



# Legal Mechanisms of Thought Control Through Anticommunism in South Korea: *Focusing on the National Security Law*

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## Abstract

*This article examines South Korea's National Security Law (NSL) as a legal mechanism of thought control and repression. Despite the country's democratic transition since 1987, the NSL has remained intact as a tool for suppressing political dissent and institutionalizing state violence. The Korean Constitutional Court has played a pivotal role in legitimizing this system by interpreting the basic free and democratic order as an ideology that merges liberal democracy with a market economy, while simultaneously restricting freedom of thought and expression. Thus, the Court's adoption of militant democracy (jeontujeok minjuui) has enabled the dissolution of political parties, criminalization of dissent, and reinforcement of authoritarian legal structures. The NSL, which originates from the Public Order Preservation Law of the Japanese colonial era, and its postwar function in suppressing leftist movements, unionization, and civil liberties, extends its repressive reach beyond criminal law to encompass state surveillance, coercive ideological conversion, and mass purges. This article also addresses the failure of transitional justice in South Korea, which continues to uphold the NSL, reproducing the conditions for ideological stigmatization. Ultimately, this article argues that South Korea's legal and constitutional order must undergo a fundamental transformation. The abolition of the NSL alone is insufficient; a broader dismantling of anticommunist thought control mechanisms is imperative. Without this comprehensive restructuring, South Korea will remain trapped in a dual-state, where nominal rule of law coexists with coercive thought control.*

**Keywords:** anticommunism, thought control, National Security Law (NSL), thought conversion, militant democracy, transitional justice

## Introduction

On December 3, 2024, South Korean president Yoon Seok-yeol abruptly declared martial law. He justified this by claiming that it was necessary to protect the Republic of Korea from the threats posed by North Korean communist forces and to eradicate *pro-North, anti-state forces* that were allegedly undermining the freedom and happiness of the Korean people. However, his primary concerns appeared to be the National Assembly's motions to impeach government officials and cut budget allocations. By equating the legislative branch's efforts to check executive power with the activities of so-called *pro-North, anti-state forces*, Yoon essentially reframed legitimate parliamentary oversight as subversive action.

Sociologist Kim Dong-Choon has argued that martial law and the National Security Law (NSL) are closely linked (D. Kim 2024, 243). In this sense, Yoon's martial law declaration evoked memories of past crackdowns under the NSL, instilling fear among many citizens. In South Korea, ruling authorities have historically responded to political crises by branding criticisms of the government or the regime as acts of allegiance to North Korea, thereby justifying state violence. Anticommunism serves as a ruling ideology that extends beyond narrow opposition to North Korea, encompassing broader suppression of systemic criticism. It functions as a powerful political tool, wielded as a justification for coercive governance.

In South Korea, anticommunism has been a central ideology of thought control, epitomized by the infamous practice of *ppalgaeng-i sanyang* (commie hunting). This thought control has been institutionalized through the NSL and its related legal framework. The origins of the NSL can be traced back to the Public Order Preservation Law (POPL) of imperial Japan, which served as a foundation for ideological repression. Throughout South Korea's constitutional history, the NSL has been a key instrument of state violence, and despite the democratic transition in 1987, it has remained in effect.

In particular, intelligence agencies have wielded immense power by leveraging the NSL to assume investigative authority into anticommunist

activities, positioning themselves as the vanguard of anticommunism. Although this authority was formally abolished as of December 31, 2023, there are indications it may be reinstated.<sup>1</sup>

This article first examines how ideological control laws, with particular focus on the NSL, have functioned through an analysis of their historical development and content, tracing how such laws expanded into forms of state violence mediated by anticommunism up to the constitutional revision of 1987. In a subsequent section, it then outlines the key features of the ideological control mechanism, before offering a critique of how the Constitutional Court has provided constitutional justification for legal instruments of ideological control centered on the NSL and anticommunist discourse. Finally, the article analyzes the remnants of these legal frameworks in contemporary South Korean society and proposes tasks to be addressed from a transitional justice perspective.

## **Legal Frameworks of Thought Control in Pre-1987 South Korea**

Thought control refers to a state's efforts to suppress the spread of thinking that deviate from its official ideology, especially when faced with ideological or political challenges. This process can involve surveillance, censorship, and the monitoring of individuals who do not conform to the state's ideological stance. Furthermore, the state may detain those deemed to hold subversive and dangerous thoughts, isolate them from social interactions, indoctrinate them with state ideology, or use direct and indirect violence to force ideological conversion (D. Kim 2024, 63). In South Korea, it is well known that the NSL serves as the cornerstone of the thought control system.

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1. For instance, on November 20, 2024, Representative Jang Dong-hyuk and 16 other legislators proposed an amendment to the National Intelligence Service Act (NISA) that would restore the agency's anticommunist investigation powers.

### *Public Order Preservation Law*

#### 1) Its Character as a Thought Control Law

The origins of the NSL can be traced back to the Japanese colonial period (1910–1945). The first relevant statute, the Security Law, was enacted on July 24, 1907. It criminalized certain activities such as assemblies, mass movements, or group gatherings under the pretext of maintaining public order and societal stability.

An even broader legal measure was promulgated on April 15, 1919: Ordinance No. 7 on Punishment of Political Crimes, which penalized collective actions or conspiracies aimed at disrupting public order for the purpose of political transformation, thereby including both preparatory and conspiratorial acts (Hong 2024, 36).

On March 7, 1925, the Japanese Diet passed the Public Order Preservation Law (POPL), which was then promulgated in April and enforced from May of that year. This law is considered a prototypical thought control law because it departed from the fundamental modern criminal law principle of penalizing specific acts. Article 1 of the law stipulated that those who organize or join associations with the intent to alter the national polity or deny the private property system, as well as those who instigate or provide material support for such activities, would be subject to punishment.

The protected legal interests under this law—namely the national polity, the Constitution, and the system of private property—were framed so broadly that they effectively encompassed the entire existing order of domination. Because intent is not externally observable unless confessed by the individual, the state often inferred subversive objectives from organizational behavior or coerced confessions through the exercise of state power.

#### 2) Ideological Control Apparatuses and Their Violence

During the Japanese colonial period, the High Police and the Special Higher Police functioned as political police specifically tasked with ideological

control on behalf of the Japanese Empire. Following the enactment of the POPL, the Special Higher Police were established in 1928, accompanied by a significant increase of over a thousand police personnel. In the same year, the Ideological Division was established within the High Prosecutors' Office. Around this time, the term *thought criminal* began to be used (D. Kim 2024, 126).

In colonial Korea, even the ordinary police possessed expansive powers. Under the Korean Criminal Procedure Ordinance, judicial police officers, including prosecutors and military police, were granted autonomous investigative authority (Hong 2024, 42). Furthermore, not only prosecutorial but also police interrogation records were admissible as evidence in court (Hong 2024, 46). As extracting a confession was the primary aim, torture became routine practice.

Laws of ideological control imposed severe penalties far disproportionate to the actual danger posed by the acts in question and were accompanied by harsh torture and punitive imprisonment. These measures served dual purposes: inducing ideological conversion and psychological trauma in the individual and instilling a chilling effect on the broader public as a preventive mechanism. Moreover, such laws significantly expanded the scope of state institutions responsible for maintaining public order and regulating thought itself.

### 3) Surveillance and Preventive Detention as Extensions of Thought Control

Surveillance was central to ideological control precisely because it targeted not only actions but also beliefs. Japanese colonial surveillance began even before the enactment of the POPL, with internal regulations introduced in late 1912 that permitted investigative surveillance of certain individuals. Surveillance included both general monitoring of unspecified groups and designated surveillance targeting specific individuals or organizations. The latter involved regular observation over a period of time. Surveillance registries compiled by the Government-General of Korea documented detailed personal and activity-related information on these individuals (Han 2012, 429).

