



**Why did Poland adopt a radical
lustration law in 2006?**

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Abstract

Lustration was one of, if not the, most important and controversial transitional justice methods to be used in post-communist Central and Eastern Europe, and Poland is an archetypal case of late and recurring lustration. Many of the attempts in the literature to tackle such changes in lustration trajectory divide between: those who focus on the political and electoral-strategic drivers of its protagonists, and those who ascribe more ideological-programmatic motives to them. This paper shows that in the Polish case the re-emergence of the lustration and file access issue became entwined with broader debates about the quality of post-communist democracy more generally and was often felt to be indicative of the need to deepen the democratisation process.

Why did Poland adopt a radical lustration law in 2006?

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Lustration was one of, if not the, most important and controversial transitional justice methods to be used in post-communist Central and Eastern Europe. The region was the first to embrace it so comprehensively and it has remained an important means of dealing with the communist past; so much so that, as Stan put, it '(many) observers have employed it as a yardstick for measuring the progress of transitional justice in Eastern Europe and the former Soviet Union'.¹ This could be attributed to the level of societal surveillance by the communist authorities as such infiltration by informants became the prevalent means by which communist regimes harassed their opponents. This was particularly the case towards the end of communist rule as the random terror and enforced societal mobilisation of the Stalinist totalitarianism gave way to the atomisation and pervasive mass surveillance that characterised the so-called 'post-totalitarian' period. As a consequence, hundreds of thousands of citizens were functionaries of or collaborators with the internal security services, leaving these countries to deal with what Linz and Stepan have dubbed the 'informer legacy'.²

Having previously been one of the most under-researched and scantily understood areas of transitional justice, the former Soviet Union and Eastern bloc has become a growing area of research and academic discussion in recent years. Although it started as a subject for historians and lawyers primarily, there is now a large and expanding comparative political science literature on this topic which looks at the measures taken by the former communist states to deal with past atrocities and overcome the legacy of communist dictatorship. However, the revival of the debate about transitional justice and how to deal with the communist past, the intense, on-going and recurring politicisation of the issue, and the passage of 'late' lustration and communist-era security service file access law in several post-communist states of central and Eastern Europe, including Poland, over a decade after the collapse of the communist system all remain something of a puzzle. It is this puzzle, of 'late' lustration and communist security service file access, that this paper seeks to address.

There is some debate and disagreement in the academic literature as to whether the term 'lustration' should include just those who worked for or collaborated with the secret police or those who held senior positions within the party-state bureaucracy more generally, as well as whether it encompasses exclusion from, or limiting of access to, certain offices, or simply

¹ Lavinia Stan, 'Introduction: Post-communist transition, justice, and transitional justice' in Lavinia Stan, ed, *Transitional Justice in Eastern Europe and the Former Soviet Union*, Routledge: London and New York, 2009, pp1-14 (12)

² See: Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South American and Post-communist Europe*, Baltimore: John Hopkins University Press, 1996, p251. For example, in a journalistic account of transitional justice in the Czech Republic, German Democratic Republic (GDR) and Poland, Rosenberg draws attention to the fact that in authoritarian Latin America repression was 'deep', while in post-totalitarian Eastern Europe it was 'wide' to explain why so few court proceedings were launched against communist leaders and secret agents. See: Lavinia Stan, 'Transitional Justice', SciTopics, February 6 2009, http://www.scitopics.com/Transitional_Justice.html (accessed February 6 2014).

vetting individuals for these links without any such consequences following automatically. Here, as in previous papers that I have written or co-written on this topic, I defined lustration as ‘measures directed against former functionaries of and collaborators with the state security apparatus’³ that can include ‘simply vetting or screening individuals for past associations with the communist security services without any sanction necessarily following.’⁴ In other words, I understand lustration as vetting individuals (generally occupants of, or candidates for, particular posts) for links with the communist regime that were kept secret from the public, such as working as secret police officers or collaborating as an informer for the former regime’s security services, without necessarily banning them from public office or positions of influence in society.

However, lustration depends a great deal on access to the extant communist security service secret archives so one can only get to grips with the issue properly by studying it both as a ‘personnel system’⁵ and also - or perhaps, more accurately, even more so - more broadly as what might be termed a ‘truth-revelation procedure’ in conjunction with the issue of de-classifying and opening up these archives and files for public inspection. Indeed, as we shall see, in Poland after the passage of the 1998 law, granted access to security service files to journalists, historians, researchers and some individuals, there was also a great deal of ‘informal’ screening of individuals and groups not covered by the procedures set down in the lustration law and public identification of former agents conducted by state and non-state actors. Consequently, it is only by examining *both* lustration as a personnel and employment policy *and* the question of access to the communist-era security service files that one can get to grips properly with this issue in post-communist states.

The paper begins by reflecting on why Poland is interesting as a case of late (and recurring) lustration by outlining the progress of the various attempts to introduce lustration and file access laws in this country. This began with a communist-forgiving approach exemplified by the so-called ‘thick line’ policy that avoided radical transitional justice measures. However, although one might have expected the issue to fade from public memory, it remained on the political agenda and the following years were punctured by various attempts to renew efforts at securing transitional justice, before belated lustration and file access laws were finally adopted at the end of the 1990s. Attempts were then made to extend these truth revelation processes in the mid-2000s culminating in them finally being amended in 2006 and 2007 to radically expand their scope. In the course of this discussion, the paper locates Poland within the various comparative typologies that have been developed to categorise lustration laws and so-called ‘lustration systems’. The paper moves on to survey the various attempts that have been made in the existing academic literature to explain the recurrence of the transitional justice and truth revelation issues and changes of trajectory in the way that post-communist states have dealt with them. These include approaches such as Nalepa’s, who follows ‘politics of the present’-type explanations pioneered by scholars such as Welsh and Williams et al, to explain changes of trajectory in terms of elite strategic positioning, on the one hand; and other scholars such as Horne who view the phenomenon in more normative terms as being entwined in ongoing post-communist democratisation process. The main empirical core

³ See: Kieran Williams, Brigid Fowler and Aleks Szczerbiak, ‘Explaining Lustration in Central Europe: A “Post-communist Politics” Approach’, *Democratization*, Vol 12 No 1, February 2005, pp22-43 (p23).

⁴ See: Aleks Szczerbiak, ‘Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland’, *Europe-Asia Studies*, Vol 54 No 4, June 2002, pp553-572 (553).

⁵ See: Roman David, *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary and Poland*, Philadelphia: University of Pennsylvania Press.

of the paper is an examination of the Polish case looking at the revival of the lustration and file access debate in Poland in the early-to-mid 2000s, focusing particularly on the arguments used by its proponents in the media and parliamentary debates leading up to the passage of the 2006-7 lustration law.

The paper shows that the re-emergence of the lustration and file access issue became entwined with other debates as an element of broader concerns about the need to improve the quality of post-communist democracy more generally. The emergence of late lustration and file access as an issue was often felt to be indicative of the need to deepen post-communist democratisation and linked to efforts to improve the quality of democracy. There are clearly limitations to this approach. It is a single country case study, albeit on what be considered a particularly interesting (arguably 'archetypal') case of lustration, that relies on written sources rather than interviews, and examines the declared motives of supporters of more radical lustration and access which may not have been their true ones. Nonetheless, it is important to at least get a clear picture of what those declared motives were, as a key, first stage in developing a more fully-worked explanatory framework.

Poland: a case of late (and recurring) lustration and file access debates

Poland is interesting as an archetypal case of the phenomena of late and recurring lustration. The revelation of links between persons holding public office and the former communist secret police by lustration and file access was by far the most extensively used transitional justice mechanism in this country, much more so than trials or compensation of victims of communist rule. In Stan's general typology of post-communist states' approaches to transitional justice - based on whether they instituted court proceedings against former communist regime functionaries, as well as their enactment of lustration laws and access to communist security service archives - Poland was (along with Hungary) classified as a 'mild' case. In such countries, transitional justice was both delayed in time and less radical in scope than those that, to a greater or lesser extent, pursued all three of these processes strongly and vigorously through citizenship and electoral as well as screening laws (such as the former GDR, the Czech Republic and the Baltic states) but more advanced than those countries that adopted weak approaches to transitional justice with only one or two of the methods outlined (such as Bulgaria and Romania) or those that resisted attempts to re-evaluate the past and seemingly followed a 'forgive and forget' approach (such as Slovakia, Slovenia, Albania and all of the Soviet successor republics except for the Baltic states).⁶

However, it is the significant delay - and, more broadly, recurrence of the issue in political debates - that is one of the most striking features of the development of lustration in Poland and one that needs explanation and analysis. While it was the first country in the region to overthrow communism, as a result of peaceful negotiations between the outgoing regime and former opposition, it was more than eight years after the transition to democracy began that Poland finally approved a lustration law. In August 1989, Tadeusz Mazowiecki, a Catholic intellectual advisor to the Solidarity opposition movement and the first non-communist prime minister in Poland since the country was incorporated into the Soviet bloc at the end of the 1940s, announced in his inaugural policy speech that a 'thick line' would be drawn between

⁶ See: Lavinia Stan, 'Conclusion: Explaining country differences' in Lavinia Stan, ed, *Transitional Justice in Eastern Europe and the Former Soviet Union*, Routledge: London and New York, 2009, pp247-270 (261-262).

the past and present.⁷ Although he was actually seeking to distance his government from the damage done to the national economy by the previous regime, the ‘thick line’ was often cited as a metaphor epitomising the lenient approach to the communist regime adopted by his administration. However, although it began with an initial communist-forgiving approach and an avoidance of the issue, lustration and file access retained a remarkable capacity to endure and remain on the political agenda when one might have expected them to fade from public memory. Indeed, one of the most striking things about the Polish case was the on-going politicisation of the lustration issue with communist security service secret archives generating a number of public scandals which contributed to the collapse of two governments in the 1990s. It thus provides us with an excellent basis for developing frameworks to explain the phenomenon of ‘late’ lustration.

