



Universiteit
Leiden
The Netherlands

Dynamics between national security laws and repertoires of political action: a comparative analysis of Hong Kong and South Korea

Kwak, S.

Citation

Kwak, S. (2024). Dynamics between national security laws and repertoires of political action: a comparative analysis of Hong Kong and South Korea. *Asian Politics & Policy*, 16(1), 78-93. doi:10.1111/aspp.12725

Version: Publisher's Version

License: [Creative Commons CC BY-NC-ND 4.0 license](#)

Downloaded from: <https://hdl.handle.net/1887/4108898>

Note: To cite this publication please use the final published version (if applicable).

ORIGINAL ARTICLE



WILEY

Dynamics between national security laws and repertoires of political action: A comparative analysis of Hong Kong and South Korea

Seohee Kwak

Faculty of Social and Behavioural Sciences, Leiden University, Leiden, The Netherlands

Correspondence

Seohee Kwak, Faculty of Social and Behavioural Sciences, Leiden University, the Netherlands.

Email: s.kwak@hum.leidenuniv.nl

Abstract

This article undertakes a comparative analysis of two cases, Hong Kong and South Korea, each characterized by distinct levels of political and civil liberties to elucidate how the institutionalization of national security operates in shaping the repertoires of popular political actions and the repressive conduct of state actors. In both cases, the legal frameworks serve to curtail popular political action, both online and offline, often through discretionary applications of national security norms, resulting in ambiguity. They bestow legitimacy upon state agencies to engage in protest policing, surveillance, and the suppression of individuals or organizations in the name of upholding national security. In contrast, the national security laws in Hong Kong and South Korea, influenced by varying interpretations and applications of perceived threats to national security, result in differences in the extent and degree of contentious political actions and state repression.

KEYWORDS

contentious politics, Hong Kong, national security, political action, South Korea

This is an open access article under the terms of the [Creative Commons Attribution-NonCommercial-NoDerivs](https://creativecommons.org/licenses/by-nc-nd/4.0/) License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

© 2024 The Authors. *Asian Politics & Policy* published by Wiley Periodicals LLC on behalf of Policy Studies Organization.

INTRODUCTION

National security is one of the most fundamental priorities of any state regardless of the form of government, and states institutionalize laws on national security in different ways according to their own historical and political contexts. The concept of national security can be understood as the the physical defense of a state's territory and its citizens by force or the structural protection of its system from internal and external subversive or terrorist acts. Regarding the latter, states develop multiple laws and policies through which it safeguards its established institutions. Moreover, in the digital era, a state's national security policy stretches to not only in offline public spaces but also in online spaces. While the law on national security is commonly observed in various political regimes, whether democratic or autocratic, this article seeks to conduct a comparative analysis of different regimes with varying degrees of political and civil liberties.

This article focuses on two Northeast Asian cases: the Hong Kong Special Administrative Region (HKSAR) and South Korea. China legislated *the National Security Law (NSL) of the HKSAR* and the law has become a scholarly topic since it was enacted in 2020 (Chopra & Pils, 2022; Fong, 2021; Kobayashi et al., 2021; Lo, 2021). The distinction should be made between the national security law of Hong Kong, which was enacted in 2020, and the one applied in mainland China, which came into effect in 2015. In comparison, South Korea introduced the *National Security Act (NSA)* in December 1948, and there are many studies on the political background and impacts of this law (Chubb, 2014; Haggard & You, 2015; Im, 2006; Jeon, 2006; Kraft, 2006; Suh, 2004). Despite the increasing academic attention paid to the Beijing-legislated National Security Law of HKSAR in recent times, limited research has been conducted into the manifestations of national security laws in comparative contexts. This article selected the cases of Hong Kong and South Korea, considering their different features and manifestations of democratic institutions. Following the classification of case selection in cross-case study methods proposed by Seawright and Gerring (2008), Hong Kong and South Korea are regarded as “diverse cases,” presenting distinct values of a categorical variable of interest.

According to Freedom House's Freedom in the World 2023 report, Hong Kong is currently recognized as “partly free,” scoring 10 out of 40 in Political Rights and 32 out of 60 in Civil Liberties (Freedom House, 2023a). Hong Kong is not an independent sovereign state but a territory granted special autonomy by China since its handover from the United Kingdom in 1997. Hence, the norm of national security has been institutionalized into the law by the legislative body of mainland China in Beijing. In Hong Kong, the term “state actors” should encompass not only the Government of the HKSAR but also state-party actors in Beijing, while accounting for the institutional intimacy between the HKSAR and the Chinese government.

On the other hand, South Korea's modern political history has been marked by a series of political upheavals, including the Korean War, unstable transitions, dictatorship, and periods of military-led rule, since the enactment of the National Security Act in 1948, until the establishment of democracy. In the present day, South Korea is classified as “Free” in Freedom in the World 2023, scoring 33 out of 40 in Political Rights and 50 out of 60 in Civil Liberties (Freedom House, 2023b). Through an analysis of two distinct cases, this article discusses the interplay between the institutionalization of national security laws and the array of popular political actions in regimes positioned at various junctures along the democratization spectrum.

Amidst various democracy-related variables, this article centers on popular rights, specifically freedom of speech and assembly. It assumes that the level of manifestation of



these rights may vary, being more constrained in Hong Kong while experiencing higher degrees of realization in South Korea. This article explores the dynamics between the laws on national security and the repertoires of popular political action in Hong Kong and South Korea. With the aim of discerning similarities and differences in cases characterized by varying levels of political and civil liberties, it addresses the following research question: How does the institutionalization of national security operate in shaping the repertoires of popular political actions and the repressive conduct of state actors in Hong Kong and South Korea? This article does not aim to present a critique of whether the laws should be abolished or maintained. It uses an academic lens to look into the dynamics between the formal structures of the laws and their functions. Thus, the overall objective of this study is to analyze salient patterns, similarities and differences between the institutional conditions and functions of the laws on national security in the two case countries. For its sources, this article utilized legal documents, government public releases, academic publications, and media reports featuring cases of people's political action and associated state responses.

The remainder of this article is structured as follows. Section 2 introduces the analytical framework that guides this study. Section 3 presents a brief overview of the laws related to the national security of Hong Kong and South Korea. The Korean national security law has been amended several times, but this article focuses on the provisions of the current version due to space constraints. While acknowledging societal support and opposition toward laws related to national security, this study primarily centers on political actions that criticize and oppose them. Section 4 delves into the findings resulting from the comparative analysis. Section 5 provides the conclusions drawn from the analysis.