Surveillance continued even after formal punishment for ideological offenses. In December 1936, the colonial government enacted the Regulation on the Supervision of Ideological Offenders in Korea, based on the Supervision Law for Ideological Offenders introduced in Japan in May of the same year. This ordinance, issued as Governor-General Ordinance No. 16, allowed authorities to place individuals who had not renounced their beliefs—despite receiving suspended prosecution, suspended sentences, parole, or full release—under ideological supervision if deemed at risk of reoffending. Such individuals were subject to surveillance and restrictions for at least two years, including oversight by probation officers and limitations on correspondence, communication, and social interactions.

Preventive detention was an even more serious infringement on human rights. Individuals deemed ideologically dangerous or likely to commit a future crime were detained in anticipation of wrongdoing. The Regulation on Preventive Detention of Ideological Offenders in Korea, enacted in February 1941, authorized the confinement of individuals—whether ideologically converted or not—deemed in need of detention. These individuals were placed in preventive detention facilities, where they were subject to continuous monitoring and control (H. Kim 2020, 101–102).

### *National Security Law (NSL)*

#### 1) Development and Characteristics as a Thought Control Law

The legal mechanism for ideological control in South Korea began in earnest with the enactment of the NSL on December 1, 1948, shortly following the establishment of the Republic of Korea. Although discussions surrounding the legislation emerged in response to the post-liberation political turmoil under the pretext of restoring public order, President Syngman Rhee's regime employed the Act as a central tool for excluding leftist forces and suppressing political dissent under the banner of anticommunism. Anticommunism, having evolved through the US military government period and into the foundation of a separate South Korean state, served as the ideological weapon of a ruling order that excluded not only leftists but

also nationalist right-wing forces (W. Park 1995, 47).

During the formation of the South Korean state, the police and prosecution inherited ideological control functions through their intelligence and public security divisions. The prosecution, in particular, assumed a leading role in anticommunist legal warfare following the promulgation of the Transitional POPL in August 1948 (Moon 2010, 800–812; S. Kang 2011, 135). The NSL significantly empowered these agencies. For example, in 1949 alone, a staggering 118,621 individuals were arrested by the police on charges of violating the NSL (M. Park 2002, 319; H. Kim 2020, 118). The law's power lay not merely in its capacity to punish, but in the threat of investigation itself, which functioned to restrict individual freedoms. At the time, approximately 80 percent of prison inmates were NSL offenders (H. Kim 2020, 118).

The law criminalized “impersonating the government,” a clause targeting the Democratic People’s Republic of Korea (DPRK) established on September 8, 1948 (W. Park 1995, 96). Furthermore, the category of “associations or organizations with the aim of national subversion” enabled the state to arbitrarily link suspects to North Korea, including peripheral organizations of the South Korean Workers’ Party and other legal leftist associations (Jeon 2005, 87).

A major political incident under the NSL was the Parliamentary Espionage Case of May 18, 1949, in which 15 National Assembly members were arrested and 13 prosecuted, resulting in heavy sentences. While views regarding the case’s fabrication remain divided, there is little doubt that the NSL was instrumental in curtailing political freedoms and undermining the rule of law (Ahn 2021, 87). The NSL was used to remove political opponents of the regime, even lawmakers, under the guise of anticommunism (Jeon 2005, 87; Jeong-gi Kim 2008, 7; Hong 2024, 251). Prosecutor Oh Je-do, infamous for his anticommunist zeal, led the judicial proceedings for the case (Jeong-gi Kim 2008, 7).

The full revision of the NSL, dated December 19, 1949, raised the maximum penalty from life imprisonment to death. Article 1 imposed the death penalty on those who organized associations or conducted acts “for the purpose of impersonating the government or causing rebellion.”

Article 2 extended this to those associated with such organizations “for the purpose of support.” Article 1 was aimed at North Korea itself, while Article 2 targeted its supporters.

Another hallmark of the 1949 revision was the introduction of single-instance trials and preventive detention. The single-instance trial system denied the right to appeal in favor of quickly processing the overwhelming number of NSL cases (W. Park 1995, 108). Preventive detention—holding an individual in custody because they are deemed to pose a threat to public security—quickly led to the problem of overcrowded prisons. According to remarks by Assemblyman Oh Seok-ju in 1950, Seodaemun Prison had a capacity of 2,000 but held over 4,000 inmates (W. Park 1995, 103). Preventive detention functioned as a quasi-sentencing mechanism, holding individuals without formal conviction for up to two years while coercing ideological conversion, especially for short-term inmates (S. Kang 2010, 78; Seo et al. 2019, 193). Although this version of the law was never fully enacted, the April 21, 1950 revision retained the preventive detention clause while replacing single-instance trials with single-judge adjudication to expedite case processing.

On December 26, 1958, the NSL was repealed and replaced with a new version, which expanded punishable acts beyond concrete subversion to include espionage, information gathering, facilitation of enemy activities, dissemination of distorted or false media reports, and defamation of constitutional institutions. The clauses adopted Japanese wartime criminal law principles and criminalized the spread of false or distorted information in the media. Provisions on defamation of state institutions prohibited criticism of the president and others, significantly curtailing civil liberties and expanding the power of investigative agencies.

Following the revolution of April 19, 1960, on June 10, 1960, the Democratic Party government deleted some clauses of the NSL, but simultaneously added provisions penalizing failure to report to investigative authorities any person suspected of having committed an offense under the NSL or unauthorized movement to and from North Korea, thus worsening the law in some respects. Prime Minister Jang Myeon even attempted to legislate a separate Anticommunism Act, arguing for the need to “eradicate communism and



capture Reds” (W. Park 1995, 169, 172–173), but this legislative attempt failed.

The military regime that came to power following the May 16, 1961 coup, declaring anticommunism a national ideology, ultimately enacted the Anticommunism Act on July 3, 1961. The military regime favored this Act over the NSL, as it enabled prosecution for a wider array of actions—regardless of intent—including the praise and incitement of activities by anti-state organizations or their members, the dissemination of literature, meetings, communications, aiding escape, and failure to report suspicious activity. This marked an expansion of ideological control on the part of the state.

The 1961 “Surveillance Coordination Guidelines” mandated the regular nationwide monitoring of designated individuals. As of November 1970, there were 10,525 such individuals; some records span the 20-year period from 1975 to 1994 (Han 2012, 430). The Yushin regime later enacted the Social Safety Act (*Sahoe anjeonbeop*) in 1975 to detain so-called anti-state offenders beyond their sentences. After President Park Chung-hee’s assassination in 1979 and the December 12 military coup of that same year, Chun Doo-hwan abolished the Anticommunism Act and incorporated its provisions into the NSL, further consolidating the legal basis for ideological control.

## 2) Apparatuses of Ideological Control and Their Violence

Although efforts to induce ideological conversion among unconverted leftist prisoners had been undertaken since the 1950s, it was under the Park Chung-hee regime—following the establishment of the Korean Central Intelligence Agency (KCIA)—that systematic ideological conversion campaigns were launched. The legal basis for these operations was the “Supplementary Directive on the Review Measures for the Ideological Conversion of Leftist Inmates,” issued on January 11, 1964. This directive outlined a five-stage process of conversion targeting unrepentant prisoners and specified in detail the corresponding administrative procedures for each stage (Sang-sook Kim et al. 2023, 288). On August 2, 1973, the Ministry of Justice issued guidelines for the operation of a special task force devoted to the ideological conversion of leftist death row inmates. Despite the excessive

punishment already imposed on long-term prisoners, they were subjected to daily beatings, violence, or torture (Jeong-in Kim 2020, 19). As a result, 197 inmates at Daejeon Prison renounced their beliefs within one year of August 1973. Even after conversion, they remained under surveillance by public security agencies and were forced to offer public confessions as so-called “converted spies” or “self-confessed spies” (H. Kim 2020, 20). This was a continuation of state violence that was tantamount to assaults on human dignity.