Nonetheless, despite various attempts to pass lustration laws in the early-to-mid 1990s a formalised lustration programme came late to Poland with a belated mild lustration law only being passed in 1997 and file access legislation adopted in 1998, with the two finally becoming operational in 1999 and 2000 respectively following further amendments. In spite of the fact the Democratic Left Alliance (Sojusz Lewicy Demokratycznej: SLD), the direct organisation successor to the former ruling communist party, was the main governing party at the time, and its former leader Aleksander Kwaśniewski held the office of President, in April 1997 the Polish parliament passed a lustration law, adopting a proposal sponsored by a three-party coalition comprising the Polish Peasant Party (Polskie Stronnictwo Ludowe: PSL), the junior governing coalition partner and another regime successor party, and two post-Solidarity opposition parties: the liberal centrist Freedom Union (Unia Wolności: UW) and social democratic Labour Union (Unia Pracy: UP). The new law contained a number of provisions. Firstly, all elected state officials from the rank of deputy provincial governor up to ministers, prime minister and the President, parliamentary candidates, barristers, judges, prosecutors and leading figures in the public mass media (approximately 20,000 individuals in total) were required to submit written declarations stating whether or not they consciously worked for or collaborated with the communist security services at any point from 1944-1990.⁸ Secondly, all statements denying collaboration were transferred to a state prosecutor, the Public Interest Spokesman (Rzecznik Interesu Publicznego: RIP), who used the communist security service secret archives to assess their accuracy. Thirdly, if the prosecutor found evidence that the declaration was false, the public official was to be tried before a lustration court. Fourthly, office holders or candidates for office who made false statements were banned from public office for ten years. Fifthly, verdicts could be appealed but the appeal court’s rulings were binding and anyone found guilty of being a ‘lustration liar’ had to resign immediately upon it making judgement (although the lustration process could be reopened subsequently if the Supreme Court overturned the decision of the appeal court). President Kwaśniewski was dissatisfied with the lustration bill because it did not define collaboration narrowly enough for him⁹ nor did it offer all citizens access to their communist

⁷ See: Tadeusz Mazowiecki, ‘Przeszłość odkreślamy grubą linią: Przemówienie Tadeusza Mazowieckiego w Sejmie’, *Gazeta Wyborcza*, 25 August 1989.

⁸ As clarified subsequently by the constitutional tribunal, collaboration had to be conscious, secret and connected to the security services’ operational activities. A declaration of intent was not enough, there had to be proof of actual activities undertaken in the form of information reports.

⁹ For example, he wanted it to exclude military intelligence and counter-intelligence, which were the communist-era security services that his erstwhile Democratic Left Alliance colleagues were most likely to have collaborated with.

security service files.¹⁰ Nonetheless, he did not veto the lustration bill and signed it into law immediately prior to the 1997 parliamentary election.¹¹

At the end of 1998, the Polish parliament, by now dominated by the right-wing Solidarity Electoral Action (Akcja Wyborcza Solidarność: AWS) grouping - which, following its victory in the 1997 parliamentary election, formed a coalition government with the Freedom Union - voted to establish the Institute for National Remembrance (Instytut Pamięci Narodowej: IPN). Apart from investigating Nazi and communist crimes and informing and educating the Polish public about the country's recent past, the Institute was set up as the custodian of the communist security service files. The 1998 law granted researchers, journalists and historians access to the secret archives as well to citizens who had been victims of secret police invigilation to their own files. Those who were not felt to be victims of communist persecution or worked as informers for, or collaborators with, the communist security services could not have access to their files (even if they had themselves been spied upon).¹²

The 2001 parliamentary election returned the Democratic Left Alliance to office and a number of developments during the 2001-5 parliament once again brought the issues of lustration and communist security service file access to the fore and led to calls for strengthening existing laws and truth revelation procedures, or introducing more radical ones. Firstly, calls for more radical lustration were linked to the fight against political corruption. This became a more salient issue in Poland following the emergence of the so-called 'Rywin affair' at the end of 2002. Lew Rywin, a prominent Polish film producer, offered Adam Michnik¹³ that he would arrange for a change in a draft media ownership law aimed at limiting the print media's influence on radio and television (which would have been in Mr Michnik's favour) in exchange for a large payment to his friends in power. Mr Rywin claimed that he was acting on behalf of what he called the 'group in power' which wanted to remain anonymous but possibly included the then prime minister and Democratic Left Alliance leader Leszek Miller. The incident took place in July 2002 and six months later at the end of December the paper printed a partial record of Mr Michnik's conversation with Mr Rywin, thus starting the actual scandal.¹⁴

¹⁰ Which critics argue that Mr Kwaśniewski wanted to allow so that former security service operatives would have an opportunity to view what had been retained about their activities in their files and, more generally, it would make the law un-workable.

¹¹ However, due to organisational difficulties in establishing the lustration court the process did not actually take effect until 1999. The problem of finding twenty one judges willing to conduct lustration trials and be involved in passing such sensitive moral and political judgements (only eleven had agreed to do so) was solved, and the lustration law was made workable, when, in June 1998, the Sejm amended the lustration law so that the Warsaw District Appeal Court was recognised as the lustration court. The 1998 amendments also strengthened the law, transforming the lustration prosecutor (now appointed by the head of the Supreme Court) from being simply the government's representatives to a key figure conducting the process.

¹² See: Sejm RP, *Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu*, *Dziennik Ustaw*, 1998 nr 155 poz. 1016. <http://isap.sejm.gov.pl/Download.jsessionid=CA1405B658D079ABB3B206BFD076EBF0?id=WDU19981551016&type=2> (accessed 20 February 2014).

¹³ A veteran anti-communist opposition strategist but who, in post-communist Poland, became proprietor of the Agora media conglomerate that published the influential liberal daily 'Gazeta Wyborcza', of which Mr Michnik was founder and editor-in-chief.

¹⁴ See: Paweł Smoleński, 'Ustawa za łapówkę czyli przychodzi Rywin do Michnika', *Gazeta Wyborcza*, 26 December 2002, <http://wyborcza.pl/1,75478,1237212.html#ixzz3qVE3SIV1> (accessed 28 December 2002).

In January 2003, the Polish parliament created a special committee to investigate the circumstances of the affair, which eventually helped to bring down Mr Miller in May 2004. Although Democratic Left Alliance deputies on the commission were able to vote through a final report which came to the conclusion that Mr Rywin had been acting on his own,¹⁵ in September 2004 the Sejm unexpectedly voted to accept a dissenting minority report that departed radically from the majority one, naming five leading government and media figures linked to the Democratic Left Alliance as the 'group of power' master-minding Mr Rywin's mission. In addition to Mr Miller, this included: Aleksandra Jakubowska, the deputy culture minister who was in charge of the amendment that would have benefited Agora; Lech Nikolski, the head of Mr Miller's prime minister's office; Robert Kwiatkowski, the head of Polish public TV whose TVP2 second channel was considered a possible target for a post-privatisation Agora takeover; and Włodzimierz Czarzasty, another influential media policy-maker who was secretary of National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji: KRRiTV), the Polish regulatory body which issued radio and television broadcast licenses, ensured compliance with the law by public broadcasters, and indirectly controlled state-owned TV and radio stations.

The Rywin affair was followed by a raft of further scandalous revelations involving politicians and officials from the ruling party, which meant that the corruption issue remained at the top of the political agenda. One of the most serious of these was the so-called 'Orlen affair' surrounding the privatisation of the partly state-owned oil company PKN Orlen. The scandal began in February 2002 with the arrest by the Office of State Security (Urząd Ochrony Państwa: UOP) of PKN Orlen's chief executive Andrzej Modrzejewski on the order of the attorney general's office. The arrest was carried out on the eve of a PKN Orlen directors meeting and, although Mr Modrzejewski was released two hours before it took place, the board removed him from his position. In an April 2004 interview for 'Gazeta Wyborcza' Wiesław Kaczmarek, who was treasury minister at the time of the arrest, claimed that its real purpose was to provoke Mr Modrzejewski's dismissal and, as a consequence, not allow the signing of a \$14 billion contract for oil supplies. The decision to arrest Mr Modrzejewski was, he claimed, taken during an official meeting that he attended in the prime minister's office involving Mr Miller, justice minister Barbara Piwnik and the head of the Office of State Security Zbigniew Siemiątkowski.¹⁶ The 'Orlen affair' attracted considerable publicity and, because of its perceived potential for undermining the security of Poland's energy supply, appeared to have even more far-reaching effects; by the end of 2004 it had already overshadowed the Rywin affair.

As a consequence, the Polish parliament voted to initiate another independent parliamentary investigative commission. This did not reach a conclusion but discovered a number of new threads including the publication of notes from the Intelligence Agency (Agency Wywiadu: AW) describing a meeting between Jan Kulczyk, Polish wealthiest businessmen and a minority shareholder in PKN Orlen, and Russian businessman and reputed spy Vladimir Alganov. At the meeting, Mr Kulczyk explained the importance of his contacts with Mr

¹⁵ In April 2004 the criminal court sentenced Mr Rywin to thirty months in prison but also concluded that allegations that senior Democratic Left Alliance figures put him up to the bribe attempt could not be proven. See: 'Lew samotnym wilkiem', *Rzeczpospolita*, 27 April 2004.

¹⁶ See: Dominika Wielowieyska, 'Kaczmarek: Miller nasał UOP na szefa Orleń', 2 April 2004, <http://wiadomosci.gazeta.pl/wiadomosci/1,114873,2001505.html> (accessed 3 April 2004); Piotr Śmiłowicz, 'Kto nasał UOP na Modrzejewskiego', *Rzeczpospolita*, 3 April 2004; and Agnieszka Kublik, 'Orlengate: nowe rewelacje Kaczmarka', 7 April 2004, <http://wyborcza.pl/1,75248,2009698.html> (8 April 2004).

Kwaśniewski who, he claimed, could enable a privatisation of the Rafineria Gdansk oil refinery on terms advantageous to the Russians. For his part, Mr Alganov said that a Russian oil company had paid a large bribe to a Polish minister and industrialist to ensure that the Russians would win the tender for the refinery.¹⁷ The parliamentary commission and linked protracted criminal investigation pointed to, as Los put it, ‘an octopus like structure’ involving powerful Russian and Western interests ‘that had its tentacles in all influential power networks in Poland’.¹⁸

Indeed, as part of its inquiry, in January 2015 the commission voted to request access from the Institute of National Remembrance to the communist security service files of 37 individuals linked to the affair. These were mainly those who had or were due to give evidence before the commission and included: Mr Kwaśniewski, prime minister Marek Belka, former Solidarity Election Action prime minister (between 1997-2001) Jerzy Buzek and Mr Siemiątkowski. They also included staff from: the President’s office; Mr Kulczyk’s circle; other members of the Miller, Belka and Buzek governments; PKN Orlen itself; and the security services.¹⁹ On the basis of these files, one right-wing commission member, Antoni Macierewicz, claimed that former communist security service functionaries had exercised behind the scenes influence on Mr Kwaśniewski.²⁰ These files also revealed that, before taking a study trip to the USA in 1984, Mr Belka had agreed to seek out potential informers for the communist security services and inform them if he was approached by US intelligence officers. In June 2005 opposition members of the commission called upon Mr Belka to resign arguing that at an earlier hearing the prime minister had denied collaborating with the communist security services. Requesting that his file be de-classified, Mr Belka refused to step down claiming that it was not unusual for scholars undertaking trips abroad during communist times to be approached by the security services, and that he had not provided them with any information of importance on his return home.²¹

These scandals, in which both former and current security service operatives seemed to be actively engaged, were felt to exemplify the corrupt and croneyistic network that had allegedly colonised Polish capitalism. They convinced increasing number of Poles that politicians, policy-makers and opinion-formers were involved in a web of large scale business deals as part of a ‘shadow economy’ linked to organised criminal networks whose origins were to be found in the communist security service services. This led to calls for more radical lustration and revelation of former communist security service networks as a means of breaking this corrupt nexus. Against the background of these scandals, politicians and commentators, particularly from the right-wing Law and Justice (Prawo i Sprawiedliwość:

¹⁷ See: ‘Another week, another bribe’, *Economist*, 21 October 2004.