ANALYTICAL FRAMEWORK

This study takes a comparative approach as a combination of processes and means to comprehend distinct patterns of similarities and differences between cases under study (Eckstein & Apter, 1963; Mair, 1996). The case study method, as the intensive study of one or a few selected cases, explores not only unique aspects of the cases but also recognizes validity within the case(s) to draw a scientific conclusion rather than cross-case theory testing (Gerring, 2009). This study is case-oriented, investigating the relationships between formal political institutions and actual repertoires of popular political action in the selected countries.

To be more specific in theoretical terms, the structural-functional approach is adopted for the comparative case study, which posits that different structures constitute a system, and these structures perform and are influenced by certain functions in equilibrium interacting with the given system (Almond & Coleman, 1960; Almond & Powell, 1966; Fisher, 2010). In particular, Almond and Powell (1966) suggested seven functions of which a political system consists and has to perform to maintain the system: political socialization and recruitment, interest articulation, interest aggregation, political communication (so far, input functions), rulemaking, rule application, and rule adjudication (output functions). The last three functions generally correspond to three conventional branches of government; the legislative, executive, and judiciary. Applying it to the research topic, this study regards structures as the observable set of rules and relevant institutions and functions as conditions, processes, and consequences presented within the political system (Fisher, 2010, p. 77). Structures and functions, therefore, are interdependent on one another in recurrent actions and operations in the political system.

While the structural-functional approach takes a holistic viewpoint by integrating the mutual influence and interlinking of the structures and functions, which is a strength of comparative political analysis, it leaves the possibility that scholars get lost with too many elements that constitute the political system. By limiting the scope of investigation to institutional conditions and exercises of the Chinese and Korean laws on national security, this study seeks to identify how the laws are formulated and articulated under the established structures in the respective countries as well as how they are applied and contribute to sustaining the political system.

Conceptually, political action is the key concept of this study. While a uniformly agreed definition remains absent, previous literature has described the concept of political action as activities taken by an individual or a group so as to influence the selection, decisions, and behaviors of government and its personnel (Barnes & Kaase, 1979; Conway, 1999; Huntington & Nelso, 2013; Verba & Nie, 1972). On the other hand, recent research has paid increased attention to the diversified forms and means of political action, ranging from online petitions on social media to collective activities for community interests and political consumerism, such as boycotting (De Zúñiga et al., 2009; Neilson, 2010; Stolle et al., 2005; Theocharis & van Deth, 2017; Vissers & Stolle, 2014). Among the various types of political action, this study delves into non-conventional forms of contentious political action defined by Tilly and Tarrow (2015) as “involving interactions in which actors make claims bearing on someone else's interest, leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, initiators of claims, or third parties (p. 4).” From a conceptual standpoint, contentious politics emerges at the intersection of three domains—politics, contention, and collective action. It involves political action characterized by its disruptive and challenging nature and entails political actions distinguished by their disruptive and confrontational essence (Tilly & Tarrow, 2015).

In a more recent work, Tarrow (2011) explained that contentious politics emerges “when ordinary people—often in alliance with more influential citizens and influenced by changes in public mood—join forces in confrontation with elites, authorities, and opponents” (p. 6). However, this study extends its boundary of contentious political action by examining not only collective actions taken by like-minded groups or civil society organizations but also individual-level actions. This article, therefore, attends to various forms of individual actions, such as signing online petitions and posting criticisms on personal social media platforms.

As to the consequences of contentious political action, this study investigates the repressive responses of state institutions. From the extensive literature on state repression, scholars have honed the concept to focus on more specific elements, shedding light on its multifaceted features and various forms. Some existing literature has been dedicated to conceptualizing state repression and its role in relation to popular political action (Davenport, 2007; Earl, 2003; Honari, 2018; Koopmans, 1997), while other studies have centered more on its empirical application, particularly within authoritarian regimes (Edel & Josua, 2018; Johnston, 2012; Li, 2019; Moss, 2014; Olar, 2019; Xu, 2021). Among many, this study follows the conceptual clarification made by Davenport (2007), who stated that “repression involves the actual or threatened use of physical sanctions against an individual or organization, within the territorial jurisdiction of the state, for the purpose of imposing a cost on the target as well as deterring specific activities and/or beliefs perceived to be challenging to government personnel, practices or institutions” (p. 2). Also, Earl (2003) identified three essential theoretical dimensions of repression: (1) the agents responsible for carrying out the repression, (2) the defining



characteristics of repressive actions, and (3) the forms of repression, whether observable or covert and unobservable (pp. 47–48).

More specifically, in a study of the extreme forms of political action and state responses in Germany, Koopmans (1997) distinguished “institutional repression” and “situational repression,” which provides rich insights into the variety of state repression. Koopmans (1997) defined institutional repression as “formal, more general, less direct, and usually legally sanctioned repressive measures taken by higher-level state authorities, such as governments or the judiciary,” and situational repression as more informal and spontaneous action taken by state agents such as the security forces dispatched to the field (p. 154). In this respect, state repression needs to be examined from two perspectives: one involves institutional repression through the enactment of national security laws as a method to curtail contentious political actions, while the other encompasses more situation-based and reactive responses of state actors in response to observed individual or collective contentious political actions.

To interconnect the concept of state repression with that of national security, a law related to national security can encompass ambiguity in its application, and a state may harness it as an institutional mechanism to proactively control political and civil liberties, thereby reinforcing its authoritarian framework (Abozaid, 2020; Fu & Distelhorst, 2018; Rubio, 2022). In essence, research on state repression in this context should explore whether and, if so, how state actors strategically leverage the legal framework related to national security to construe specific political actions as potential threats to national security. The legal framework of national security can provide a foundation for justifying and legitimizing state repression, potentially encroaching upon the essential political and civil liberties of the populace. This study pays attention to both institutionalized forms of repression embedded in the established political system and situational repression observed as a reactive response to the occurrence of people's political action. Through an investigation of the cases of Hong Kong and South Korea, marked by different levels of political and civil liberties, this study seeks to elucidate how state repression interacts with popular contentious political action that challenges the national security law.