For ideological conversion targeting young people the authoritarian regime also employed the military apparatus. The Park regime forcibly conscripted university students who had participated in the student movement without their consent, in violation of the Military Service Act (Sang-sook Kim et al. 2023, 269). This practice was continued by the Chun Doo-hwan regime, which seized power through the December 12, 1979 military coup, and was institutionalized in the 1982 Greening Project (Nokhwa saeop). This project was predicated on the notion that student activists had been tainted by “red communist ideology” and could be ideologically purified or converted into “blue liberal democratic ideology” through military service (H. Kim 2020, 123). In December 2005, the Ministry of National Defense’s Truth Commission on Past Affairs acknowledged that acts such as coercing student conscripts to act as informants and unexplained deaths within the military had occurred openly for many years. On October 11, 2002, the Commission on Suspicious Deaths confirmed that between 1981 and 1983, 447 individuals were targeted by the Greening Project, of whom 256 were forcibly conscripted (H. Kim 2020, 124). The Truth and Reconciliation Commission later affirmed that these actions resulted in human rights violations. The coercion to act as an informant was a practical extension of the NSL’s criminalization of failure to report.

Indirect forms of coercion accompanying ideological conversion included sentence reductions such as suspended sentences or parole, or incentives like exemption from solitary confinement and relaxed restrictions on reading materials. Other coercive tactics included pressure from prison instructors, as well as psychological and financial pressure on prisoners’

families (H. Kim 2020, 103). The Regulations on Parole Review, enacted on July 4, 1978, required inmates convicted under the NSL to undergo a review of their ideological stance and if deemed necessary, to submit a “statement of conversion” or a written reflection. The regulation was revised on October 10, 1998, replacing the required documents with a “pledge of law observance,” a declaration affirming adherence to the constitutional and legal order of the Republic of Korea. Although refusal to submit this pledge no longer entailed the violent coercion associated with earlier conversion practices, the policy extended the psychological effects of past trauma. On April 25, 2002, the Constitutional Court ruled that the pledge did not infringe on freedom of thought or conscience protected under the Constitution (98Hun-Ma425, 99Hun-Ma170, 498 [consolidated]).<sup>2</sup> The regulation was ultimately repealed on December 19, 2009.

A particularly emblematic form of coercion through family networks was the implementation of guilt-by-association (*yeonjwaje*). The current Constitution prohibits this practice (Article 13, Paragraph 3), as it violates the liberal principle of individual responsibility central to the rule of law. Nonetheless, in South Korea, ideological guilt-by-association persisted for decades. It is estimated that approximately one million individuals were affected by association with family members who had engaged in leftist activities or defected to the North during or after the Korean War. Given Korea’s population of 30 million at the time, this implies that roughly one in thirty citizens suffered from such ideological discrimination.<sup>3</sup>

Guilt-by-association effectively barred affected individuals from employment in public service or the military. During periods of political instability, it also served as a means of manufacturing so-called “official spies” (E. Kim and S. Kim 2016, 246–247). Authoritarian regimes frequently fabricated espionage cases for political security, and the families of North Korean defectors were the most convenient targets. Under the

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2. This and other cases may be found through the Intelligent Integrated Search system available at the official website of the Constitutional Court of Korea (<https://isearch.ccourt.go.kr/main.do>).

3. For the personal testimonies of victims, see Yoo (2021, 241–247).

ideological umbrella of anticommunism, victims of guilt-by-association lived in constant fear, stripped of agency and dignity by an omnipotent disciplinary regime. A study of elderly couples who had experienced the Korean War revealed a collective defensive psychology: if any relative had a leftist history, it was feared that both the individual and their children would be socially ostracized. This led to the mobilization of entire families into self-surveillance and ideological conformity, thereby reinforcing and internalizing the dominant anticommunist memory (E. Kim and S. Kim 2016, 247).

Unless the history of direct and indirect violence surrounding ideological conversion is fully reckoned with, the trauma inflicted by the NSL and anticommunism will inevitably persist into the present and future.

### 3) Expansion of Thought Control: Surveillance and Preventive Detention

Following Korea's liberation from Japanese colonial rule in 1945, the practice of surveillance as a means of thought control continued in southern Korea under the US military occupation (1945–1948). On January 1, 1946, the US Army Military Government issued Ordinance No. 23104, establishing a Surveillance Division within the police structure. After the founding of the South Korea in 1948, the surveillance functions of the police remained intact. On June 25, 1950—the day the Korean War broke out—the Bureau of Public Safety within the Ministry of Home Affairs issued a directive to all provincial police departments titled “On the Control of All Persons Under Surveillance and the Security of All Prisons Nationwide.” The directive ordered the immediate detention of all individuals under ideological surveillance. Because of insufficient detention capacity, an addendum instructed local police stations to prioritize the arrest of “conscious elements” among the surveilled population, reporting their names, ages, and addresses (Gwangju High Court [Jeju], 2011Na506, May 2, 2012).

Preventive detention was carried out for those in the National Guidance League (Gungmin bodo yeonmaeng), a government-sponsored organization for ideological conversion. During the Korean War, this organization became a vehicle for mass political killings. Between late June and mid-September

1950, units from the Army Counterintelligence Corps (CIC), police, military police, naval and air force intelligence services, and right-wing youth groups detained and executed members of the League (Sang-sook Kim et al. 2023, 91). The most extreme form of thought control during wartime was the mass killing of civilians, justified through guilt-by-association. The estimated number of victims ranges from 50,000 to 100,000 (G. J. Lee 2023, 102).

In 1961, the “Regulations on the Coordination of Surveillance of Designated Individuals” were enacted, giving the Korean Central Intelligence Agency (KCIA)—then a secret intelligence agency—authority to plan, coordinate, and supervise ideological surveillance. On July 16, 1975, the Social Safety Act was promulgated. One of its key provisions allowed for the preventive internment of individuals deemed at risk of recidivism, in addition to placing them under probation. Among the conditions for exemption from such security measures was the requirement that the individual “possess a firmly established anticommunist spirit” (Social Safety Act, Article 7, Paragraph 1, Subparagraph 1). Whether this condition was met was determined by the Security Measures Review Committee.

Prior to the May 17, 1980 military coup led by Chun Doo-hwan, the Defense Security Command’s Counterintelligence Department convened a meeting of security unit intelligence officers from across the country and distributed a list of individuals to be subject to preemptive arrest once martial law was expanded nationwide (Han 2012, 431). Although no formal legislation on preventive detention currently exists in South Korea, it remains unclear what forms of emergency measures may be implemented during wartime, as relevant military laws remain classified. For example, on December 3, 2024, there were indications that plans for mass detention of key individuals were prepared alongside the declaration of martial law.<sup>4</sup>

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4. *Hankyoreh*, March 3, 2025, [https://www.hani.co.kr/arti/society/society\\_general/1185010.html](https://www.hani.co.kr/arti/society/society_general/1185010.html) (accessed March 13, 2025).

## Mechanisms of Thought Control Prior to Democratization

### *NSL as a Penal Code of Intention*

Since the advent of modern penal codes, criminal law has focused on acts, not intentions, as the basis for punishment. When strictly applying this principle, crimes such as insurrection should be punishable only when manifest acts aimed at overthrowing the state or abolishing private property systems are committed—acts that inherently carry a degree of violence and pose clear threats to state order, as typified by the crime of treason. In South Korea, the Criminal Act was promulgated on September 18, 1953. Until then, Japanese criminal law—applied through the 1912 Joseon Criminal Ordinance—had remained in effect. Japan’s criminal law, enacted in 1907 and amended in 1921 and 1941, provided that a person who “commits a riot with the purpose of overthrowing the government, infringing on national territory, or disturbing the constitutional order” could be punished (Article 77). Since a riot involves observable actions, punishment could not be imposed solely on the basis of intent.