¹⁸ See: Maria Los, ‘Reshaping of Elites and the Privatization of Security: The Case of Poland’, *Reflections on Policing in Post-Communist Europe*, Issue 2, 2005, <http://pipss.revues.org/351>.

¹⁹ See: ‘Kieres: nie wykluczam, że poproszę marszałka Sejmu o spotkanie’, 14 January 2005, <http://wiadomosci.gazeta.pl/kraj/2029020,34308,2494188.html> (accessed 14 January 2005); and ‘Lista osób, które komisja chce zlustrować’, 14 January 2005, <http://wiadomosci.gazeta.pl/wiadomosci/1,114873,2493080.html> (accessed 14 January 2005).

²⁰ See: Agnieszka Kublik and Wojciech Czuchnowski, ‘Co jest w teczkach prezydenta i premiera?’ 10 June 2005, <http://wiadomosci.gazeta.pl/kraj/2029020,34308,2758818.html> (accessed 10 June 2005).

²¹ See: Piotr Śmiłowicz, ‘Teczki dzielą i łączą’, *Rzeczpospolita*, 13 June 2005; Piotr Śmiłowicz, ‘Teczkowy fortel premiera’, *Rzeczpospolita*, 17 June 2005; ‘Co jest w teczce Belki’, *Rzeczpospolita*, 22 June 2005; ‘Instrukcja stypendysty Marka Belki’, *Rzeczpospolita*, 22 June 2005; and ‘Past Catches up with Polish PM’, *Deutsche Welle*, 23 June 2005, <http://www.dw.com/en/past-catches-up-with-polish-pm/a-1626267> (accessed 18 January 2016).

PiS) party began to call for a moral revolution that would replace the post-1989 Third Republic - which they considered to be inherently weak, morally bankrupt and controlled by corrupt cliques - with a strong and moral 'Fourth Republic' state.

Lustration, therefore, became entwined with broader discourses on post-communist democratisation, specifically the radical 'Fourth Republic' critique of post-1989 Poland as corrupt and requiring far-reaching political and moral renewal.²² Originally an idea and critique that enjoyed quite broad political support (including from politicians and intellectual milieu associated with Civic Platform), the 'Fourth Republic' came to be associated primarily with the 2005-2007 Law and Justice-led governments. Broadening the scope of lustration came to be seen as a key element of such a renewal. Specifically, as noted above, the notion that political life in the post-communist period was manipulated by the former (but still influential) communist-era security services - and, more broadly, the perceived ability of elites linked to the former regime to take advantage of their communist-era networks to turn their old political power into economic power²³ - prompted many Poles to question the virtues of the so-called 'thick line' approach towards transitional justice.

Moreover, the very act of opening up the communist security service files by the Institute of National Remembrance led to pressure for further truth revelation. For example, in February 2005 the allegedly slow pace at which the Institute's files were being made available, and its apparent failure to fulfil its mandate and publicly name secret agents, prompted journalist Bronisław Wildstein to disclose a 'working' list of 240,000 persons on whom secret files existed (including former agents, military intelligence, secret informers, prospective candidates for informers, and victims) and to post it on the Internet.²⁴ The list contained no information on whether those named were victims or informers and no details regarding their date of birth or place of residence that would identify them. As well as leading to heavy criticisms of the Institute for allowing such a security breach, the publication of the 'Wildstein list' also increased pressure on the Polish authorities to open up the communist security service secret archives more widely.²⁵

²² The concept was first developed by political scientist Rafał Matyja in a niche conservative journal at the end of the 1990s, although it actually came to prominence in public discourse when the Civic Platform-linked academic (and future parliamentary deputy) Paweł Śpiewak used it in the wake of the Rywin affair. See: Rafał Matyja, 'Obóz Czwartej Rzeczypospolitej', *Debata*, 1998, No 3; and Paweł Śpiewak, 'Koniec złudzeń', *Rzeczpospolita*, 23 January 2003. For a good summary of the debate on this concept, see: Rafał Matyja, 'Druga..., trzecia..., czwarta..., czyli o państwie Polaków', 4 August 2004 at <http://www.e-fakt.pl/artykuly/artikul.aspx/Artykul/30956> (Viewed on 19 December 2005). For more on the Fourth Republic project see: Aleksander Hall, 'IV Rzeczypospolitej raczej nie będzie', *Rzeczpospolita*, 27 October 2005; and Janusz Reykowski, '3 razy 60 proc.', *Polityka*, 29 October 2005; Paweł Śpiewak, 'Pięć lat po czwartej', *Polityka*, June 26 2010; and Ryszard Bugaj, 'Osierocona idea IV RP', *Rzeczpospolita*, July 6 2010.

²³ See, for example: Maria Los and Andrzej Zybortowicz, *Privatizing the Police-State: The Case of Poland*, Basingstoke: Palgrave Macmillan, 2000.

²⁴ See: 'To nie jest lista agentów', *Rzeczpospolita*, January 31, 2005; Agnieszka Kublik and Wojciech Czuchnowski, 'Wildstein wyniósł listę 240,000 nazwisk z IPN', 31 January, 2005, <http://serwisy.gazeta.pl/kraj/2029020,34317,2520547.html> (accessed 31 January 2005).

²⁵ Calls for further lustration and file access were also spurred on by the emergence of links between prominent Catholic clergymen and the communist security services. These began with the revelation by the Institute of National Remembrance in April 2005 that Father Konrad Hejmo, an acquaintance of Pope John Paul II who for 20 years was the main link between the Polish-born pontiff and Polish pilgrims visiting Rome, had been a communist spy. At a press conference, the Institute's director Leon Kieres said that it had proof that Father Hejmo, a Dominican monk, had collaborated with the Polish communist secret police in the 1980s under the names codenames 'Hejnal' and 'Dominik'. See: Andrzej Kaczyński, Ewa K. Czaczkowska and Paweł Siennecki, 'Donosił z Wiecznego Miasta', *Rzeczpospolita*, April 28, 2005. News of the allegations broke at a time when

The 2006 lustration and file access law

Following the election of a government led by Law and Justice and the party's candidate Lech Kaczyński as President in 2005, the Polish parliament passed a series of amendments - firstly in 2006 and then, in a revised version after Mr Kaczyński refused to approve the original, at the beginning of 2007 - which led to a radical expansion of the scope of the lustration and file access laws. Although the new law was based largely on the Law and Justice draft, it was passed with cross-party support that encompassed all of the main parliamentary groupings except for the Democratic Left Alliance but including the centre-right (although evolving in an increasingly centrist direction) Civic Platform (Platforma Obywatelska: PO), then the main opposition party. Indeed, Civic Platform had, if anything, adopted a more radical approach towards file access in the run up to the 2005 parliamentary election when more right-wing conservative elements were ascendant within the party.

The original law that was finally approved by parliament in October 2006 in many ways marked a radical departure from the provisions of previous Polish lustration and file access legislation. Firstly, in order to streamline the verification process, the Public Interest Spokesman's office was abolished and replaced by a special lustration department within the Institute of National Remembrance that determined which declarations raised suspicion and warranted investigation. It was felt that the provisions of the previous law, whereby during lustration proceedings the Spokesman conducted the initial screening and then directed questions to the Institute, had slowed the lustration process down too much.

Secondly, lustration declarations and the process of determining whether or not someone was a 'lustration liar' were to disappear. Instead, the Institute would issue every person a certificate ('zaświadczenie') about what kind of documents were held on them in the communist security service archival records. Specifically, these certificates would state if the security services had regarded the person undergoing lustration as a so-called 'personal information source' (osobowe źródło informacji) not just as a secret collaborator (Tajny Współpracownik: TW), but also as an operational contact (Kontakt Operacyjny: KO), functionary, official contact or a consultant. In other words, these included people from whom communist security functionaries obtained information but who may not have consented, or even been aware, that they were qualified as a 'personal information source'.²⁶ Those persons in certain positions, or fulfilling functions, requiring public trust, or aspiring to hold them, would be issued with such a certificate ex-officio - which could then be used as a

Poles were still mourning Pope John Paul II who died three weeks earlier and Father Hejmo had played a central role organising the pilgrimage of up to one million Poles who flocked to Rome for the former pontiff's funeral. A series of further revelations about links between Catholic clergymen and the communist security services followed, peaking in January 2007 when the Archbishop of Warsaw Stanisław Wielgus resigned a few days after his consecration (but immediately prior to his public investiture) following revelations in the Institute's files about his collaboration with the communist security services, which he had initially denied. See: Tomasz P. Terlikowski, 'Arcybiskup Stanisław Wielgus był agentem wywiadu PRL', *Rzeczpospolita*, January 4, 2007. However, the new lustration law that was passed in 2006 did not encompass clergymen and the Church was left to deal with the issue through its own internal procedures. Law and Justice deputy Zbigniew Girzyński argued that the reason for this was that: '(w)e knew that we were writing a revolutionary law, anyone who does not understand that will quickly be convinced. It was a question of political caution, why do we need to open up another front?...our revolution cannot eat us - its children. Anyway, I have the impression that the Church is now (itself) dealing with lustration.' See: Paweł Smoleński, 'Młodzi lustrują', *Gazeta Wyborcza*, 5 August 2006, <http://wyborcza.pl/1,76842,3529550.html> (Accessed 7 August 2006).