OVERVIEW OF THE CASES

The highest Chinese legislative body, the National People's Congress Standing Committee in Beijing (hereafter NPCSC), unanimously passed the *National Security Law* (hereafter NSL) on June 30, 2020 to ensure stability in Hong Kong. The Chinese leadership was motivated to pass this law in the aftermath of an unprecedented wave of massive protests throughout 2019 by millions of people in Hong Kong in opposition to the Extradition Law Amendment Bill that allows transfers of fugitives to the mainland for trials. Anti-extradition demonstrations were peaceful across the streets of Hong Kong in the beginning, with little police intervention, but they gradually turned more confrontational and outspoken with five political demands, including police accountability, universal suffrage, and opposition to Chinese influence over Hong Kong (Stott et al., 2020). Following escalating tensions, violent clashes occurred between protesters and the police in the latter part of 2019, which resulted in casualties, property damage, and thousands of arrests (Stott et al., 2020).

The NSL, consisting of 66 articles, criminalizes acts or attempted acts in the following four categories; secession, subversion, terrorism, and collusion with foreign forces. A maximum sentence can be up to life imprisonment, and certain cases shall be transferred to mainland

China for trial. Article 4 guarantees the right to freedom of speech, yet the law is largely concentrated on the identification of offenses against national security and prosecution of individuals and groups. Also, the government's public propaganda, supervision, and promotion of national security through education institutions, media, and online communications is well articulated in Articles 9 and 10. According to Hong Kong's *Public Order Ordinance (Cap. 245)* introduced in 1967, any interested group intending to organize a public meeting involving more than 50 individuals or a public procession involving more than 30 individuals is obliged to notify the Commissioner of Police before the public gathering. The Commissioner of Police holds the authority to prohibit any public meetings that are deemed contrary to the interests of national security or public safety.

Moreover, the NSL stipulates the establishment of a formal unit within the government of the HKSAR specialized in executing and safeguarding the law. Following the enactment of the law, the Committee for Safeguarding National Security (hereafter CSNS) was formed, chaired by the Chief Executive of the HKSAR, the National Security Department under the Hong Kong Police Force, and the National Security Prosecutions Division under the Department of Justice. According to Article 15, a National Security Advisor under the CSNS is to be appointed by Beijing so as to advise on the functions of the committee. In addition to the NSL, the Chief Executive, through the CSNS, announced the *Implementation Rules for Article 43 of the NSL in July 2020*. The Rules set forth more specific details on pre-emptive and reactive responses of state authorities, ranging from censoring communications and interceptions to authorizing covert surveillance. Its provisions were neither made open to the public before being passed or went through consultation with non-governmental actors.

Since the law came into effect on June 2020, a broad spectrum of repression has been exerted against individuals, media, and organizations. As of July 21, 2023, 265 people have been arrested charged with national security offenses (Explainer: Hong Kong's national security crackdown—month 37, 2023). In February 2021, 47 citizens and lawmakers engaged in pro-democracy activities were arrested on conspiracy charges to commit subversion, enduring prolonged pretrial detention until a trial took place in June 2022, with little clear explanation for the reasons (Walker, 2022). Besides, media outlets critical of Chinese authorities and in favor of democracy have been forced to terminate operations, and multiple pro-democracy groups and online media agencies, such as Stand News and Apple Daily, facing criminal charges of violating the NSL, were disbanded. Hong Kong's security forces raided to confiscate materials and blocked their social media accounts and online news websites. Editors and senior members were arrested under the charge of inciting secession or colluding with foreign actors. Following the police's continued investigations and allegations that it violated the NSL by disrupting the political order and colluding with foreign forces, a civil society organization—Civil Human Rights Front—was shut down after 19 years of political activities in favor of democracy and freedom (Lam, 2021).

Korea's *National Security Act* (hereafter NSA) was promulgated in December 1948 amid political turmoil in the Korean peninsula over ideological conflicts. Korea had been going through turbulent times after gaining independence from Japan and had grappled with uprisings by and conflicts between the communists and the anticommunists. In particular, the legislation of national security in South Korea was triggered by the Yeosu-Suncheon Incident; a massive rebellion erupted led by left-oriented soldiers and civilians across the Yeosu and Suncheon regions against the Rhee Administration in October 1948 (Suh, 2004). Opposition voices were raised within the National Assembly, and a bill to revoke the NSA was proposed, but they did not resonate sufficiently to prevent the passage of the law. Since it came into effect,



the NSA has been exercised as a legal instrument to detect and silence suspected advocates of the North Korean regime and communist ideology (Kraft, 2006). The NSA presents a dilemma in that South Korea, established as a liberal democratic state, chose to curtail individual freedoms so that the state does not let communists or leftist entities make use of such freedoms (Suh, 2004). The NSA has undergone seven revisions, with certain provisions and clauses modified in alignment with political transitions toward liberal democracy.

Nevertheless, the core parts of the NSA remain unchanged. Article 1 proclaims that the NSA aims to secure the security of the state and the liberty of its people by regulating antistate activities that endanger the state's security with an attached clause of its minimal application only for its objective while not curtailing basic human rights unreasonably. Under this law, "antistate groups" refers to domestic or foreign antigovernment organizations with a command and leadership system that fraudulently use a title of a government or aim at rebellion against the South Korean state. Under Article 7, those who praise, incite, promote, or cooperate with an antistate group or its members are to be sentenced to jail for up to 7 years. Even those who just join such a group will be imprisoned for more than 1 year. Moreover, another notable part is Chapter 4 that outlines rewards and compensations for those who report a suspected person to the competent authorities or arrest a suspect themselves.

According to the *Assembly and Demonstration Act* (hereafter ADA), an assembly is allowed as long as it meets the requirements, such as submitting information about an assembly in advance to the competent police authority. An outdoor assembly or demonstration involving a group of individuals numbering more than one person necessitates prior notification of the competent police agency. On the other hand, the ADA does not incorporate the concept of the state's national security interests within its provisions. According to the ADA, political actions subject to control are those that overtly endanger public order and societal peace through clearly observable aggressive actions, such as violence, destruction, and arson.

COMPARATIVE ANALYSIS

Employing the structural-functional approach, this study delineates two fundamental dimensions in the discourse of its analysis; (1) the structural aspect pertaining to the set of rules and institutions concerning laws on national security and their applications, and (2) the functional aspect or the conditions, processes, and consequences of political action in the functioning of the given system.