By contrast, ideological control laws such as the NSL punish even the mere formation of an organization, inferring from it a purpose to overthrow the government. Article 1 of the NSL penalizes not only those who “form an association or group with the purpose of impersonating the government or inciting rebellion,” but also those who “conspire, instigate, propagate,” or “supply funds or assistance.” This makes various forms of activity punishable even before any overt criminal act is committed (D. Kim 2024, 229). The key criteria—purpose and organization—rely on the inner intent of the individual. Ideological control laws thus do not target specific criminal acts or concrete threats to state order, but rather presumed intentions. The NSL assigns criminal liability for acts such as organizing or joining a group, based solely on the assumed objective of that group.

This approach enables punishment based on abstract risk rather than actual, imminent danger. Whether the group in question has the capacity to effect systemic change is irrelevant. Possession of certain literature, travel abroad, participation in meetings or communications—acts that may not

concretely violate legal interests—can be punished solely for exhibiting *anti-state* or *anti-social* tendencies. This is not punishment for conduct but for conviction or state of mind. Both the POPL and the NSL exemplify what scholars call punitive laws of conscience (J. Park 2007, 440).

### *Enemy-Friend Dichotomy and Self-Censorship*

According to legal philosopher Lee Jaeseung, the penal ideology of Nazism classified individuals as criminals based on whether they were “friends” or “enemies” of the regime (J. Lee 2013, 26). The NSL operates in a similar fashion, targeting *internal enemies* who, based on their purpose or beliefs, are seen as collaborating with external threats. It functions as a law of exception, defining the boundaries of the political community by excluding dissenters (S. Kang 2012, 91–92).

In practice, the NSL becomes a tool of selective punishment, targeting individuals not for their actions but for their political alignment (J. Lee 2013, 27). Acts of rebellion by the anticommunist ruling power are not punished, unless that power is removed from political office. Though their conduct may be anti-constitutional or anti-state, their lack of formal ties to left-leaning organizations often precludes the application of either the NSL or even criminal law. In an oppressive right-wing regime, the state’s definition of “intent” is not that of the citizen but of the power structure. Punitive law regarding conscience aligns with anticommunist power, not with liberty (J. Lee 2013, 30).

Sung-Hyun Kang interprets the enactment of the NSL in 1948 as the legal codification of civil war (S. Kang 2012, 90; S. Kang 2018, 65). During the Korean War, many individuals were subject to preventive detention and executed without trial solely on ideological grounds (Oh 2009, 5). The NSL thus operates as a political penal code that perpetually reproduces the category of the “internal enemy” (J. Lee 2013, 31). Rather than freedom of thought (*sasang*) that would have protected political pluralism,<sup>5</sup> South

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5. Thought refers to structured beliefs based on specific values, such as ideologies, worldviews, and philosophies (Constitutional Court, April 1, 1991, 89Hun-Ma160).

Korea's 1948 Constitution had provided protection to freedom of religion and "conscience" (*yangsim*). Inevitably, however, the scope of ideological control expanded to enforce self-censorship over even one's conscience—the inner domain that encompasses ethical and moral judgment based on personal convictions.

Under Japanese colonial rule, the primary targets of the POPL were socialist ideologies and Korean independence movements grounded in anti-colonialism (Hong 2024, 16). However, through expansive interpretation, it reached into the private domain of self-censorship. In post-liberation South Korea, while the NSL was initially enacted to suppress insurrectionary organizations during the state-building process, it was later applied to critics of the government, associating criticism of the regime with threat to state security. Individuals expressing dissenting views were forced to constantly self-monitor and censor their own thoughts.

#### *Full Mobilization of the Surveillance State*

Because the South Korean state does not believe that punishment alone alters ideology, it subjects those convicted under the NSL to continued surveillance. As ideological conviction does not arise or disappear overnight, intelligence agencies conduct prolonged investigations and covert monitoring, even in the absence of immediate evidence. The implementation of ideological control laws is inherently violent because their goal is not the regulation of action but the transformation of human consciousness. These laws aim to dominate the very fabric of individual existence—targeting one's inner life. To maximize their effect, a range of violent means have been employed.

The entire state apparatus—including intelligence agencies, law enforcement, correctional institutions, and administrative agencies—was mobilized. Thought control was institutionalized not only through legal provisions but through the very structure and scope of state power. The resulting totalitarian state expanded through state-directed education and quasi-state organizations embedded within civil society.

Two structural features are particularly notable. First, the expansion and empowerment of secret intelligence agencies, which became the central



organs of thought control. Under the NSL regime, such agencies sought to dominate the inner realm of individual thought, belief, and opinion (Oh 2017). Dissenting ideas were labeled “subversive,” attributed to foreign brainwashing, and targeted for reprogramming by the state (Oh 2009, 13–14; Oh 2015, 189). The legal use of the term subversive dates back to the 1936 Joseon Subversive Publications Control Ordinance, enacted by the Japanese Governor-General. The Ministry of National Defense’s list of banned books once included even Hyun Ki-young’s 1999 novel *A Spoon on the Earth* (*Jisang-e sutgarak hana*)—a clear violation of human rights (Oh 2009, 7–8).

Terms such as impure, subversive, and purification, as used by the authorities, reflect a state logic that the population must think in unison, and that loyalty to the state must be secured by eliminating critical thinkers (D. Kim 2013, 21).

Second, the full mobilization system for ideological control enabled the military’s intelligence agencies to surveil civilians. Beginning with the Special Investigation Division under the General Headquarters of the Korean Constabulary in 1948, military intelligence evolved into the Counterintelligence Corps (1950s), and later the Defense Security Command (DSC, Boan saryeongbu) in 1977. The DSC was central to the December 12, 1979 military coup. In 1991, it was renamed the DSC (Gukgun gimu saryeongbu), and during the Lee Myung-bak and Park Geun-hye administrations, it was involved in public opinion manipulation, civilian surveillance, and even preparations for martial law. Though it was renamed the Defense Counterintelligence Command (Gunsu anbojiwon saryeongbu) in 2022, the agency played a central role in the December 3, 2024 declaration of martial law, continuing to intervene in civil society under the pretext of counterespionage.

After democratization, even ordinary administrative agencies participated in ideological surveillance. The Lee Myung-bak administration established the Office of Public Ethics Support under the Prime Minister’s Office in July 2008, which monitored the public and private lives of citizens critical of the regime. Under Park Geun-hye, the Ministry of Culture, Sports and Tourism—based on lists compiled by the National Intelligence Service (NIS, formerly the

Korean Central Intelligence Agency) at the instruction of the Blue House—created a blacklist to exclude artists and writers critical of the government from public funding.

### *Fabrication of Espionage Cases*

Within the context of national division between North and South Korea, the state's ideological control mechanisms expanded through the fabrication of espionage cases. While actual espionage involving infiltration and intelligence gathering, undertaken by both Koreas via North Korean agents in the South and South Korean agents in the North, South Korea's public security agencies began fabricating spy cases as the number of real infiltrators declined after the 1970s. These fabricated spy cases became a key instrument of the state's ideological enforcement.