²⁶ See: Andrzej Kaczyński, 'Agenci będą eliminowani', *Rzeczpospolita*, 22-23 July 2006.

basis for evaluating their moral qualifications - and private individuals could request them as well. As lustration declarations would no longer exist, there would be no sanctions for individuals who failed to reveal involvement in the communist security services. Rather, the body appointing or employing the person in question - or the voters, in the case of elected officials - would decide if someone who was described in their certificate as a communist security service agent or informer should occupy the public function in question. For those occupying these positions, such certificates, together with any documents that related to them, would be held in a publicly available register, which every citizen would have the right to see, and be published on the Internet.

Thirdly, although there would no longer be a special lustration court, there were still two possible sources of legal redress available to those who wanted to appeal against what was written about them in the certificates. If someone felt that the Institute had acted improperly from a procedural point of view, they could appeal to its governing bodies and then to the administrative court. On the other hand, if someone disagreed with the contents of the archival files then they could appeal to the civil court. In the case of a successful appeal the court judgement would be added to the certificates but the contents of the communist security service files and the certificates themselves would not be amended.

Fourthly, it significantly broadened the scope of existing rules on disclosing collaboration and expanded the categories of persons covered by the lustration law to encompass an estimated 400,000-700,000 individuals (the exact number was not clear). This included, for the first time: teachers and the heads of educational institutions; University lecturers and senior administrators; journalists, editors and publishers of both public and private media; diplomats; legal counsellors, notaries, tax advisers and certified accountants; local councillors; the heads of state-owned companies and those in which the state treasury held a share; members of the management and supervisory boards of companies listed on the stock exchange; senior national state administration and local government officials; and employees of, among others, para-state bodies such as the Supreme Audit Chamber (Naczelana Izba Kontroli: NIK), National Insurance Fund (Zakład Ubezpieczeń Społecznych: ZUS) and the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego: KRUS), as well as the Institute for National Remembrance itself.²⁷

Fifthly, the Institute would publish lists of persons registered as communist security service functionaries and their 'personal information sources' with an explanation of why the latter appeared in the archives. The first list was to be published within three months of the new law coming into effect and then updated at least once every six months.

In November 2006, President Kaczyński signed the new draft into law but on the condition that a series of significant amendments were passed. Firstly, in place of the Institute of National Remembrance certificates outlining the contents of the archives on candidates for public office, lustration statements - where such candidates or office-holders declared whether or not they had secretly collaborated with the communist security services - would

²⁷ See: Aleksandra Gardynik, '400 tysięcy osób do sprawdzenia', *Rzeczpospolita*, 27-28 January 2007; Aleksandra Gardyniuk, 'Trudne wyzwanie dla Instytutu Pamięci', *Rzeczpospolita*, 15 February 2007; and Jan Cienski, 'Polish witch-hunt "risks business chaos"', *Financial Times*, March 14, 2007. It was estimated that the Institute would be able to process around 40-50,000 of these certificates per year. See: 'Ujawnimy wszystkich funkcjonariuszy bezpieki. Z prof. Januszem Kurtyką, prezesem Instytutu Pamięci Narodowej, rozmawia Wojciech Wybranowski', *Nasz Dziennik*, 24 August 2006.

be brought back, although these would still be checked by a special lustration prosecutors department within the Institute rather than the Public Interest Spokesman. Secondly, penalties for submitting false lustration declarations would return, as would the use of the criminal procedure if there was a discrepancy between the contents of the files and the individual's lustration declaration or if an individual wanted to appeal against their inclusion in the list of communist secret service collaborators. Thirdly, while the Institute would still be required to publish lists of 'personal information sources', to ensure that 'real' agents were not lost in the mass of names, these would be divided into four registers covering: secret collaborators, security service functionaries, communist party functionaries, and those who had been invigilated. These amendments were approved together with two others which; extended the scope of lustration into several additional categories including bailiffs, other academics, members of the supervisory boards of companies with specific importance to public order and state security, members of local and national examination commissions, and National Bank of Poland managers; and introduced penalties for failing to submit a lustration declaration in the required time leading to automatic loss of public function.

Although the new lustration law came into force in March 2007, in May the Polish constitutional tribunal gutted the new provisions when it ruled that large sections of the amended law violated Poland's Constitution.²⁸ Firstly, it ruled that the definition of who held public offices was too broad, and it significantly limited the number of categories undergoing lustration. It ruled that the provisions of the law should not include: any academics employed by private universities and only senior academic managers in public higher education institutions; heads of state primary and middle schools, and private schools; the heads of private companies; journalists; private TV and radio producers; the publishers and editors of private journals; bailiffs; statutory auditors; tax advisers; members of sports governing bodies. Secondly, it struck down provisions that, it argued, defined the state security organs too broadly: deleting the state censor's office and office for religions from the list of communist-era institutions defined as being part of the security services; removing references to 'personal information sources' from the law's pre-amble; and tightening up the definition of collaboration in line with its earlier judgements which stipulated that this had to be 'materialised'. Thirdly, it ruled that removing elected officials and lawyers from public office for failing to submit a lustration declaration was unconstitutional. Fourthly, it also banned as unconstitutional the proposed publication by the Institute of Public Remembrance of a catalogue of 'secret collaborators' and 'operational contacts' on the Internet. However, the Tribunal did not question the provisions for lustrating candidates for senior offices nor those that required the loss of office for anyone found to be submitting a false lustration declaration. As Nalepa put it, 'even with the provisions struck down by the Tribunal, the Institute still expanded its powers compared to what they were under the 1997 law'.²⁹

After 2007, the issue of lustration and file access became less salient in Polish politics. One might argue that this was inevitable given passage of time since the collapse of communism. However, it was also because the Constitutional Tribunal's gutting of the new legislation

²⁸ See: Eliza Olczyk and Agnieszka Sopińska, 'Trybunał Konstytucyjny obalił część spornych przepisów', *Rzeczpospolita*, May 12-13 2007; Wojciech Czuchnowski and Pawel Wroński, 'Lustracja to nie zemsta', *Gazeta Wyborcza*, May 12-13 2007.

²⁹ See: Monika Nalepa, 'Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation/Instytut Pamięci Narodowej - Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu' in Lavinia Stan and Nadya Nedelsky, eds. *Encyclopaedia of Transitional Justice Volume 3*, 2013, New York: Cambridge University Press, pp200-205 (202)

created confusion as to what the new law's precise provisions were. Moreover, Civic Platform, which ousted Law and Justice from government following a snap parliamentary election held in the autumn of that year, increasingly downplayed the lustration and file access issues as part of a conscious effort to reach an accommodation with the liberal-left Polish cultural and media establishment which had always been extremely wary of – and, in some cases, openly hostile to – these processes.

Explaining 'late' lustration

Attempts to describe and explain the key drivers of changes of lustration trajectory and the recurrence of the issue – specifically the phenomenon of 'late' lustration and truth revelation – in the academic literature divide between: those who focus on its protagonists' political and electoral-strategic calculations; and those who ascribe more ideological and programmatic motives to them. One particular variant of those who adopted the so-called 'politics of the present' approach developed originally by Welsh³⁰ is to try and explain the recurrence of the lustration issue through what might be termed the political elite strategy explanation. This is based on the notion that political actors responded rationally to impulses such as (actual or anticipated) popular and societal demand to further their own partisan interests. One such attempt to explain lustration trajectories with reference to elite strategic positioning developed by Nalepa is rooted in an explicitly rational-choice framework and based on the idea that, when determining their strategic choices, supporters of lustration used the issue in a calculating way for party advantage.³¹ Based on a combination of elite interviews, archival evidence and statistical analysis of survey experiments conducted in the Czech Republic and Hungary as well as Poland, Nalepa tries to explain the specific timing of transitional justice in post-communist states, particularly in cases such as the Polish one where pacted, peaceful transitions to democracy were followed by delayed lustrations. Her explanatory framework is based on what she terms a 'skeletons in the closet' argument which models the incentives of former dissidents from the anti-communist opposition and regime functionaries.

In terms of the Polish case, one of the things that Nalepa attempts to explain is why the issue of truth revelation re-surfaced again in the mid-2000s so many years after the transition to democracy, and specifically the puzzle that is the core research question tackled in this paper: why the lustration and file access laws were amended and strengthened after Law and Justice came to office in 2005? Nalepa argues that this was due to the rise of political elites that emerged from anti-communist opposition groupings that had not been infiltrated by communist security services and, therefore, had fewer collaborators in their ranks and were

³⁰ See: Helga Welsh, 'Dealing with the Communist Past: Central and East European Experiences after 1990' *Europe-Asia Studies*, Vol 48, No 3, May 1996, pp413-428. This was my original position on this question set out in my own writings and developed in co-authored work with colleagues working on the Czech Republic and Hungary (Williams and Fowler). See: 'Dealing with the Communist Past or the Politics of the Present'; Kieran Williams, Brigid Fowler and Aleks Szczerbiak, *Explaining Lustration in Eastern Europe: 'A Post-communist politics approach'*, Sussex European Institute Working Paper No 62, March 2003, Brighton: Sussex European Institute; and 'Explaining Lustration in Central Europe'. Although this angle was not developed explicitly in my own and in collaborative work, and our analysis left open the possibility that lustration may have been motivated by ideological conviction, the clear implication as it built upon Welsh's framework was that the issue recurred because, to some extent at least, it had become instrumentalised as a power tool in post-communist political struggles and inter-party competition.