Structures

The key point of similarity is the institutionalization of pre-emptive repression in both cases. The national security laws of Hong Kong and South Korea have enabled state actors to penalize individuals and groups only with allegations even before they actually take action. The NSL sets up formal structures giving justifiable authority to state actors in taking coercive action against individuals and organizations in the name of safeguarding the state. The newly established institutions, the CSNS chaired by the Chief Executive, the National Security Department under the Hong Kong Police Force, and the National Security Prosecutions Division under the Department of Justice, are hardly accountable to the other branches of government. With the backing of the NSL, they are entitled to conduct surveillance and intervention on not only

ordinary Hong Kong citizens but also public officials, legislators, and corporations. Both the laws of Hong Kong and South Korea stipulate that acts of discussing and planning an activity that is perceived to endanger national security are subject to punishment before its occurrence. This is a powerful authority made available to state authorities, whereas citizens and organizations have a much narrower scope of political action due to the possibility of pre-emptive repression. Therefore, in both cases, the interests of decision-makers, not necessarily those of the public, have been converted into legislation, execution, and adjudication of the laws on national security.

What is worthy of attention in Hong Kong's case is that the Beijing-legislated NSL creates synergies with other existing regulations and institutional arrangements. Setting aside the NSL, Hong Kong has the *Public Order Ordinance* introduced in 1967. The ordinance clarifies regulations of public processions and assembly with legal definitions of unlawful riots and the authority of state agencies, usually police, by identifying national security as "the safeguarding of the territorial integrity and the independence of the People's Republic of China." Despite the guarantees provided by the *Basic Law* enacted in 1997, which include fundamental rights like freedom of assembly and speech, as well as a significant level of autonomy for the HKSAR across its legislative, executive, and judicial functions, public demands expressed through collective actions both online and offline, advocating for democracy in Hong Kong, have encountered repression under the pretext of upholding national security.

What makes China's NSL of Hong Kong more extensive is its spillover into other existing institutions to function for institutional repression. With legal backing, enforcement authorities are entitled to search or freeze a suspected person's properties, require a person to delete their published content and conduct covert surveillance when suspicious of an undermining of national security. A person or a group suspected of violating the law may be subject to surveillance or be wire-tapped. Furthermore, the law stipulates that "one country, two systems" is the essential principle and Beijing, not the Hong Kong authorities, has authority over the interpretation and enforcement of the NSL. The NSL passed by the NPCSC in Beijing has given much authority to not only Hong Kong's but also Chinese state agencies to impose penalties for people's political action while allowing a wide discretionary interpretation of offenses against national security (Chopra & Pils, 2022). By doing so, the NSL has come to "institutionalize harsh repression" with explicit presentations of policing and punishment of political actions in public spaces and on the internet that are considered contentious or critical (Kobayashi et al., 2021).

Furthermore, the interconnections among legislative, executive, and judiciary bodies in both Beijing and Hong Kong play a crucial role in shaping the dynamics of the institutional arrangements concerning national security. The NPCSC in Beijing disqualified four pro-democratic members of the Legislative Council (LegCo) of the HKSAR by asserting that their political activities pose a threat to national security (The Government of the Hong Kong Special Administrative Region, 2021). Also, according to the NSL, the Chief Executive is given authority to decide the appointment of judges to handle cases related to the NSL. Moreover, pro-Beijing or conservative judges are allocated for trials relating to the NSL (Lo, 2020). Hence, the current institutional landscape of Hong Kong underscores its clear objective of enhancing internal cohesion within state institutions to ensure the consistent enforcement of the NSL.

The NSL applies not only to hard politics spheres but also to schools and universities. For instance, some books have been removed from public libraries, and the Hong Kong government announced national security education in secondary schools (Lo, 2020). As the NSL obliges education institutions to implement national security education, universities in Hong Kong



have introduced the content of the law into their curricula (Hong Kong students must learn China security law to graduate, 2022; Pang & Cheng, 2021). In addition, the Education Bureau has developed class materials promoting the NSL, even for young children, and has introduced the *Basic Law* and the NSL test from the 2023/24 school year that newly appointed teachers in public schools must pass (Davidson, 2021; The Government of the Hong Kong Special Administrative Region, 2022). This illustrates that educational institutions are being mobilized under the influence of political institutions to socialize members of society into complying with the NSL.

Compared with the Beijing-created NSL, the Korean NSA is relatively less extensive in building new structures that provide more leeway for institutional repression. The NSA does not promulgate the establishment of new committees or state organs but indicates the involvement of investigation agencies and intelligence agencies in collecting information and law enforcement. Moreover, not all Korean state agencies seek to preserve the NSA in a uniform manner, which is a notable difference. Its legitimacy has been questioned and debated, even within the circle of state actors, which is hardly observed in the case of Hong Kong. For instance, the National Human Rights Commission of the Republic of Korea, an independent government body, has repeatedly released its formal opinion that Article 7 of the NSA contravenes constitutional rights and freedoms. At the legislative institution level, calls for its partial or complete repeal have also been made. Furthermore, a bill on the abolition of the NSA has been proposed several times by National Assembly members in recent administrations, mostly from liberal political parties.

In contrast, conservative parties have consistently expressed opposition to its abolition. The pro- and anti-NSA sides are in a fierce standoff; for instance, both pro-abolition and anti-abolition sides garnered 100,000 signatures from the public (Kang, 2021). Besides, constitutional complaints have been filed to the Constitutional Court multiple times since its partial revision in 1991. The Constitutional Court has held seven times that Article 7 is constitutional, and the eighth one is under deliberation at the time of writing (Chung, 2022). Regardless of changes in political orientations of the president or dominant political parties in the National Assembly, the Constitutional Court has made consistent decisions through its deliberation and open hearing processes. Therefore, The Korean case exemplifies a greater degree of flexibility at the institutional level, providing ample space for refining laws related to national security through democratic discussions and even contestation.

Functions

The laws in both cases function in a way to silence dissidents in advance, laying a foundation for a climate of fear in both Hong Kong and Korea. This pre-emptive repression derives from the law identifying acts of planning, mobilizing, and providing support to acts of undermining the state's political institutions as criminal offenses. Hence, media agencies and civil society organizations have been banned in the name of safeguarding national security, even before they take an observable political action. In Hong Kong, a nationwide hotline was created on November 5, 2020 through which people can report observed or suspected cases undermining national security anonymously, and this is a formal structure that cultivates “the politics of fear in the psyche of some Hong Kongers” (Lo, 2020, p. 40). This measure is comparable to rewards and compensations stipulated in the Korean NSA for those who report a suspected person or arrest a suspect themselves.