Investigators handling NSL cases were afforded various benefits, incentivizing them to aggressively pursue espionage accusations. Courts frequently convicted defendants based solely on confessions, which were often obtained through torture. As a result, the security apparatus manufactured numerous espionage cases. Among the primary victims were Zainichi Koreans (ethnic Koreans residing in Japan), South Korean students studying abroad, and fishermen abducted by North Korea, all prosecuted under the NSL (W. Park 1997, 383–471; Jeong-in Kim 2020, 23–29). Many of these individuals were falsely labeled as spies.<sup>6</sup>

Those ensnared in these fabrications often had their lives destroyed: some were executed, while others endured long-term incarceration. Even after release, they suffered the ongoing stigma of being labeled traitors or spies (Jeong-in Kim 2020, 9; Yoo 2021, 231–238).

Fabricated espionage cases persisted even after democratization in 1987. Notable examples include the 2003 Song Du-yul case, involving a Korean-German scholar accused of pro-North Korean affiliations, and the 2013 Yoo Woo-seong case, in which a North Korean defector employed by the Seoul Metropolitan Government was falsely charged with espionage. In 2017, the

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6. For an in-depth analysis of fabricated spy cases involving Zainichi Koreans, see Cho (2016).

Defense Security Command planned a case linking Catholic priest Father Ham Se-woong to Chongryon, a pro-North Korea Zainichi organization in Japan, as part of another fabricated spy investigation (Jeong-in Kim 2020, 9–10).

Anticommunism in South Korea functioned not merely as opposition to communism per se, but as a tool for suppressing individuals critical of the ruling order. Public security agencies exploited the NSL and the state of division to frame dissidents as spies. In one striking example, the Supreme Court ruled that even information reported in the media could be considered a “state secret” under the NSL (Jeong-in Kim 2020, 23). The Court has continued to interpret the law such that any disclosure, no matter how minor, that could potentially benefit an anti-state organization (North Korea), may be classified as a national secret (Supreme Court, October 25, 2012, 2010Do6310).

While the NSL formally encompasses instances that have actual value as a state secret, legitimate concerns lose their validity when *state secrets* are interpreted so broadly as to leave no room for legal certainty or proportionality.

*State-Sponsored Anticommunist Education, Censorship of Subversive Literature, and the Organization of Pro-Government Conversion Groups*

Following liberation in 1945 and amidst the consolidation of the national partition under Soviet and American occupation forces, anticommunism was institutionalized as a core ideological component of state-building in the southern American zone. After the establishment of South Korea in 1948 south of the 38th parallel, anticommunist education functioned as a proactive mechanism of thought control, not only excluding opposing ideologies but also cultivating a biased mode of thinking through school curricula and mass media (I. Kang 2002, 1–2). The ultimate objective was to produce conformist citizens of the newly formed state (D. Kim 2024, 440–441).

From the advent of the Park Chung-hee regime in 1961, schools actively promoted anticommunist sentiment through activities such as essay contests, poster campaigns, and musical performances that vilified

communism (I. Kang 2002, 11). Under the 1972 Yushin Constitution, students were required to *revere* South Korea's national flag and anthem. The regime even established a quasi-military organization, Hakdo hogukdan (Student National Defense Corps), in secondary schools and universities.

During the Lee Myung-bak administration (2008–2013), some authorized school textbooks were labeled as *leftist* and subject to forced revision (D. Kim 2013, 24). The Park Geun-hye administration (2013–2017) went further by attempting to enforce a state-authored history textbook, aiming to indoctrinate students with the dominant ideology of the regime. Such efforts conflicted with post-democratic constitutional values, as they curtailed opportunities for students to engage in diverse and critical thought (Shin 2015, 169).

In South Korea, ideological control extended beyond the NSL, encompassing not only political expression but also academic, artistic, and cultural expression under the pretext of national division. One prominent example is the controversy surrounding the university textbook *Understanding Korean Society (Hanguk sahoe-ui ihae)*.<sup>7</sup> In this case, the Supreme Court overturned the dismissal of professors involved in the book's publication, ruling that the work had not been authored "with the intent to benefit the North Korean communist group" (Supreme Court, September 17, 1999, 98Du15412).

Censorship of books designated as *subversive* also occurred. The Constitutional Court ruled that banning such books within military installations did not violate soldiers' basic rights, including their right to read (Constitutional Court, October 28, 2010, 2008Hun-Ma638). During the Lee Myung-bak and Park Geun-hye administrations, the blacklist system, orchestrated by the NIS and coordinated by the Blue House, with the Ministry of Culture, Sports and Tourism and its affiliated arts funding bodies acting in concert, amounted to a totalitarian state crime against freedom of expression.

In the cultural sector, the *blacklist* scandal during the Park Geun-hye

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7. First published in 1990, a revised edition of *Hanguk sahoe-ui ihae*, by Chang Sang-hwan, et al., was republished in 1994 by Jiri.

administration revealed that cultural figures critical of the conservative government were excluded, under direct orders from the Blue House, from public funding based on lists compiled by the NIS. In its 2020 ruling, the Constitutional Court held that the state's collection and use of such information, and the resulting exclusion of artists, constituted a violation of their fundamental rights (Constitutional Court, December 23, 2020, 2017Hun-Ma416).

Another key method of enforcing ideological conversion was the creation of pro-government conversion organizations. Before the Second Sino-Japanese War (1937–1945), ideological conversion in colonial Korea generally involved mere renunciation of prior beliefs. After 1937, however, conversion increasingly required affirmative acts of cooperation with the Japanese imperial regime (H. Kim 2020, 104).

In post-liberation South Korea, President Syngman Rhee established the National Guidance League (NGL) on April 21, 1949, as a quasi-state organization designed to enforce ideological conversion. The NGL was created without legal basis, under the direct initiative of Rhee government. It claimed to “protect and guide” those influenced by leftist ideologies, establishing a nationwide organizational network by the eve of the Korean War. Yet soon after the outbreak of war, tens of thousands of League members were subjected to mass executions, marking one of the darkest chapters in the history of state-led ideological control.

*Interim Summary: The Constitutional System of Anticommunist Thought Control*

The NSL infringes upon citizen freedoms across all aspects of society. According to Park Won-soon's study (1997, 53–382), the scope of the NSL encompasses journalism, publishing, literature, academia, the arts, education, religion, labor movements, unification activism, and political activities. Even criticism of the United States or opposition to US policies has been subject to prosecution under the NSL (W. Park 1997, 472–505; Minju sahoe-reul wihae byeonhosa moim 2021, 108–123). Across all these domains, South Korean authoritarian regimes weaponized anticommunism to suppress dissent.

Labor movements, in particular, were a primary target of NSL prosecutions. Following the enactment of the NSL, the law was first used to crack down on members of the Chosun Federation of Trade Unions (Joseon nodong johap jeonguk pyeonguihoe, or Jeonpyeong). As the labor movement grew in the late 1970s, repression under the NSL intensified. The state deliberately equated labor activism with socialist or communist ideologies, making it one of the key targets of anticommunist suppression. Even today, prejudices against labor unions can be traced back to the influence of anticommunism.

The NSL also fuels a perpetual search for internal enemies. The crime of failure to report forces citizens to monitor and report on one another, constructing a totalitarian surveillance system. Even if accusations under the NSL are ultimately dismissed or the accused acquitted, the victims suffer severe consequences. If their cases attract media attention, they are subjected to trials in the court of public opinion, often being suspected of links to North Korea without factual verification or final judicial rulings (Minju sahoe-reul wihan byeonhosa moim 2021, 105, 123–137).

Moreover, anticommunism enables the mobilization of private violence. The Syngman Rhee administration empowered right-wing youth organizations such as the Northwest Youth Corp (Seobuk cheongnyeondan), effectively creating an extralegal state within a state (Jeong-gi Kim 2008, 97). This constituted the privatization of public authority and the organization of private groups into violent paramilitary units. The situation became so severe that, on December 1, 1950, during the Korean War, the National Assembly passed the Sahyeong geumjibeop (Private Punishment Prohibition Act), intended to penalize those who carried out unauthorized executions of suspected collaborators or insurgents without legal proceedings. It applied not only to military and police personnel but also to members of private paramilitary organizations, such as youth defense groups and self-defense units. The attack on the Seoul Western District Court on January 19, 2025, following the issuance of an arrest warrant for South Korea's president and insurrection leader Yoon Seok-yeol, can be seen as a contemporary manifestation of privatized violence in service to the state.