³¹ See: Monika Nalepa, *Skeletons in Closet: Transitional Justice in Post-Communist Europe*, New York: Cambridge University Press, 2010. Nalepa's main arguments in the book are summarised in: Monika Nalepa, 'Captured Commitments: An Analytical Narrative of Transitions with Transitional Justice', *World Politics*, Vol 62 No 2, April 2010, pp341-80.

untainted by collaboration with the previous regime. Lustration, Nalepa says, had distributive effects and Law and Justice had all the pre-requisites of a party that would have benefited from it. She maintains that earlier in their political careers Lech Kaczyński and his twin brother Law and Justice leader Jarosław Kaczyński knew that their party's leadership was free from security service informers. Nalepa claims that they had this knowledge as a result of Lech Kaczyński holding the posts of head of the Supreme Audit Office (Najwyższa Izba Kontroli: NIK) between 1992-95 and justice minister in the Solidarity Electoral Action-led government between 2000-1, which allowed him to survey the files of party members and locate hidden 'skeletons'. Armed with this knowledge of who would probably be the most affected by lustration, and having a parliamentary caucus comprising very young members and those with a background in opposition groups that maintained low profiles before the transition, Law and Justice was, therefore, not afraid that lustration would uncover skeletons in its own closet. Nalepa also claims that those parties pushing for the strengthening of the lustration law, like Law and Justice, comprised new political elites and very young parliamentarians together with those who had a background in low profile opposition groups which had not been infiltrated by the communist security services - and, therefore, contained fewer collaborators. Moreover, the fact that (she claims) the Kaczyński brothers changed their party organisation four times provided them with 'an opportunity to purge party ranks of known collaborators' which, she argues, they 'took liberal advantage of'. This, together with access to secret information about which parties were infiltrated by former secret police agents, meant that by the time that they took office they 'reached a point at which they were certain they would benefit from lustration'.³²

There are, however, problems both with Nalepa's explanation of the Polish case. In particular, the empirical basis for Nalepa's explanation for why the lustration law was amended and strengthened in 2006-7 is rather flimsy and contains some factual errors. Contrary to what Nalepa argues, it was not Law and Justice that 'promised to make public all of the documentation collected by the dreaded secret police'.³³ Rather it was Civic Platform - and especially, Jan Rokita, the then head of the party's parliamentary caucus and prime ministerial candidate in the 2005 elections - that pushed hardest for a policy of completely opening up the security service files. This call was restricted to politicians; and Lech Kaczyński actually opposed the idea during the 2005 election campaign.³⁴ Indeed, as noted above, the 2006-7 lustration law was passed with broad cross-party support (except for the Democratic Left Alliance). This included Civic Platform, many of whose leaders were once prominent figures within the Freedom Union and its predecessor the Democratic Union (Unia Demokratyczna: UD) who, as heirs to the opposition politicians involved in the round table negotiations, would, according to Nalepa's logic, have been among the political groupings most infiltrated by the communist-era security services. Moreover, it is far from clear that the post of head of the Supreme Audit Office and justice minister really gave Lech Kaczyński the access to security service files that Nalepa implies. Her claim that the Kaczyński brothers changed party organisations four times and that, among former anti-communist dissidents,

³² See: *Skeletons in Closet*, p19.

³³ See: *Ibid*, p17.

³⁴ See: Paweł Wroński, 'Teczki dzielą PO i PiS', 13 June 2005, www.gazeta.pl (accessed 13 June 2005). Although Jarosław Kaczyński later clarified that it was Law and Justice policy to support opening up politicians' security service files and only opposed making public all security service documentation, claiming that the latter was the policy that Lech had in fact opposed. See: Paweł Wroński, 'PO-PiS drobna korekta poglądów brata', 14 June 2005, www.gazeta.pl (accessed 14 June 2005); and Piotr Śmiłowicz, 'Pogodzili się w sprawie teczek', *Rzeczpospolita*, 14 June 2005.

they ‘were probably those who most frequently terminated one party and created another’³⁵ is incorrect. She also provides no real evidence that they ‘took liberal advantage of this’ to ‘purge party ranks of known collaborators’.³⁶

Nalepa does not provide any solid evidence for her claim that those parties pushing for the strengthening of the lustration law, like Law and Justice, comprised new political elites and very young parliamentarians together with those who had a background in low profile opposition groups which had not been infiltrated by the communist security services - and, therefore, contained fewer collaborators. Indeed, there was much contrary evidence, that Law and Justice, in particular, was actually dominated by an ‘old guard’ from the Centre Agreement party whom Jarosław Kaczyński trusted on the grounds that he enjoyed long-standing collaborations with them and that they remained loyal to him even at the end of the 1990s when the twins found themselves in the political doldrums.

Nalepa is correct in the sense that the new draft lustration and file access law was promoted in parliament by a new, younger generation of Law and Justice politicians such as Arkadiusz Mularczyk and Zbigniew Girzyński who were, arguably, not so weighed down by the burden of the communist past. Indeed, speaking in the July 2006 debate on the new lustration law Mr Girzyński pointed out that many of the deputies who were members of the parliamentary commission that considered the bill in detail were too young to be covered by its requirements.³⁷ However, these deputies who were in the forefront of pushing forward the lustration law were not, as Nalepa implies, drawn solely from Law and Justice. Indeed, young, high profile supporters of widening lustration and file access came from all the main parties including Sebastian Karpiniuk from Civic Platform, Mateusz Piskorski from the radical agrarian Self-Defence (Samoobrona) party, and Daniel Pawłowiec and Rafał Wiechecki from the clerical-nationalist League of Polish Families (Liga Polskich Rodzin: LPR)³⁸ (the exception being the communist successor Democratic Left Alliance, the only parliamentary grouping to oppose the new law outright). For example, speaking in the July 2006 debate Mr Pawłowiec pointed out that the parliamentary commission scrutinising the bill contained ‘mainly young people who were not weighed down by the baggage of the past and for whom it was, therefore, easier to formulate the contents of this law.’³⁹ Similarly, pro-lustration commentator Krzysztof Wyszowski noted that it was ‘the young deputies from PO and PiS who (were) interested in the records of the IPN archives solely as the testament of the past, who are for their opening up and (it was) the old heroes who have achieved public successes thanks to their anti-communist legends who support(ed) keeping them secret.’ According to Mr Wyszowski, ‘Poland has been rotting morally for the last seventeen years’

³⁵ See: *Skeletons in Closet*, p19. Although they were involved in a number of broader electoral coalitions, the Kaczyńskis were only associated with two actual parties: the Centre Agreement (Porozumienie Centrum: PC), the first party founded by Jarosław Kaczyński in May 1991 following the break-up of the Solidarity movement which functioned until 2001, and Law and Justice. Moreover, their degree of organisational turnover was by no means unusual for those individuals who were politically active on the post-Solidarity right in the 1990s.

³⁶ See: *Skeletons in Closet*, p19. Other than an un-substantiated claim from constitutional law professor Jerzy Osiatyński (whom she wrongly describes as a ‘Western journalist[s]’) that, when they set up Law and Justice, the Kaczyński brothers ‘turned to young people on the far right’. See: *Ibid*, p130.

³⁷ See: *Sejm RP. 22. Posiedzenie Sejmu w dniu 20 lipca 2006r.* Warsaw: Sejm RP, p295. On another occasion, he said that when he ‘reviewed the fiasco of successive attempts to introduce lustration I knew that this would have to be implemented by another generation’ as the older one was ‘too entangled in those times’ which ‘distort(ed) its clarity of vision’. See: ‘Młodzi lustrują’.

³⁸ Self-Defence and the League were Law and Justice’s junior coalition partners from May 2006-July 2007.

³⁹ See: *Posiedzenie Sejmu w dniu 20 lipca 2006r.*, p302.

but ‘(a new) generation of people is emerging on whom we cannot blame communism or the government of Poland since 1989.’⁴⁰

However, notwithstanding problems with Nalepa’s account at an empirical and factual level, one of the biggest difficulties with her so-called ‘skeletons in the closet’ model is that it posits the notion that the transitional justice issue was almost completely instrumentalised by strategic, office-seeking political elites. The same problems are evident (albeit more implicitly) in some other variations of the ‘politics of the present’ explanatory framework that focus on strategic political and electoral factors; including, I must admit, my own previous work on this topic. On reflection, this approach may need to be modified because it potentially under-estimates the importance of normative factors and fails to grasp fully the extent to which that the motives of those pushing for lustration and transitional justice may have been, in part at least, genuinely programmatically and ideologically driven rather than being rooted in, and motivated purely and simply by, strategic considerations, partisan interests and instrumental imperatives to gain an advantage over political competitors.

Even those pro-lustration parties and political actors who saw the sponsorship of truth revelation procedures as a useful power tool to gain an advantage over their competitors were not necessarily solely (or even mainly) strategically motivated and may also have been committed to these policies for ideological and programmatic reasons. Stan is surely correct when she says, that ‘it (is) difficult to argue that normative considerations of justice are entirely absent’ and that ‘to reduce the complexity of the politics of memory to the level of recognizing it only as a manipulating tool used in the cut-throat battles waged by power-thirsty political parties or to relegate it to the grey zone of illusory and unattainable myths ignores the Eastern Europeans’ need to know the truth about the communist regime, to confront their own personal history, and to obtain justice and absolution.’⁴¹ In other words, as authors such Horne,⁴² Calhoun⁴³ and Appel⁴⁴ rightly point out, one cannot assume *a priori* that lustration is used simply for political manipulation, which some of the ‘politics of the present’ approaches have a tendency to imply.

There are a number of examples in the literature on post-communist transitional justice of another approach to accounting for different patterns of post-communist lustration and truth revelation procedures - including explaining the recurrence of debates and changes of trajectory in countries such as Poland - that suggest that a greater emphasis should be placed on precisely such normative, ideological-programmatic factors. These accounts are based on the idea that political elites believed, or came to believe, that a more radical approach to such issues was both necessary and desirable from a normative perspective. They also envisage scenarios where some elites who always believed that lustration was necessary came to find themselves in a position where they were able to implement it.

⁴⁰ See: Krzysztof Wyszowski, ‘Gra pozorów czy lęk prezydenta,’ *Rzeczpospolita*, 6 November 2006.

⁴¹ See: ‘Introduction: Post-communist transition, justice, and transitional justice’, p4.

⁴² See: Cynthia Horne, ‘Late lustration programmes in Romania and Poland: supporting or undermining democratic transitions’, *Democratization*, Vol 16 No 2, April 2009, pp344-376.

⁴³ See: Noel Calhoun, ‘The Ideological Dilemma of Lustration in Poland’, *East European Politics and Societies*, Vol 16 No 2, Spring 2002, pp494-520; and Noel Calhoun, *Dilemmas of Justice in Eastern Europe's Democratic Transitions*, Basingstoke: Palgrave Macmillan, 2004.

⁴⁴ See: Hilary Appel, ‘Anti-Communist Justice and Founding the Post-Communist Order: Lustration and Restitution in Central Europe’, *East European Politics and Societies*, Vol 19 No 3, Summer 2005, pp379-405

A good example of how an academic explanatory debate about the timing of lustration becomes linked with more normative approaches is Horne's argument that sees the emergence of late lustration as being tied to efforts to improve the quality of post-communist democracy.⁴⁵ This directs our attention to the important point that in many countries, such as Poland, examining political discussions about lustration separately from other political developments under-estimates the extent to which these issues have often become entwined with other, broader post-communist democratisation discourses on questions such as: the public's right to information about the backgrounds of its public representatives, officials and authority figures, and the need to tackle corruption. These relate as much to the relationship between transitional justice and the perceived failures of post-communist democratisation as they do to questions of historical justice and dealing with the communist past, with lustration posited as a project designed to implement democratic renewal and enhance the quality of democracy in these states. This is interesting because the normative literature on post-communist transitional justice has often posited liberal democratic legal-ethical arguments both for and against adopting a radical approach to lustration: counter-posing questions of securing historical justice and allowing freedom of information on the one hand, with concerns about ascribing collective guilt and retroactive justice on the other.