When the concept of national security politicized in the law is manifest, it leaves much room for a vague and arbitrary interpretation in practice. The national security laws in both cases frame political action that opposes, refutes, or challenges the current political regime of the respective states as an unlawful offense to be punished. The line between “moderate and normal criticism” and “subversive and anti-state action” is blurred. In the varying forms of and messages in people's political action, the criteria for when citizens are safe or not remain uncertain. Peaceful forms of political action are highly likely to fall into the vaguely defined category of offense against national security in Hong Kong, with many of the arrestees merely having delivered political speeches or conducted advocacy activities (Chopra & Pils, 2022; Wong et al., 2021). This function of the law implies that anyone who is suspected, at the discretion of state authorities, can be deemed to be committing unlawful offenses.

Online spaces are marked by contradictory features in the repertoires of popular political action in terms of both enabling and constraining conditions. During a series of massive protests against the Extradition Bill in 2019, Hong Kongers, many of them students, organized and led protests by making use of social media (Stott et al., 2020, p. 821). In South Korea, there are several civil groups organized by like-minded citizens that raise funds online, promote their messages, and organize demonstrations to call for the complete repeal of the NSA. These aspects show the significance of online spaces for people in initiating and managing collective political action. Having said that, it is a different story when it comes to political empowerment through online political action. Both offline and online spaces present narrow, constrained boundaries under the influence of the respective national security laws. In Korea, online posts have been deleted by state authorities when they have been perceived to contain content in favor of North Korea (Glionna, 2012). The legal frameworks concerning national security laws in Hong Kong and South Korea enable the application of these laws not only to public spaces but also extend their reach to encompass media platforms and the internet. No matter whether a citizen expresses politically opposing views in the street or on social media, state authorities have arranged agencies and capacities to take repressive responses.

Another major difference between the two cases is the boundary of perceived threat. The NSL legislated by mainland China is imposed on individuals and groups that criticize the political system, or the incumbent leaders in Hong Kong or mainland China. Individuals and groups can be susceptible to prosecution for engaging in political actions that express opinions inconsistent with the current political ideology and system. Thus, the perceived threat is internal-bound and encompasses the domestic political institutions. In this regard, just posting criticism of the current Chief Executive or holding slogans reading “independence for Hong Kong” can be subject to penalty. In contrast, the South Korean NSA mainly targets activities that are in favor of North Korea. The perceived threat is the external entity of the North Korean political regime and its leader. Therefore, commending, endorsing, and encouraging support for the North Korean political system or its leader are thus commonly regarded as potential threats by the South Korean regime.

This difference is attributable to the different historical political contexts of the cases. China's NSL of Hong Kong is built on the doctrine of “one country, two systems,” and dissent over China's Central People's Government or the Hong Kong Government is perceived to pose a threat to its long-sought conviction. Moreover, China's NPCSC passed the NSL driven by the unprecedentedly massive and enduring wave of civic protests that erupted in Hong Kong throughout 2019. South Korea legislated the NSL more than seven decades ago following the split of the two Koreas, with ideologically opposing governments established. Against this political background, Korea's NSA conceives North Korea as a threat to national security. One



thing to note here is that the Korean NSA does not explicitly use the term, North Korea. The act consistently refers to antistate groups and democratic fundamental order. However, entangled with the historical context of its legislation, this act criminalizes a wide range of acts relating to the North Korean regime; supporting, praising, sympathizing, propagandizing, and spreading favorable views about the North Korean regime.

The other difference is observed in the application of the law regarding the scope of political action. In Hong Kong, the concept of national security encompasses a broad scope open to discretionary interpretation. The legal framework, reinforced by the NSL, empowers state authorities to prevent political actions viewed from the state's perspective as inciting negativity toward the government and undermining the existing political system. Furthermore, political actions encounter on-ground limitations through determinations of state authorities, even if they lack aggressive or disruptive attributes. For instance, the first protest allowed by the police since the enforcement of the NSL took place under stringent constraints. The participant count was restricted to 100 individuals, each wearing designated number tags; banners underwent prescreening before the protest. Additionally, the police closely shadowed the protesters, establishing cordons to ensure meticulous oversight and separation from the media and other passers-by ("Police monitor first Hong Kong protest since, 2020, 2023). individuals and groups find themselves confined to a limited range of political actions, facing uncertainty regarding where they can safely express their critical or opposing views in both public and online domains.

In South Korea, the expression of opposing views itself is more guaranteed than in Hong Kong. Political actions that involve criticism of the government or the prevailing political system are not necessarily framed as severe threats to national security to the extent witnessed in Hong Kong. Therefore, criticism itself is hardly treated as a criminal offense in Korea today, and political criticism of the incumbent government is accepted to a certain extent, which does not explicitly come along with additional praise of the North Korean leader or regime. Both pro- and anti-NSA demonstrations are held by Korean citizens in public spaces, even in front of the National Assembly or the Constitutional Court. As long as people do not present a direct and observable threat to public order and societal peace through aggressive actions like violence and arson, as stipulated by the NSA, state authorities do not restrict activities such as criticism or claim-making concerning national security. Moreover, a single citizen criticizing the government or the NSA itself can hold a one-person demonstration even without reporting the plan to the police since the ADA does not apply to a demonstration held by a single individual.

Looking back, the detentions and arrests of citizens carried out under the pretext of upholding the NSA have diminished in parallel with the country's transition toward a democratic regime. Figure 1 presents the number of people who were prosecuted after the initial investigation, people who were not prosecuted, and other cases in the period of 1997–2021 in South Korea. The number of people prosecuted for NSA-related charges has overall shown a considerable decline from the late 1990s (686 in 1997, 416 in 1998, 286 in 1999) to more recent years (15 in 2019, 26 in 2020, and 41 in 2021). The rise in the number of arrests or prosecutions in 2013 and 2014 is attributable to sabotage plots and public speeches on pro-North Korea made by some political figures and their advocates, leading to subsequent judicial proceedings.