Despite South Korea's democratization, the country's constitutional system of anticommunist thought control remains entrenched due to

the ongoing division of the Korean Peninsula. For instance, the judiciary continues to justify the NSL on the grounds that North Korea has not “completely abandoned its objective of communist unification” (Seoul High Court, July 21, 2004, 2004No827), has not displayed “clear signs of change” (Supreme Court, September 23, 2003, 2001Do4328; Supreme Court, April 8, 2003, 2002Do7281), or has not undergone “a distinct democratic transformation” (Supreme Court, April 8, 2003, 2002Do7281).

While the Constitutional Court has recognized North Korea as a partner for dialogue and cooperation toward peaceful unification (Constitutional Court, July 29, 1993, 92Hun-ba48), such recognition remains largely symbolic. Under this judicial reasoning, unless North Korea collapses or undergoes a regime transition, the anti-state entity justification for the NSL remains valid, effectively granting the NSL indefinite legitimacy (Oh 2004, 110–111).

From a constitutional perspective, national division should be considered a variable in individual constitutional cases, rather than the basis for a *state of exception* legal framework. However, by perpetuating an exceptionalist divided-state constitutional system, the courts and the Constitutional Court have institutionalized a *half-democracy* where citizens cannot fully exercise their fundamental rights. As long as the existence of North Korea remains the justification for anticommunist laws, South Korea’s constitutional democracy remains fundamentally deficient (Oh 2015, 184).

## **Legal Frameworks of Thought Control Since the 1987 Democratic Transition**

### *NSL and the Constitutional Court under the 1987 Constitution*

Even under the so-called progressive administrations of Kim Dae-jung, Roh Moo-hyun, and Moon Jae-in, the NSL was never abolished. One of the hallmark features of the 1987 constitutional revision was the establishment of the Constitutional Court. Given that many pre-democratization laws contained unconstitutional elements, the Court contributed to a degree of democratization of the legal system by rendering several unconstitutional

rulings (Yoon 2001, 340–343).

However, in a landmark decision, the Court upheld the constitutionality of the NSL's "praise and incitement" clause, offering a conditionally constitutional interpretation. It held that the clause is constitutional only when applied to acts that present a "clear danger" to the existence or security of the state or to the basic order of liberal democracy (Constitutional Court, April 2, 1990, 89Hun-Ga113). The 1991 amendment to the NSL incorporated this language, slightly narrowing the scope of punishable expressions such as praise, incitement, assembly, and communication.

Nonetheless, the Constitutional Court failed to demonstrate the proactive judicial stance required to secure public trust by firmly defending fundamental rights—what former Chief Justice Lee Hoe-chang had identified as the judiciary's role (H. Lee 1987, 161). In particular, the Court has often shown a repressive posture toward freedom of thought and conscience. Though expected to serve as the final bastion for human rights protection, the Court has remained deeply entrenched in the legacy of Cold War anticommunism.

On September 26, 2023, despite a thoroughly prepared constitutional complaint seeking the abolition of the NSL—filed by Minbyeon, a progressive lawyers' association, and supported by a published monograph (Minju sahoe-reul wihan byeonhosa moim 2021)—the Constitutional Court once more upheld the Act (Constitutional Court, September 26, 2023, 2017Hun-Ba42 etc.). While five justices issued dissenting opinions against the "enemy expression" provision, this limited progress only highlighted the resilience of the ideological control framework built upon anticommunism.

### *Constitutional Court's Justification of the NSL*

Although the NSL was historically used as a legal instrument for suppressing anti-government voices under the pretext of excluding leftist forces, the Constitutional Court has repeatedly upheld its constitutionality, thereby conferring constitutional legitimacy on the law. The NSL is a supra-constitutional law, rooted not in constitutional principles but in anticommunist ideology external to the Constitution (Kuk 1994, 126).



Nevertheless, the Court incorporated the NSL into the constitutional order by interpreting it through the lens of the “basic free and democratic order” as referenced in the Preamble and Article 4 of the Constitution.

On the surface, this appeared to be an effort to discard unconstitutional aspects of the NSL while preserving its constitutionally acceptable content. However, in equating the “basic free and democratic order” with the Constitution itself, the Court effectively provided an ideological framework to legitimize the NSL as a system-maintaining law of thought control (Oh 2015, 182).

In defining this *basic order*, the Court cited elements similar to those adopted by the German Federal Constitutional Court: respect for fundamental rights, separation of powers, parliamentary governance, multiparty democracy, electoral systems, and judicial independence. However, unlike Germany, the Korean Court added another component —“an economic order based on private property and a market economy” (Constitutional Court, April 2, 1990, 89Hun-Ga113).

Criticism of such definitions can itself be prosecuted under the NSL’s praise and incitement clause. In a democratic republic, even critiques of the constitutional system—if expressed peacefully—must be protected under freedom of expression. Although the 1991 revision to the NSL introduced the requirement that the offender must have acted “with knowledge that the conduct endangers the existence or security of the state or the basic free and democratic order,” the law continued to punish acts such as importing, copying, possessing, transporting, distributing, selling, or acquiring written or visual materials that fall under “praise and incitement” category. In its September 26, 2023 decision (2017Hun-Ba42 etc.), the Constitutional Court again upheld the constitutionality of this clause.

The Court justified its ruling by asserting that acts of praise, incitement, propaganda, or sympathy toward anti-state groups, even if not immediately realized, could at any moment pose a significant threat to national security, and thus do not constitute an excessive restriction on freedom of expression. The ruling cited the historical memory of war between North and South Korea, the ongoing state of armistice and military confrontation, and North Korea’s continued armed provocations.

What is absent from the Constitutional Court's reasoning is any sense of constitutional responsibility to restrain the violence of the NSL or the broader logic of anticommunism. On the contrary, the Court has lent constitutional justification to state repression and exclusion, raising serious concerns about its complicity in legitimizing authoritarian legacies through constitutional rhetoric.

*Constitutional Court's Bias Regarding Freedom of Thought and Conscience*

The Constitutional Court has ruled that ordering a person found guilty of defamation to publish an apology in a newspaper infringes upon their freedom of conscience (Constitutional Court, April 1, 1991, 89Hun-Ma160). However, the Court held that a written apology imposed on student perpetrators under the "Act on the Prevention of and Countermeasures Against School Violence" does not infringe upon freedom of conscience. It reasoned that such a measure is not a "compelled or coerced apology against one's will," but rather "a special educational measure intended to aid the recovery of the victim and the restoration of normal peer relationships" (Constitutional Court, February 23, 2023, 2019Hun-Ba93 etc.).

In contrast, the Court found the pledge of law observance—a document requiring inmates convicted under the NSL to affirm their commitment to upholding the legal and constitutional order of the Republic of Korea—to be constitutional. The Court deemed it merely a confirmation of one's constitutional obligations (Constitutional Court, April 25, 2002, 98Hun-Ma425 etc.).

In its reasoning in the above case, the Court stated that: "Given the confrontation between North and South Korea, and North Korea's continued pursuit of its revolutionary strategy toward the South, which threatens the survival of the Republic of Korea, the South Korean state must defensively respond to such strategies." It further stated that "unlawful acts by forces connected with or voluntarily aiding North Korea's attempts to undermine the basic free and democratic order" are "currently punished primarily under the NSL or the Assembly and Demonstration Act" (Constitutional Court, April 25, 2002, 98Hun-Ma425). Therefore, prisoners

convicted of such offenses must undergo additional procedures to confirm their compliance with legal order, unlike other inmates.

