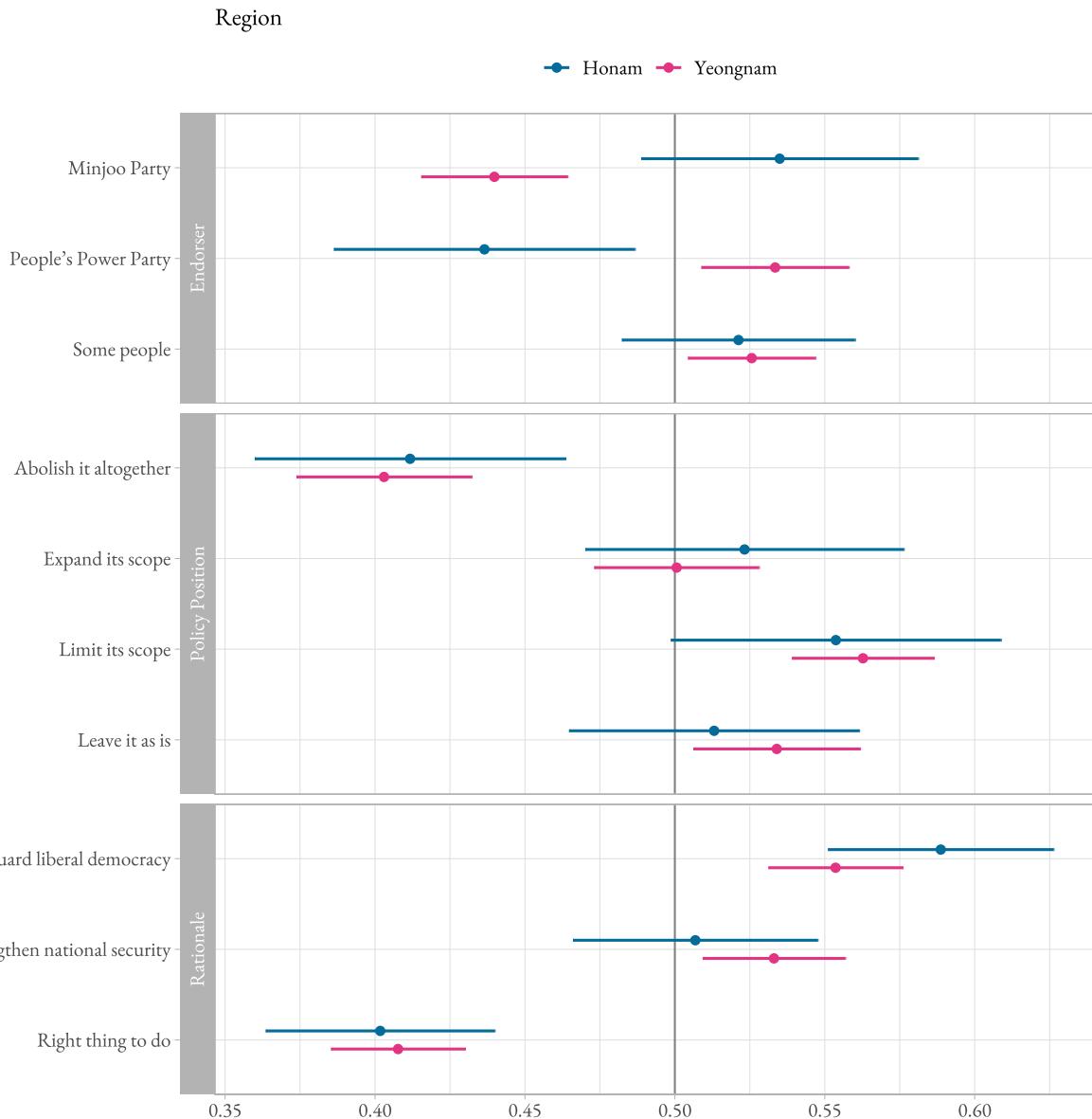


Figure D.7: Marginal means of the policy mix attributes for the selected groups

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.

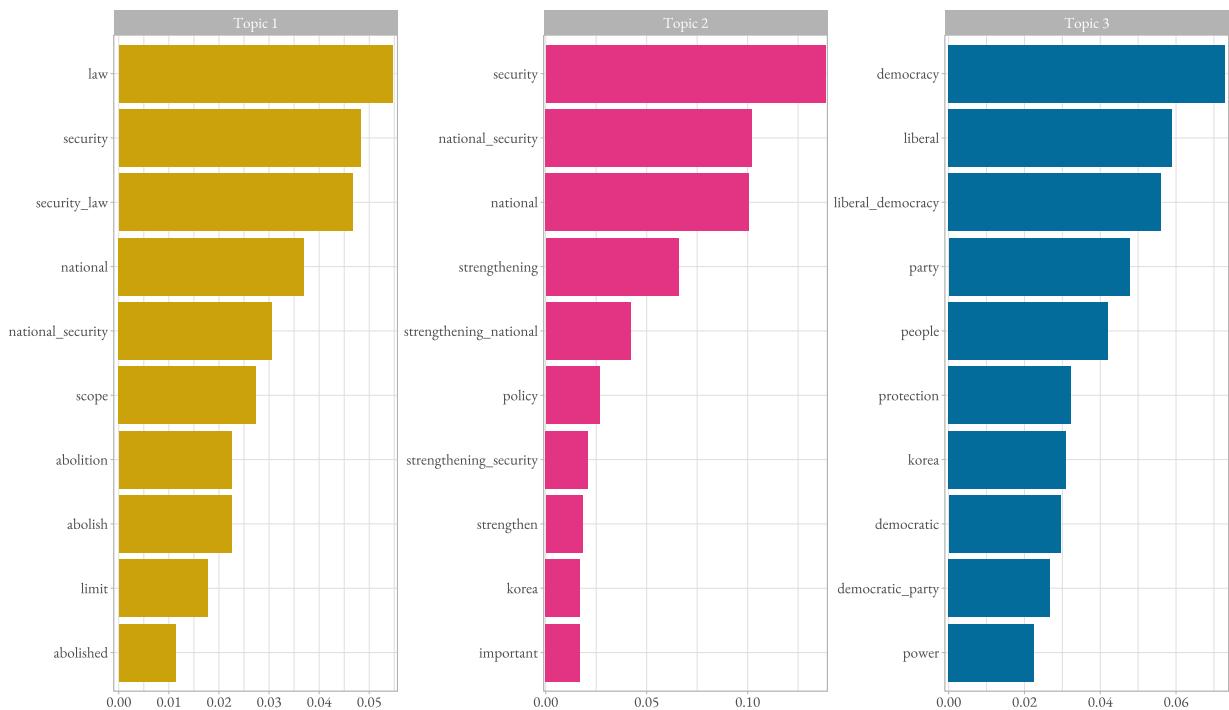


Figure D.8: Topics from the implementation of Latent Dirichlet Allocation

Note: The values on the x-axis show the probability of the term given the topic.