The noticeable decrease in the number of prosecuted cases charged with NSA violation arouses the contextual background; democratization followed by mass democratization movements and the end of a decades-long dictatorship. During the eras of dictatorial and

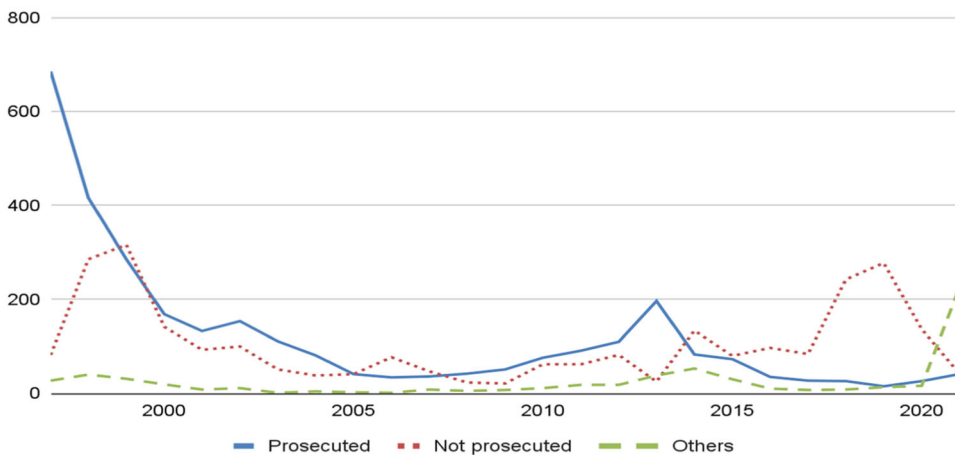


FIGURE 1 The number of charges and arrests by year in Korea (1997–2021). Unit: Persons. *Source:* Statistics Korea, e-narajipyo (www.index.go.kr). “Others” refers to other unterminated cases that ceased during an investigation, were suspended, were transferred to other agencies, or were called for additional investigation.

postcoup military-led regimes, a notably substantial number of individuals were reportedly suppressed, and their rights were gravely violated in the guise of the NSA. In earlier periods, in the 1970s and 1980s, a number of innocent citizens were arrested on fabricated charges, tortured, and forced to make confessions by the Korean Central Intelligence Agency (the name was later changed to the National Security Planning Agency and is currently the National Intelligence Service) (Amnesty International, 1998; National Human Rights Commission of the Republic of Korea, 2004). However, with the advent of democratic transition and the consolidation of democratic regimes, this number has dramatically plummeted.

Also combined with another external context, the collapse of communist regimes across the former Soviet Bloc, public demand for NSA revision or even abolition gradually increased along with reduced fear of a communist presence in the country (Jeon, 2006). Having said that, the NSA has been one of the most heated political topics for decades; those with conservative orientations insist on the preservation of the law, whereas those with liberal orientations call for its abolition. Neither side has commanded consistent majorities in public polls, their results varying at different times.

CONCLUSION

This article undertook a comparative study of the institutions and exercises of the laws on national security of Hong Kong and South Korea. By examining two cases characterized by differing levels of political and civil liberties, this exploratory study has synthesized both similarities and differences to enhance the comprehension of the dynamic relationship between the institutionalization of national security and the repertoires of political action. In both cases, the legal framework on national security has the capability to frame a wide range of popular political actions as criminal offenses, whether in public spaces or online. The three existing branches of government and state authorities set the normativity of national security as equated with the ideological status quo. Therefore, national security in the respective laws has unique



connotations in that they seek to retain the existing political system and to nip opposition in the bud. Also, the laws formally give legitimacy to state agencies in protest policing, searching, and conducting surveillance of individuals or organizations in the name of safeguarding national security. Through such mutually enhancing processes between political structures and political functions, the laws contribute to sustaining the existing political regimes.

Under such conditions, the consequences of the enactment of the laws demonstrate a skewed balance between the norm of national security defined by the existing political regimes and that of principal rights to speech, assembly, and association, the former often outweighing the latter. Thus, both institutional and situational repression is widely present across various forms of political action, regardless of whether it is individual or collective. A number of cases of intimidation, detention, arrest, and imprisonment have been reported after individuals and organizations raised their opposing voices in Hong Kong and Korea. There is little difference when considering online political action; people are exposed to the likelihood of covert surveillance by state authorities, which may lead to a criminal charge for violating the law on national security. In essence, state repression is exercised in both regimes, utilizing national security legislation as an institutional source of legitimation, despite their differing milieus of overall political and civil liberties.

Setting aside the similarities, the two cases present some interesting differences. The unique historical trajectories and sociopolitical landscapes are significant factors in the discussions on the national security laws in the respective cases. Even though they refer to the same term, “national security,” the perceived threat connotated throughout the law differs. In addition, the Beijing-legislated NSL is relatively more far-reaching across various institutions in terms of internal cohesion, uniformly coordinating them to enforce and promote the norms of national security as prescribed by the law. The NSA is intended to increase the cost of political opposition and criticism, yet there remains the possibility that people may take a more nuanced, tactical approach.

On the other hand, Korean state agencies and actors present divergence in the exercise of the NSA. Korean institutions and lawmakers adopt divergent positions concerning the NSA. Currently, the law holds diminished institutional power, preventing state actors from employing discretionary repressive measures without valid justifications and judicial oversight. Besides, individual and collective political action criticizing the NSA or the political regime is largely guaranteed as long as it does not touch upon the North Korean regime or its leader. In summary, varying opinions and actions based on a certain level of disagreement with the content of the national security law are tolerated, and the arbitrary and harsh repression of state actors is institutionally not encouraged in South Korea. However, the precise boundaries of tolerance are still arguably ambiguous. The differences identified in these distinct cases shed light on the associations between the institutional arrangement of national security and the variation in the scope and degree of repression of state actors against citizens engaging in political actions, such as raising their voices, participating in public protests, or criticizing the law on national security.

The salient similarities and differences identified in this comparative study add insights to the literature on democratic and authoritarian politics, particularly in terms of popular political action and state repression. Specifically, the differences identified in these cases provide valuable insights into national security legislation in both democratic and less democratic regimes. This institutionalization is utilized to constrain popular political action at the discretion of state actors. In democracies where separation of power and horizontal accountability are in place, varying opinions exist within state actors and society. Also,

criticism of the national security law does not necessarily lead to repression in a democracy. Consequently, the institutional arrangements of democratic regimes play a comparable role, albeit to varying degrees across the states, in shaping the level of constraint and repression of popular political action.