Building on this notion that 'there is a collective sense that the past actively affects the political and economic reality of the present',⁴⁶ Horne, thus, sees the fact that countries like Poland embarked upon late lustration programmes as an expression of the perceived need to deepen the democratisation process. The objective of these programmes was to expand the scope of transparency measures associated with transitional justice such as lustration to include those in 'positions of public trust' in both the public and private sectors including journalists, academics and business leaders. As Horne puts it, 'lustration is resonating with a symbolic and institutional sense that something about the democratic transitions in incomplete'.⁴⁷ Horne rejects what she calls the 'dominant explanation' that 'lustration is...a (tool of party politics and) threat to democratic consolidation' and draws a distinction between lustration laws that were 'politically *motivated*' (which, she argues, they all were) and those that were 'politically *manipulated*' (emphasis added) or 'elite driven' and 'wielded against political parties for personal gain' leading to 'personal advantaging of the party in power' rather than advancing a reform-agenda.⁴⁸ She goes on to argue that the evidence of late lustration in Poland supported neither a strong 'revenge hypothesis' nor a 'limited hypothesis that the laws were timed and designed for direct political party advantage'.⁴⁹ Rather, she claims that late lustration was both linked to and driven by legitimate social, economic and political concerns.⁵⁰ Thus post-communist governments - not just in Poland but in other post-communist states such as Latvia, Macedonia, Slovakia and even those that instituted transitional justice measures early on such as the Czech Republic - continued to grapple with the issue and, in some cases, used late lustration as a means to further and correct some of the problems associated with post-communist transition by addressing public concerns about issues such as corruption, distrust and inequality. The new lustration laws

⁴⁵ See: 'Late lustration programmes in Romania and Poland'.

⁴⁶ See: Ibid, p357.

⁴⁷ See: Ibid, p366. She also considers the argument that lustration policies may have been a response to external cues from international audiences such as the EU, but largely rejects this explanation.

⁴⁸ See: Ibid, p351.

⁴⁹ See: Ibid, p366.

⁵⁰ Although it is not clear, of course, how exclusive this was to 'late' lustration and it could well be argued that 'early' lustration also tapped into concerns that were legitimate, or at least appeared to be to the public.

were thereby often re-structured and packaged with other reform measures, specifically anti-corruption programmes.

Debates on the 2006 Polish lustration and file access law

So how did these themes play out in debates on the 2006 Polish lustration and file access law, at least as far as the declared motives of its supporters were concerned? Many of them did emerge in the arguments used by supporters of more radical lustration and truth-revelation, although they were inter-linked and often overlapped with one another.

The failure of the Polish lustration model

Firstly, a lot of the strongest arguments in favour of a new, revised lustration law were rooted in the idea that Polish truth revelation procedures in their current form (that is, the 1997 lustration and 1998 file access laws, together with the ways in which these were interpreted through court judgements) had not proved itself. As the justificatory statement attached to the 2006 Law and Justice draft law, which formed the basis for the eventual legislation, argued: 'After nearly 9 years of being in force, it transpires that the current lustration law does not fulfil the tasks placed upon it by the legislators. Above all, it does not protect the interests of the state sufficiently and, at the same time, does not give enough protection to the person undergoing lustration'. It continued that none of the three objectives that the introduction of lustration declarations was expected to ensure - swift trials, unambiguous and widely accepted verdicts, and wide access by interested parties to those materials covered until then by a secrecy clause - were achieved in practice.⁵¹

Introducing the Law and Justice draft during the March 2006 debate on the new lustration law, party spokesman Arkadiusz Mularczyk argued that '(t)he necessity of introducing new regulations arises from the ineffectiveness of the current law'.⁵² Speaking in the same debate, Law and Justice deputy Zbigniew Girzyński claimed that: 'Only when the vision of lustration was unavoidable, as the 1997 election approached (and) when it was clear that the political pendulum would reverse, in April 1997 a lustration law was passed but even when it was passed everything was done to torpedo it'.⁵³ The 1997 law was, he claimed, 'meant to satisfy the conscience of the political class...deceive public opinion into thinking that lustration was occurring...(and) create(d) a mechanism which, instead of allowing historians access to these archives in a *de facto* substantive way, led to a situation where these historians...had problems obtaining the IPN files'.⁵⁴ Speaking in the same debate, Self-Defence spokesman Mateusz Piskorski argued that 'in spite of numerous subsequent amendments to the second of these laws (the 1998 file access law) the lustration process and access to the SB (Służba Bezpieczeństwa, the Polish communist-era Security Service) files has not been regulated in a civilised way'.⁵⁵

⁵¹ See: Sejm RP. *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*. Druk nr 360, Warsaw: Sejm RP, February 2006, p32.

⁵² See: Sejm RP. 12. Posiedzenie Sejmu w dniu 9 marca 2006r. Warsaw: Sejm RP, 2006, p137.

⁵³ See: *Ibid*, p144.

⁵⁴ See: *Ibid*, p145.

⁵⁵ See: *Ibid*, p130.

Similarly, speaking in the July 2006 debate on the new law, Polish Peasant Party deputy Tadeusz Ślawecki claimed that: ‘after nine years of the lustration law functioning, the Polish model of lustration does not safeguard the interests of the state and, at the same time, does not give sufficient protection to those undergoing lustration’.⁵⁶ Writing in support of the new law, veteran Solidarity activist and pro-lustration commentator Krzysztof Wyszowski also argued that: ‘From the outset it was clear that the (1997) law was poor, protecting excessively the interests of those people entangled with collaborating with the communist security services. It was a similar story with the creation of the Institute of National Remembrance. As a result of opposition from the Freedom Union a crippled monster emerged limiting the possibility of society discovering the truth about the PRL (Polska Rzeczpospolita Ludowa: PRL; the (communist) Polish People’s Republic).’⁵⁷

One of the main reasons why the current lustration legislation was not felt to have met its objectives was the fact there were no negative legal consequences arising from the act of having been a communist security service functionary or collaborator: it was only submitting a false declaration that led to any sanctions being imposed upon an individual. As Arkadiusz Mularczyk put it in the March 2006 debate, the lustration law ‘has not succeeded in realising its basic objectives, specifically: revealing materials which were secret up until now, ensuring the effectiveness and swiftness of court proceedings’. The Polish lustration law adopted ‘a solution...which was unknown in other states of the former communist camp’ whereby ‘the basic task of the court is to check the truthfulness of lustration declarations’, as opposed to monitoring what the security services and the persons who collaborated with them actually did. In other words, under the Polish lustration system, ‘failing to disclose work, service for or collaboration with the security services is sanctioned much more harshly than simple collaboration’.⁵⁸

As the justificatory statement attached to the 2006 Law and Justice draft law points out, the 1997 law was underpinned by the notion that fear of having compromising documents revealed would encourage former security service agents and collaborators to own up and, as a result, reveal facts that were not found in the extant archive material. Defenders of the current law argued that simply revealing collaboration or service both represented a certain act of atonement and eliminated the danger of former security service functionaries being blackmailed.⁵⁹ Another perceived advantage of this solution was that it appeared to free the courts from having to take into account ‘extra-legal considerations relating to normative judgements on events of a historical, ideological or political character’, and limiting themselves to one simple criteria of judgement: the truthfulness or not of the lustration declaration.⁶⁰ These hopes were not, it was argued, realised in practice. Given that those undergoing lustration could ‘own up’ to collaborating with the security services generally without specifying the precise nature of that collaboration, still left them potentially open to blackmail if the blackmailer had proof confirming that they had undertaken particular actions. As the justificatory statement put it: ‘It turns out that the concept of a “lustration declaration” did not, in the majority of cases, encourage those persons undergoing lustration to reveal the

⁵⁶ See: 22. Posiedzenie Sejmu w dniu 20 lipca 2006r, p303.

⁵⁷ See: ‘Gra pozorów czy lęk prezydenta’.

⁵⁸ See: 12. Posiedzenie Sejmu w dniu 9 marca 2006r, p137.

⁵⁹ See: Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw, p32.

⁶⁰ See: Ibid, p33.

truth, nor did it free the courts from making normative judgements about the activities of secret collaborators'.⁶¹

Another reason why it was felt that that the current system of lustration and file access was not working was that it was very difficult to bring a successful case to conclusion in the lustration court. This was because either the law and court judgements were too generous to those suspected of lying in their lustration declarations or the trials were conducted in secret, dragged on for years and, as the justificatory statement attached to the 2006 Law and Justice draft law put it, often ended 'in a judgement which simply pose(d) hypotheses and (did) not determine the facts unambiguously'.⁶² Writing just before he released his infamous 'list', pro-lustration commentator Bronisław Wildstein argued that, 'it is clear that in these kinds of cases, Polish courts function not just in a very sluggish way, but are exceptionally understanding in relation to the accused. In the case of (Marian) Jurczyk⁶³ that fact that his (security service) reports did not particularly harm the opposition, the Supreme Court recognised as proof that he was not an SB collaborator. In addition, the SLD managed to introduce an amendment to the law which meant that a final verdict would only come into effect after cassation in the Supreme Court. This is not just a mockery of the principles of a state governed by the rule of law (where appeal to the higher court instance is an exceptional path) but, at the same time, dragged out an already years-long procedure'.⁶⁴ Similarly, speaking during the March 2006 parliamentary debate on the new lustration law, League of Polish Families deputy Rafał Wiechecki said that: 'In Poland...(we) have a long lustration court process, where the criminal procedure is used, where there is a presumption of innocence, where all doubts are resolved in favour of the person undergoing lustration, where collaboration does not carry any consequences.'⁶⁵

Critics of the existing lustration law also felt it was absurd to conduct lustration trials using a criminal procedure based on the principle of a presumption of innocence with all doubts resolved in favour of the accused. Such far-reaching protection was felt to provide the accused with too many safeguards and produced absurdities in terms of the way that verdicts were reported and perceived. For example, the media often reported a 'not guilty' verdict as meaning that someone was not a security service collaborator rather than showing that the Public Interest Spokesman had not been able to prove beyond reasonable doubt that they had submitted a false lustration statement. As Law and Justice deputy Tomasz Markowski put it speaking in the March 2006 parliamentary debate, 'the trial of the prominent representative of the post-communist left (former Democratic Left Alliance prime minister and party leader) Józef Oleksy...probably best shows how flawed the existing (lustration) law is in practice ...The problem lies in the fact that lustration proceedings are based on the...procedures of criminal law in which protection for the accused goes considerably further than in other procedures.'⁶⁶

Moreover, lustration verdicts were often determined by evidence from former communist security service functionaries who appeared at lustration trials and, as the justificatory

⁶¹ See: Ibid, p33-34.