Institutions that underpin the NSL, such as the pledge of law observance and security surveillance orders, have consistently received constitutional endorsement from the Court. For instance, in decisions issued in 1997 (92Hun-Ba28), 2001 (2000Hun-Ba22), 2003 (2001Hun-Ga17 etc.), and 2015 (2014Hun-Ba475), the Court upheld the constitutionality of the Security Surveillance Act. Only in the 2021 decision (2017Hun-Ba479, June 24) did the Court finally find certain provisions—namely, the mandatory reporting of changes in personal information and the penalties for non-compliance—to be incompatible with the Constitution.

By continuing to legitimize these outdated mechanisms of thought control, the Court has enabled security agencies to arbitrarily designate *internal enemies* simply for espousing ideas similar to North Korea's. The label of ideological similarity is used to suppress rational discourse and legitimate expression. In this way, the Court effectively distorts freedom of thought and conscience—rights protected by the Constitution—into state-granted privileges, coercing individuals to abandon these freedoms. It argues that since compliance is a condition for legal benefits (e.g., parole), individuals may choose to forego such benefits and thus are not forced to violate their conscience—implying there is no infringement on freedom of conscience.

Since 1987, constitutional democracy and the rule of law in Korea have merely cloaked ideological control in constitutional rhetoric. The Constitutional Court maintains that freedom of conscience includes both the freedom to form and hold convictions (*forum internum*), which is absolute, and the freedom to manifest or act upon those convictions (*forum externum*), which can be legally restricted. Yet in practice, the latter has been used to expand the punishable scope of ideological acts, functioning in an unconstitutional manner (J. Park 2007, 440). This reflects the Court's disregard for the protection of inner freedom.

Jaesung Lee critiques this framework, arguing that no constitutional issue can be resolved by merely distinguishing between absolute and relative freedoms. He contends that because human life is inherently social,

all freedoms are relative in their application (J. Lee 2005, 67). To say that freedom of thought or conscience is “absolute” means that expressions of such thought must be protected to the fullest extent possible unless they cause imminent and concrete danger. However, by reducing these freedoms to the domain of private, internal belief, the Constitutional Court has opened the door to wide-ranging state control over externalized thought. Ultimately, the Court appears more committed to upholding the NSL and Cold War anticommunism than to protecting constitutional rights and human dignity.

### *Constitutional Court's Militant Democracy as Tool of Ideological Control*

The Constitutional Court of Korea interprets the “basic free and democratic order” as comprising both liberal democracy and market economy. Yet in reality, due to the enduring force of the NSL, freedoms of thought and expression in Korean society have been significantly curtailed. As a result, liberal democracy has been reduced to electoral formalism, while ideological conformity is enforced, making Korea's system more accurately describable as *militant democracy*.<sup>8</sup>

In a democratic republic, militant democracy justifies restrictions on certain freedoms only when confronting forces that seek to overthrow the democratic order through violence. In principle, such threats are dealt with through criminal provisions on rebellion and insurrection. However, the NSL extends far beyond such standards by institutionalizing anticommunism as a foundational logic and fostering a militant democracy rooted in repression and exclusion (Kuk 1994, 162).

The Court's commitment to militant democracy culminated in its 2014 decision to dissolve the Unified Progressive Party (UPP, Tonghap jinbodang), which had won 13 seats in the 19th National Assembly. In its

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8. The term “militant democracy” emerged in the wake of Hitler's rise to power through elections. Karl Lowenstein, in 1937, coined the term “militant democracy” to refer to a form of constitutional framework that would protect the democratic order by preemptively placing restrictions on extremist groups.

ruling (2013 Hun-Da1), the Court justified this action not only with reference to “universal principles of constitutionalism” but also by invoking the “unique historical context of the Republic of Korea,” thereby acknowledging South Korea as an exceptional state—one deviating from normal constitutional democracy.

The party dissolution system in Korea was introduced in response to abuses under the Syngman Rhee regime, which unilaterally revoked the registration of the Progressive Party (Jinbodang) in 1958. At that time, the party’s leader Cho Bong-am<sup>9</sup> was arrested for espionage and violating the NSL and subsequently executed in 1959 (Sang-sook Kim et al. 2023, 209). Ironically, after democratization, the same system has once more been used to disband a progressive opposition party. The Court reasoned that when a party’s true objectives are concealed, the state must rely on sources beyond official party platforms to ascertain them—essentially adopting a *mind-reading jurisprudence*.

The Court’s invocation of “historical context” and “public sentiment” to justify the dissolution of a political party contradicts the universal principles of constitutionalism, which it claims to uphold. Even in conditions of national division—or even during wartime—freedom of thought and expression, as core components of human dignity, must be guaranteed to the greatest extent possible. The current logic enables the state to manufacture *enemies* or *evil*, and any thought critical of the existing order can be rendered a potential threat to the basic free and democratic order.

A democratic republic requires an “open constitutionalism” (Kuk 2000, 117) where all non-violent ideologies and expressions coexist, forming the basis for political compromise. Kuk critiques the 1956 decision of the German Federal Constitutional Court to ban the German Communist Party as a Cold War maneuver that weaponized the system of party dissolution. He argues that such measures transform normal constitutional law into

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9. As the main opposition candidate in the 1956 presidential election, Cho Bong-am had won 23 percent of the valid votes on a platform that called for democratic, peaceful unification with North Korea. As a form of protest, votes cast in that election that were invalid (blank) amounted to approximately 20 percent.

crisis management law, distorting the very function of constitutional protection (Kuk 1994, 148). Germany later replaced the term “militant democracy” with “defensive democracy” to hide its authoritarian legacy (W. Park 1995, 223).

However, in South Korea, the party dissolution system allows nine justices to unilaterally eliminate any political movement that seeks to fundamentally challenge the existing order—even in the absence of collective violent acts. In a functioning democracy, such parties should be judged by the electorate, not dissolved by judicial decree (W. Park 1995, 232).

South Korea’s frequent use of exceptional constitutional measures under the pretext of national division mirrors Germany’s crisis-management constitutionalism. However, the Korean Constitution still imposes upon the state a duty to recognize and guarantee fundamental rights (Article 10), even under division. Article 4, which references the pursuit of peaceful unification based on the liberal democratic order, should be interpreted not as a justification for invoking emergency powers, but as a constitutional safeguard for democratic republicanism.

In this light, liberating freedom of thought from the grip of division and anticommunist ideology must be the first task in defending the democratic republic.

### *Residual Surveillance Regimes*

On December 31, 1988, the Security Surveillance Act was enacted as a replacement for the repealed Social Safety Act. This law authorizes post-sentence surveillance through probation. One of the conditions imposed on subjects is to “renounce immoral habits, perform good deeds, and avoid associating with persons of criminal disposition.” The Act continues to authorize surveillance of individuals convicted under the NSL (Articles 2[3] and 4).

Although the earlier law required a “spirit of anticommunism,” the current Act demands a “spirit of law observance” (Article 11[1][1]). In order to be exempt from surveillance, a subject must demonstrate this spirit. Individuals must report to the chief of the local police station their

family and cohabitant information, religious affiliations, associations, major activities, and travel details on a quarterly basis (Article 18).

According to the Presidential Directive on the Management of Public Security Offender Records, those classified as public security offenders include not only violators of the NSL, but also those prosecuted under the Assembly and Demonstration Act.