A methodological limitation of this comparative analysis lies in the limited systematic evidence regarding data pertaining to the law on national security accessible to the public particularly in Hong Kong. This study only looked into macro-level institutional conditions and manifestations through the analytical framework of the structural-functional approach. While this article acknowledges variety in state repression and popular political action, the collected data were largely skewed toward very observable forms of political action and repressive responses taken by state actors. Considering that there are also more covert and nuanced interactions taking place, future research could pay attention to the lived experiences of members of society under regimes with this type of legislation.

REFERENCES

- Abozaid, A. M. (2020). Counterterrorism strategy and human rights in Egypt after the Arab uprising: A critical appraisal. *Aggression and Violent Behavior*, 51, 101385.
- Almond, G. A., & Coleman, J. S. (Eds.). (1960). *The politics of the developing areas*. Princeton University Press.
- Almond, G. A., & Powell, G. B. Jr. (1966). *Comparative politics: A developmental approach*. Little, Brown and Company.
- Amnesty International. (1998). *Republic of Korea (South Korea): Long term prisoners still held under the National Security Law*. <https://www.amnesty.org/fr/documents/asa25/015/1998/en/>
- Barnes, S. H., & Kaase, M. (Eds.). (1979). *Mass participation in five western democracies*. SAGE Publications.
- Chopra, S., & Pils, E. (2022). The Hong Kong National Security Law and the struggle over rule of law and democracy in Hong Kong. *Federal Law Review*, 50(3), 292–313.
- Chubb, D. L. (2014). Statist nationalism and South Korea's national security law. In J.-H. Kwak, & K. Matsuda (Eds.), *Patriotism in East Asia* (pp. 144–158). Routledge.
- Chung, S. J. (2022, July 8). Gukka boanbup jechiljo yeodeolbunchae wiheon simpandae...Hunjae, goowol sipohil gonggaebyunron [The 8th review of the Article 7 of the National Security Act...Public hearing scheduled on September 15]. *Yonhap News*. <https://www.yna.co.kr/view/AKR20220707144700004>.
- Conway, M. M. (1999). *Political participation in the United States*. CQ Press.
- Davenport, C. (2007). State repression and political order. *Annual Review of Political Science*, 10, 1–23.
- Davidson, H. (2021, February 5). 'Let's learn about national security': Hong Kong rewrites school rules. *The Guardian*. <https://www.theguardian.com/world/2021/feb/05/lets-learn-about-national-security-hong-kong-releases-video-for-young-children>
- Earl, J. (2003). Tanks, tear gas, and taxes: Toward a theory of movement repression. *Sociological Theory*, 21(1), 44–68.
- Eckstein, H., & Apter, D. E. (Eds.). (1963). *Comparative politics: A reader*. Free Press of Glencoe.
- Edel, M., & Josua, M. (2018). How authoritarian rulers seek to legitimize repression: Framing mass killings in Egypt and Uzbekistan. *Democratization*, 25(5), 882–900.
- Explainer: Hong Kong's national security crackdown—month 37. (2023, July 30). *Hong Kong Free Press*. <https://hongkongfp.com/2023/07/30/explainer-hong-kongs-national-security-crackdown-month-37/>
- Fisher, J. R. (2010). Systems theory and structural functionalism. In J. T. Ishiyama, & M. Breuning (Eds.), *21st century political science: A reference handbook* (pp. 71–80). SAGE Publications.
- Fong, B. C. H. (2021). Exporting autocracy: How China's extra-jurisdictional autocratic influence caused democratic backsliding in Hong Kong. *Democratization*, 28(1), 198–218.
- Freedom House (2023a). *Freedom in the World 2023: Hong Kong*. <https://freedomhouse.org/country/hong-kong>
- Freedom House (2023b). *Freedom in the World 2023: South Korea*. <https://freedomhouse.org/country/south-korea/freedom-world/2023>
- Fu, D., & Distelhorst, G. (2018). Grassroots participation and repression under Hu Jintao and Xi Jinping. *The China Journal*, 79(1), 100–122.