⁶² See: Ibid, p40.

⁶³ A veteran Solidarity activist and leader of the 1980 Szczecin strike that led to the union's formation, who was accused of submitting a false lustration declaration.

⁶⁴ See: Bronisław Wildstein, 'Cały ten antylustracyjny zgiełk', *Rzeczpospolita*, 14 January 2005.

⁶⁵ See: *12. Posiedzenie Sejmu w dniu 9 marca 2006r*, p133.

⁶⁶ See: Ibid, p162.

statement attached to the 2006 Law and Justice draft law put it, 'in most cases submitted testimony advantageous to those undergoing lustration.'⁶⁷ The statement argued that the experience of the current system showed that links between secret informers and their handling officers outlasted the formal period of collaboration. The common interests developed between a secret informer and their handling officer in communist times - through, for example, moving money across the border or setting up and nurturing businesses - were continued into the post-communist period.⁶⁸ This meant that those covered by the lustration law might be aware what archival materials had been destroyed and, therefore, whether or not they needed to own up to their collaboration. Indeed, as Janusz Kurytka, President of the Institute of National Remembrance from 2005-10, put it: 'In our current process of lustration we often have a situation where the handling officers speak on behalf of the agent that they were once handling. The officer will always protect their agent.' He continued that '(t)he lack of specific mechanisms to verify archival documents, by (for example) calling witnesses who know and understand archival procedures, is also striking; this can have an influence on the result of a trial'. Indeed, even when proof of collaboration existed 'on paper, they (the spy handlers) deny it saying that it (such proof) was entered falsely'.⁶⁹

At the same time, the definition of what constituted collaboration with the communist security services was narrowed progressively. As the justificatory statement attached to the 2006 Law and Justice draft law pointed out: 'The Polish lustration law adopts a solution not known in any other former communist state...The court has to ascertain, if the information obtained by secret collaborators was useful for realising the tasks being implemented by the security services of the Polish People's Republic and, specifically, if it could lead to people subject to invigilation being harmed.'⁷⁰ Even before the Public Interest Spokesman and lustration court began their work, in its November 1998 judgement the Constitutional Tribunal defined collaboration extremely narrowly ruling that simple registration as an informer in the operational evidence of the security services did not represent sufficient proof of collaboration, which had to be 'materialised'. As the justificatory statement put it: 'In this situation, the threat of revealing compromising material became illusory and...it did not pay for those undergoing lustration to reveal the truth in their lustration declarations'.⁷¹ As a consequence of the Constitutional Tribunal's narrow definition of collaboration, not all those whose declarations were subject to screening by the Public Interest Spokesman could complete the full lustration process. According to the 2006 Law and Justice draft law justificatory statement, between 1999-2004 the Spokesman only directed 153 statements that he suspected of being false to the lustration court for evaluation. He could not proceed with court actions against a further 588 declarations where he had justified suspicions on formal grounds that they were false but the only evidence that he had was a personal (and not an operational) file. This meant that 80% of those whom he suspected of submitting false declarations evaded responsibility, a group that included: 47 parliamentary deputies, 43 representatives of the media, 16 ministers and deputy ministers, 12 provincial governors and deputy governors, and two employees of the Presidential Chancellery. According to the Law and Justice justificatory statement, 'one can assume that these people received prior warning

⁶⁷ See: *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*, p36.

⁶⁸ See: *Ibid*, p35.

⁶⁹ See: Janusz Kurtyka, 'Nie przeproszę Przewoźnika', *Gazeta Wyborcza*, 7 January 2006.

⁷⁰ See: *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*, p32.

⁷¹ See: *Ibid*, p33.

that the relevant documents had been destroyed.⁷² Mr Kurtyka and the Institute's lawyers also felt that the judgements of the Supreme Court and Constitutional Tribunal were too restrictive and blocked the potential to use the lustration and file access laws to cleanse of Polish public life.⁷³

At the same time, in October 2000 the Supreme Court ruled that, when deciding if someone had collaborated or not, the authorities had 'take into account the possibility of fake collaboration', a formulation that was repeated in a September 2002 amendment to the lustration law which came into force in November of that year. Moreover, in an October 2002 verdict, the Supreme Court also declared that the information passed on to the security services by a secret collaborator had to be 'helpful and useful' in assisting them in implementing their responsibilities.⁷⁴ The October 2003 constitutional tribunal judgement had a very negative evaluation of the very concept of the enforcement of declarations regarding possible collaboration with the communist security services describing them as an 'unacceptable game with citizens'.⁷⁵ Finally, the tribunal's October 2005 verdict threw the whole lustration process into turmoil by allowing those persons recognised as secret collaborators to examine their own personal files. Previously it was only those who were invigilated, and had not themselves at any time collaborated, who were allowed such access.⁷⁶ As Law and Justice spokesman Arkadiusz Mularczyk put it: 'This verdict changes the chemistry and atmosphere surrounding lustration. We are in a different situation than a few years ago.'⁷⁷

The Polish lustration model was also felt to be somewhat chaotic, with a number of competing systems apparently operating alongside each other. As Bogdan Borusewicz (who was elected in 2005 as a Law and Justice-backed Senator but later switched to Civic Platform) put it: 'Today there are two (lustration) orders: the Public Interest Spokesman and the lustration court for political elites...(and) the IPN - which, according to the (1998 file access) law, issues statements (declaring) if someone who approaches the Institute was persecuted by the previous regime or not. In practice, this (the latter) is para-lustration and a person who is not recognised as having been persecuted, which suggests that they were a secret collaborator, effectively does not have the possibility of appeal against (what is, in effect) an administrative decision.'⁷⁸ Pro-lustration commentator Bronisław Wildstein also drew attention to these parallel lustration orders which, he argued, was an attempt by opponents of the process to cause confusion and undermine the system: 'Verdicts on the question of collaboration by public persons...belong to the courts. In the case of other people, the IPN simply reveals the name of the secret collaborator (TW: Tajny Współpracownik) hidden behind a pseudonym...(T)his inequality was forced through by opponents of lustration who, in this way, wanted to forcefully make carrying it (the process) out more difficult.'⁷⁹ As the 2006 Law and Justice draft law justificatory statement pointed out, various

⁷² See: Ibid, p36. For more on this, see: Andrzej Kaczyński, 'Cztery razy lustracja', *Rzeczpospolita*, 8 March 2006; and Bogusław Nizieński, 'Prokurator ludzkich sumień', *Rzeczpospolita*, 3 August 2006.

⁷³ See: Krzysztof Burnetko, 'Żegnaj TW, witaj OŻI', *Polityka*, 5 August 2006.

⁷⁴ See: *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*, p32.

⁷⁵ See: Ibid, p39.

⁷⁶ See: Andrzej Kaczyński, 'Kto zajrzy do teczek', *Rzeczpospolita*, 30 November 2005; and 'TK: dostęp do teczek dla agenta, ale nie do wszystkich', *Gazeta.pl*, 29 November 2005.

⁷⁷ See: Paweł Smoleński, 'Inkwizycja zamiast sądu', *Gazeta Wyborcza*, 3 December 2005.

⁷⁸ See: 'Inkwizycja zamiast sądu'.

⁷⁹ See: 'Cały ten antylustracyjny zgiełk'.

attempts to try and amend the 1997 lustration law led to a situation of legal chaos where analogous actions undertaken by persons undergoing lustration at the same time were evaluated according to different criteria. For example, amendments to the lustration law relating to the definition of collaboration with the state security organs (that is, whether or not it included co-operation with the intelligence, counter-intelligence and border security services) were passed in February and September 2002, both of which were struck down by the Constitutional Tribunal. This meant that, in the course of one year alone, the basic clause determining who was covered by lustration was changed four times with four different definitions of collaboration being applied!⁸⁰

At the same time, the establishment of the Institute of National Remembrance and other lustration-linked institutions created a greater appetite for further revelation. This was partly achieved by showing that giving the public access to communist security service files did not necessarily lead to the disaster that many critics predicted. As pro-lustration commentator Tomasz Wiścicki pointed out: ‘An important cause of the change in the climate surrounding the revelation of communist interior ministry documents is the activity of the Institute of National Remembrance, Public Interest Spokesman and lustration court...It turns out that there was no catastrophe, wave of suicides nor even divorces, and the Polish political scene was not plunged into a “war of files” which was supposed to be caused by reaching for the UB (Urząd Bezpieczeństwa, the Security Office, the SB’s predecessor) materials.’ According to Mr Wiścicki, the new lustration and file access regime also meant that: ‘The climate surrounding the revelation of the contents of the communist interior ministry archives located in the IPN has changed markedly...It is no longer possible to recognise all supporters of opening up these files as freaks’. Mr Wiścicki argued that the Institute ‘has played a particular role in the practical weakening of anti-lustration hysteria’ and was ‘the most powerful cause encouraging the change in the public atmosphere surrounding the revelation of security service materials. Compared to the specific effects of the activities of the Institute, it is very difficult to maintain most of the arguments for keeping these documents secret’.⁸¹

However, the new Polish truth revelation regime also threw into sharp focus frustrations about the limitations and contradictions of how the current provisions were working, highlighted by the release of the ‘Wildstein list’. As Tomasz Wiścicki put it: ‘Supporters of the publication the inventory of (the IPN) archives see this (the Wildstein list) as a symbol around which those who support opening up the communist security service files can coalesce.’⁸² Similarly, as Law and Justice deputy Zbigniew Girzyński put it speaking in the March 2006 debate on the new lustration law: ‘(I)n spite of the enormous restrictions, the Institute of National Remembrance started to function, historians - especially those from the Institute, which had greater access to these files - started to write books, write articles, which unveiled the reality of communist Poland. Thanks to this, things are now coming into the open which unveil the truth about what happened, (and) also unveil the truth about (what) this anti-lustration front (represents).’ Referring to Wildstein’s list specifically, Mr Girzyński argued that the journalist ‘undertook a certain act of civic bravery providing access to the wider public to the contents of the IPN materials, a list of the names of those people who were contained in the IPN materials, which led to a situation where even a Sejm dominated by the left had to add certain resources to the IPN to finally begin the process of unveiling the

⁸⁰ See: *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*, pp37-39.