In the 1986 Student Spy Ring case, Kang Yong-joo, a former political prisoner, was prosecuted for refusing to comply with the Security Surveillance Act from 2002 to 2017 and for declining to submit a pledge of law observance. Although he was ultimately acquitted, the law remains in force (Jeong-in Kim 2020, 6). Surveillance under this law operates as a form of extended imprisonment, subjecting individuals to ongoing control even after release (Yoo 2021, 238–241). As the legal counterpart to the NSL, in tandem with the NSL, there are calls to abolish the Security Surveillance Act (M. Song 2005, 174–189).

Security agencies begin surveillance not only after charges are filed, but even before any alleged crime occurs, through so-called preliminary investigations. Their methods include wiretapping, physical surveillance, hacking, metadata collection, and use of informants. These operations often last for extended periods.

One notable instance of mass surveillance was the revelation of packet inspection-based internet monitoring in an NSL-related case. From around 2008 to 2015, the director of the NIS secured judicial approval to monitor the internet and mobile communications of targeted individuals for over seven years. This technique—unforeseen by the Protection of Communications Secrets Act—prompted a ruling of unconstitutionality by the Constitutional Court (Constitutional Court, August 30, 2018, 2016Hun-Ma263).

### **Legacy of Thought Control Laws and the Imperative of Transitional Justice**

In South Korea, the project of transitional justice through the reckoning with past illegality remains incomplete. For instance, in 2007, the NIS

Development Committee for Clarifying the Past confirmed that both the KCIA and its successor, the Agency for National Security Planning, had engaged in illegal civilian surveillance of politicians, journalists, labor unions, and university campuses (Han 2012, 432). However, the NIS has continued to disseminate ideologically hostile propaganda against civil society and has waged cyber-warfare that erodes spaces for public discourse and open communication (J. Lee 2014, 185). Under its former director Won Sei-hoon, the NIS was accused of intervening in elections, from the 2010 local elections to the 2012 presidential election. Seoul's police commissioner at the time, Kim Yong-pan, was found to have downplayed and concealed the online comment manipulation campaign conducted by NIS operatives (Jeong 2013, 92). The ideological conversion operations of the military dictatorship era have evolved into cyber-based methods of mass persuasion and control (Oh 2015, 189).

The long legacy of state violence—from the ideological repression under Japanese colonialism to wartime massacres—has inflicted deep psychological trauma on the Korean people. On December 3, 2024, many citizens experienced renewed trauma simply at the declaration of martial law. This illustrates the renewed urgency of transitional justice to deepen and extend the democratization achieved in 1987. In contemporary Korea, terms like *ppalgaengi* (commie, reds), pro-North leftist, or *jusapa* (follower of North Korean ideology) continue to serve as rhetorical tools of ideological violence. These labels—used during the tenures of NIS directors Kim Sung-ho and Won Sei-hoon—are updated expressions of *ppalgaengi* that carry the power to socially exclude and even dehumanize (J. Lee 2013; Jeong-in Kim 2020, 37; Han 2018, 146, 172).

The conservative establishment, which has historically used thought control to uphold the ruling order, continues to exploit these rhetorical strategies to both invoke past trauma and justify contemporary repression. This persistence reflects the failure of transitional justice in Korea (Oh 2025, 234–236). Transitional justice refers to legal and political efforts to address the wrongs of prior authoritarian regimes (Ju 2025, 444; Oh 2025, 231). The foremost of these tasks is the abolition of the NSL, which—despite 40 years having passed since democratization and 77 years since its enactment—



remains upheld by the National Assembly, the President, the Constitutional Court, and the Judiciary.

As one victim of a fabricated espionage case testified. “While in prison, everyone hoped for a retrial. . . We endured because we believed our injustice would be overturned someday. That belief—that one day, we’d be found innocent in a better world—is what kept us going” (Ju 2025, 457).

Yet even the current Truth and Reconciliation Commission, part of Korea’s transitional justice framework, requires a fundamental overhaul in its approach to state violence. According to the Framework Act on Clearing Up Past Incidents for Truth and Reconciliation, the Commission’s purpose is to contribute to national integration by uncovering repressed truths about the independence movement, human rights abuses, and massacres, thereby affirming national legitimacy and promoting reconciliation (Article 1). However, some commissioners reportedly discredit victims based on accusations found in authoritarian-era police records. For example, one case involved the label “assassin squad member” in a 1969 surveillance log by the Jindo Police (*Hankyoreh*, April 29, 2024).

Similarly, unlawful wartime executions by police and military during the Korean War continue to be excused on the basis of “wartime necessity” (*Hankyoreh*, March 12, 2024). This amounts to a *posthumous execution*, denying victims recognition and subjecting families to further trauma. The military regimes following the 1961 coup destroyed evidence of massacres, demolished memorial sites, and even disinterred collective graves, as was the case in Geochang. Sociologist Sung-hoon Han calls this the “posthumous desecration of victims” (Han 2014, 312). State crimes are routinely concealed and distorted by the very institutions responsible. Such denial of transitional justice by the state kills victims twice, three times over—an indictment of the catastrophic consequences of its failure.

The violence of anticommunism and thought control remains a pressing issue. As Kuk Sun-ok observes:

The NSL is categorically different from ordinary public security laws. It is a law of thought suppression, designed to suppress the very act of thinking. It dichotomizes thought into orthodoxy and heresy, and

ruthlessly wields the sword of state violence against those labeled as heretical. It is a quintessential law of regime preservation. (Kuk 1994, 126)

The NSL, constructed in the context of national division, has functioned as the ideological foundation of a constitutional system grounded in anticommunist thought control. It has been referred to as the ideological national identity of the Republic of Korea (Jeon 2005, 99). In a system where the state imposes unthinking loyalty and suppresses dissent, the Constitution becomes little more than a framework for authoritarianism, or a facade covering the inhuman core of the regime (Oh 2015, 189).

Through colonial rule, civil war, and military dictatorship, the constitutional order of division has entrenched a system of ideological control that renders fundamental rights hollow. Compelled to accept the legitimacy of this order, citizens are effectively reduced to subjects, not rights-bearing citizens. Ideological control—because it violates human dignity—is a form of totalitarian state violence and state crime, legitimized under the name of law. This is the tragedy of contemporary South Korea: the rule of law in name, but the operation of violence in practice—a Janus-faced state (Oh 2015, 189).

As of now, the precise role of the NIS in the events of December 3, 2024 remains unclear. If, due to its clandestine nature, the agency could not inform the public, it should at least have reported to constitutional authorities like the speaker of the National Assembly to enable a democratic response. Since intelligence gathering and dissemination during a rebellion fall within the NIS's legal duties, the agency's complicity or inaction raises serious constitutional concerns (Oh 2025, 252).

True dismantling of the legal mechanisms of thought control must include: repeal of related laws such as the Surveillance Act and the Martial Law Act; legal reform to protect rights of conscience and thought, including conscientious objection; full truth-seeking and victim redress for past ideological repression, institutional accountability and sanction for perpetrators; and the radical downsizing of intelligence agencies like the NIS, in both personnel and budget (Oh 2017).

The NSL is not merely an isolated statute but the linchpin of Korea's

legal system of thought control. Its abolition requires only a single line—"The NSL is hereby repealed." Yet even this simple legislative act remains unrealized. Abolishing the NSL would weaken anticommunist ideology, reduce the power of the NIS, and dismantle the country's security surveillance system. Moreover, a peace regime on the Korean Peninsula and in East Asia must be pursued through disarmament and inter-Korean reconciliation, dismantling the constitutional order of division and restoring that of a democratic republic.

Unless Korea reckons with its past and present systems of thought control, there is no hope for its human rights or democracy. The task of transitional justice is therefore not only comprehensive and foundational but also inherently transformative (Daly 2002, 73–183; J. Lee 2014, 185). In Korea, what is needed is not merely textual constitutional revision but a reinvention of the constitutional order itself.

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