- Gerring, J. (2009). The case study: What it is and what it does. In C. Boix, & S. C. Stokes (Eds.), *The Oxford handbook of comparative politics* (pp. 90–122). Oxford University Press.
- Glionna, J. M. (2012, February 5). South Korea security law is used to silence dissent, critics say. *Los Angeles Times*. <https://www.latimes.com/world/la-xpm-2012-feb-05-la-fg-south-korea-bookseller-20120205-story.html>
- Haggard, S., & You, J. S. (2015). Freedom of expression in South Korea. *Journal of Contemporary Asia*, 45(1), 167–179.
- Honari, A. (2018). From ‘the effect of repression’ toward ‘the response to repression’. *Current Sociology*, 66(6), 950–973.
- Hong Kong students must learn China security law to graduate (2022, July 26). *Bloomberg*. <https://www.bloomberg.com/news/articles/2022-07-26/hong-kong-students-must-learn-china-security-law-to-graduate>
- Huntington, S. P., & Nelso, J. M. (2013). *No easy choice: Political participation in developing countries*. Harvard University Press.
- Im, C.-H. (2006). The National Security Law and anticommunist ideology in Korean society. *Korea Journal*, 46(3), 68–98.
- Jeon, J. H. (2006). Segyehwa, jungbohwa sidae hankukui jungchijeok jungchesung byunhwa: Bangonguisikul joonsimuro [Changes in the Korean political identity in the globalization and information age: Focusing on the anti-Communism]. *Korean Political Science Review*, 40(3), 125–144.
- Johnston, H. (2012). State violence and oppositional protest in high-capacity authoritarian regimes. *International Journal of Conflict and Violence (IJCV)*, 6(1), 55–74.
- Kang, M. K. (2021, June 9). ‘Gukka boanbup pyeji bandae’ gukhoe cheongwon sipmanmyung dongui [100,000 signatures for anti-abolition of the National Security Act collected]. *Yonhap News*. <https://www.yna.co.kr/view/AKR20210609056300001>.
- Kobayashi, T., Song, J., & Chan, P. (2021). Does repression undermine opposition demands? The case of the Hong Kong National Security Law. *Japanese Journal of Political Science*, 22(4), 268–286.
- Koopmans, R. (1997). Dynamics of repression and mobilization: The German extreme right in the 1990s. *Mobilization: An International Quarterly*, 2(2), 149–164.
- Kraft, D. B. (2006). South Korea's National Security Law: A tool of oppression in an insecure world. *Wisconsin International Law Journal*, 24(2), 627–659.
- Lam, J. (2021, August 15). Hong Kong protests: As Civil Human Rights Front folds, police and Beijing warn legal troubles far from over. *South China Morning Post*. <https://www.scmp.com/news/hong-kong/politics/article/3145093/hong-kong-protests-civil-human-rights-front-confirms-it>
- Li, Y. (2019). A zero-sum game? Repression and protest in China. *Government and Opposition*, 54(2), 309–335.
- Lo, S. (2020). Hong Kong: A battleground in a clash of political civilisations. *Asialink*. <https://asialink.unimelb.edu.au/insights/hong-kong-a-battleground-in-a-clash-of-political-civilisations>
- Lo, S. (2021). Hong Kong in 2020. *Asian Survey*, 61(1), 34–42.
- Mair, P. (1996). Comparative politics: An overview. In R. E. Goodin, & H.-D. Klingemann (Eds.), *A new handbook of political science* (pp. 309–335). Oxford University Press.
- Moss, D. (2014). Repression, response, and contained escalation under “liberalized” authoritarianism in Jordan. *Mobilization: An International Quarterly*, 19(3), 261–286.
- National Human Rights Commission of the Republic of Korea. (2004). *Gukka boanbup jeokyongsangeseo natanan ingwon siltae* [Human rights status in the enforcement of the National Security Act]. <https://www.humanrights.go.kr/site/program/board/basicboard/view?currentpage=20&menuid=001003001004001&pagesize=10&boardtypeid=16&boardid=593331>
- Neilson, L. A. (2010). Boycott or buycott? Understanding political consumerism. *Journal of Consumer Behaviour*, 9(3), 214–227.
- Olar, R. G. (2019). Do they know something we don't? Diffusion of repression in authoritarian regimes. *Journal of Peace Research*, 56(5), 667–681.
- Pang, J., & Cheng, S. (2021, November 5). Exclusive-New Hong Kong university classes set out dangers of breaking security law. *Reuters*. <https://www.reuters.com/world/china/exclusive-new-hong-kong-university-classes-set-out-dangers-breaking-security-law-2021-11-05/>
- “Police monitor first Hong Kong protest since 2020”. (2023, March 26). *BBC*. <https://www.bbc.com/news/world-asia-65080083>.

- Rubio, R. (2022). Preventative plasticities: Legal ambiguities in Jordanian counterterrorism legislation. *Arab Law Quarterly*, 36(4–5), 494–523.
- Seawright, J., & Gerring, J. (2008). Case selection techniques in case study research: A menu of qualitative and quantitative options. *Political Research Quarterly*, 61(2), 294–308.
- Statistics Korea. e-narajipyo [e-index]. www.index.go.kr
- Stolle, D., Hooghe, M., & Micheletti, M. (2005). Politics in the supermarket: Political consumerism as a form of political participation. *International Political Science Review*, 26(3), 245–269.
- Stott, C., Ho, L., Radburn, M., Chan, Y. T., Kyprianides, A., & Morales, P. S. (2020). Patterns of ‘disorder’ during the 2019 protests in Hong Kong: Policing, social identity, intergroup dynamics, and radicalization. *Policing: A Journal of Policy and Practice*, 14(4), 814–835.
- Suh, H. K. (2004). ‘Hangyesanghwangui jungchi’ wa minjujuui: 1948nyun hankukui Yösunsageongwa gukgaboanbup gwanryun nonuirul joongsimuro [Politics of extremity and democracy: Controversies on Yösun revolt and national security law in Korea]. *Korean Political Science Review*, 38(5), 7–31.
- Tarrow, S. (2011). Introduction in power, *Movement social movements and contentious politics* (3rd ed., pp. 1–15). Cambridge University Press.
- The Government of the Hong Kong Special Administrative Region. (2021). *HKSAR Government announces disqualification of legislators concerned in accordance with NPCSC's decision on qualification of HKSAR legislators*. <https://www.info.gov.hk/gia/general/202011/11/P2020111100779.htm>
- The Government of the Hong Kong Special Administrative Region. (2022). *EDB announces details on requirement for newly appointed teachers to pass Basic Law and National Security Law Test*. <https://www.info.gov.hk/gia/general/202210/24/P2022102400527.htm>
- Theocharis, Y., & van Deth, J. W. (2017). *Political participation in a changing world: Conceptual and empirical challenges in the study of citizen engagement*. Routledge.
- Tilly, C., & Tarrow, S. G. (2015). *Contentious politics* (2nd ed.). Oxford University Press.
- Verba, S., & Nie, N. H. (1972). *Participation in America: Political democracy and social equality*. University of Chicago Press.
- Visser, S., & Stolle, D. (2014). The Internet and new modes of political participation: Online versus offline participation. *Information, Communication & Society*, 17(8), 937–955.
- Walker, T. (2022, June 8). National security trial begins for 47 Hong Kong pro-democracy activists. *Voice of America News*. <https://www.voanews.com/a/national-security-trial-begins-for-47-hong-kong-pro-democracy-activists-/6607963.html>
- Wong, L., Kellogg, T. E., & Lai, E. Y. (2021). *Hong Kong's national security law and the right to a fair trial: A GCAL Briefing Paper*. Georgetown Center for Asian Law. <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/06/HongKongNSLRightToFairTrial.pdf>
- Xu, X. (2021). To repress or to co-opt? Authoritarian control in the age of digital surveillance. *American journal of Political Science*, 65(2), 309–325.
- De Zúñiga, H. G., Abril, E. P., & Rojas, H. (2009). Weblogs, traditional sources online and political participation: An assessment of how the internet is changing the political environment. *New Media & Society*, 11(4), 553–574.

How to cite this article: Kwak, S. (2024). Dynamics between laws on national security and repertoires of political action: A comparative analysis of Hong Kong and South Korea. *Asian Politics and Policy*, 16(1), 78–93. <https://doi.org/10.1111/aspp.12725>