⁸¹ See: Tomasz Wiścicki, ‘Poszerzyć zakres lustracji’, *Rzeczpospolita*, 17 March 2005.

⁸² See: ‘Poszerzyć zakres lustracji’.

truth'. Moreover, thanks to being given access to the files former opposition activists 'were (now) able...thanks to their contents...to un-mask the people who had informed upon them. All of this, maybe a bit against the intentions of those who passed the legislation, reveals the truth about these times.'⁸³

Truth revelation and democratisation

Calls for a more radical lustration and file access law also became bundled up with broader critiques, and the ongoing process to improve the quality, of post-communist democratisation. An important justification for pushing forward with it was the idea of lustration as a key element of a policy package to renew and cleanse politics and public life. For example, pro-lustration commentator Bronisław Wildstein argued that: 'The Third Republic was constructed on (the basis of) a fundamental inequality. A democratic state constructs the basic equality of citizens on the basis of equal access to information. Citizens have the right to know the past of those who want to represent them and have a right to know about the activities which were undertaken against them by the totalitarian regime. They have a right, and even an obligation, to know their recent past which, in large part, is contained in the secret documents of the PRL secret services'.⁸⁴ Similarly, according to Civic Platform deputy Stefan Niesołowski, 'revealing the names of communist security service employees and agents is an important element of building an independent democratic Poland'.⁸⁵ Pro-lustration academic Barbara Fedyszak-Radziejewska also said that: 'I regard lustration as an important instrument of democracy, understood as something more than just putting a voting card into a ballot box once every four years. The true sense of democracy exists in the possibility of making a choice - if we don't know who to choose between, then that choice is an illusion. Without good journalists, we know less than nothing'. Mrs Fedyszak-Radziejewska defended the release of the 'Wildstein list' on the grounds that, 'by speeding up the lustration process, Wildstein has strengthened the democratic system in the Third Republic'.⁸⁶

Speaking in the March 2006 debate on the new lustration law, Law and Justice spokesman Arkadiusz Mularczyk argued that: 'This draft fully realises the principle that the Polish Republic is a democratic state ruled by law that realises the principle of social justice'.⁸⁷ Another Law and Justice deputy Zbigniew Girzyński argued that 'in 1989 when we began systemic changes and (a process of) transformation, one really serious thing was neglected, which today has repercussions in our public life, the neglect associated with the transparency of the Security Service archives, with questions of lustration'.⁸⁸ Marek Suski, another Law and Justice deputy, also argued that, 'the question of opening up the SB and other communist state service archives now in this parliament is one more attempt to bring Poland in line with normality, with a democratic, sovereign and, what is more, just state. Because the law emerges from a system of values and without a just state you cannot talk about full democracy and sovereignty. The history of the last few years shows that although Poland is a sovereign and democratic state it is, at the same time, deeply unjust. This is undoubtedly a

⁸³ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r*, p145.

⁸⁴ See: 'Cały ten antylustracyjny zgiełk'.

⁸⁵ See: Stefan Niesołowski, 'Lustracja totalna', *Gazeta Wyborcza*, 20 January 2005.

⁸⁶ See: Barbara Fedyszak-Radziejewska, 'Dlaczego pikieta?' *Gazeta Wyborcza*, 7 February 2005.

⁸⁷ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r*, p137.

⁸⁸ See: *Ibid*, p143.

shameful, still untreated boil from the times of the Polish People's Republic'.⁸⁹ Another Law and Justice deputy Stanisław Pięta argued that 'by presenting this bill, we are developing the foundations of democracy... We are forming the foundations of a democratic Polish Republic.'⁹⁰ Similarly, supporting the new introduction of a new lustration law in the July 2006 debate, League of Polish Families spokesman Daniel Pawłowicz said that: 'In order for a normal state to exist it needs understandable regulations, (that are) accepted (by), and apply throughout, the whole of society... it needs a certain coherence between the theory and practice of power.' The existing lustration law was, he argued, 'an open example that (in Poland) there are (the) equal and (the) more equal, and that the latter are obviously (including) communist agents.'⁹¹

Closely linked to this notion of lustration as an element of democratisation and the cleansing of politics and public life, was the idea that public positions should be held by those who have behaved honourably. For example, pro-lustration commentator Tomasz Wróblewski argued that, 'the verification of (public) authority figures is the outright key to changing the consciousness of Poles. The more examples that we have of the reflexive defence of well-known figures from public life in spite of the principles that they espouse every day, the faster that public opinion loses trust'.⁹² Tomasz Wiścicki, another pro-lustration commentator, also argued that there was a need to 'take advantage of the current favourable atmosphere and political conjuncture' to broaden the scope of lustration so that, 'members of professions that involve public trust should be free from suspicion that they collaborated with the (communist security) services.'⁹³

In the draft lustration law justificatory statement, Law and Justice argued that: 'The basic aim of this draft law is to protect and strengthen democracy in the Republic of Poland through leading us to a position in which the most important state positions, the fulfilment of which combines a requirement to possess not just meritocratic but also moral qualifications, will be filled by people whose past does not raise doubts in the realms of their service, work or those kind of contacts with state security organs whose moral evaluation must be negative.' The statement also argued that '(we have to have a guarantee that those who occupy) functions, positions and professions requiring public trust by people through their conduct up until now gave and continue to give a guarantee of honesty, honour, a feeling of responsibility for their own words and actions, civic determination and righteousness.'⁹⁴ Speaking in the March 2006 debate Law and Justice spokesman Arkadiusz Mularczyk said that the proposed certificates that individuals would have to submit under the new law outlining the nature of their collaboration 'will have a significant impact upon the evaluation of that person's moral qualifications that are essential for fulfilling public functions.'⁹⁵ Similarly, Civic Platform parliamentary caucus leader Jan Rokita argued that, 'public figures who are in professions or functions where a certain public trust and credibility is required; these should be treated exactly the same by the lustration law...(A)ll those who perform public functions, functions based on trust - and who, in connection with that, in a democratic state should have fully

⁸⁹ See: Ibid p137.

⁹⁰ See: Ibid, p163.

⁹¹ See: 22. *Posiedzenie Sejmu w dniu 20 lipca 2006r*, p302.

⁹² See: Tomasz Wróblewski, 'Weryfikacji autorytetów', *Rzeczpospolita*, 4 February 2005.

⁹³ See: 'Poszerzyć zakres lustracji'.

⁹⁴ See: Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw, p31.

⁹⁵ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r*, p138.

open, and not hidden, biographies - all of these should be obliged to submit a lustration declaration.’⁹⁶ Mr Rokita argued that by ensuring that ‘politicians cannot hide their biographies’, the new lustration law would ‘guarantee the decency of politics and public life’.⁹⁷

Speaking in the same debate, Dariusz Lipiński, another Civic Platform deputy, also said that: ‘We are today debating a little about the past, but also the wholly contemporary need to fill functions, positions and professions which require public trust with people who are supposed to give a guarantee of honesty, worthiness, a feeling of responsibility for their words and actions, civic determination, integrity’.⁹⁸ Similarly, Law and Justice deputy Marek Suski said that the process of opening up the communist security service archives would ‘reveal who is loyal towards our country’ and determine whether the Polish state was ‘democratic with a human face, or with the face of a chimney sweep’ because this ‘depends on what kind of opinion-forming class we have’. Lustration was thus ‘a specific activity to repair the state’ because a country ‘does not want to be notoriously betrayed, has to condemn betrayal, and deplore traitors’ and ‘a law which, thus, shows who was a traitor and who was a hero’ would be ‘a milestone in the history of constructing a just state.’⁹⁹ Tomasz Markowski, another Law and Justice deputy, also argued that, ‘we need to finally, and in a manner that conforms to reality, establish a catalogue of functions, positions, occupations, which require public trust. Too many sensitive segments of the state and society found themselves beyond the verification of lustration’. The lustration law would ‘in line with social intuition, and what society expects from us, significantly widen the group of occupations requiring public trust’.¹⁰⁰ Stanisław Pięta (Law and Justice) argued that, ‘the Polish nation must have the certainty that (members of) the state administration, (parliamentary) deputies, (and) the government are people who are committed to the interests of the nation and interests of the state, that no one has any compromising materials (held on them)’. He also said that ‘cleansing (the state) administration, cleansing local government, cleansing state institutions, cleansing many occupations, from people who collaborated with the communist security apparatus is a condition of the re-birth of the Polish state elite. Without this we cannot construct a normal, honest Poland’.¹⁰¹ Andrzej Szlachta (Law and Justice) also claimed that: ‘Cleansing the Polish state by eliminating from public life persons whose past creates moral reservations is an obligation, a historical necessity, a national imperative’.¹⁰²

Greater openness and transparency

A key specific benefit of pushing ahead with a more radical lustration and file access law, linked to these broader concerns about the need for more far-reaching post-communist democratisation, was felt to be that it responded to the need for greater openness and transparency in public life. In particular, it would satisfy the public’s ‘right to know’ the backgrounds of its public officials and authority figures who occupied positions of public trust. For example, pro-lustration commentator Bronisław Wildstein argued that making public the communist security service archives held by the Institute of National

⁹⁶ See: Ibid, p139.

⁹⁷ See: Ibid, p142.

⁹⁸ See: Ibid, p159.

⁹⁹ See: Ibid, p158.

¹⁰⁰ See: Ibid, p162.

¹⁰¹ See: Ibid, p163.

¹⁰² See: Ibid, p164.

Remembrance would ‘end the whole problem of checking lustration declarations, as everyone can make up their own mind on the subject’. It would ‘have a cleansing character’ that would be more effective than any South African-style reconciliation commission which was unrealistic in Polish circumstances as this required ‘the recognition of guilt and goodwill on the part of the perpetrators of the evil of the communist security service’ which was lacking in the Polish case.¹⁰³ Similarly, speaking during the 2005 parliamentary election campaign, Civic Platform prime ministerial candidate Jan Rokita argued that ‘absolute transparency’ and ‘openness of politicians biographies’ was a ‘fundamental aspect of (an honest) state’. Mr Rokita said that, ‘(a)s long as the biography of even one politician is hidden in some secret archive and cellar, then you don’t have an honest state.’¹⁰⁴

According to the Law and Justice draft law justificatory statement it ‘represent(ed) an extremely important element in (ensuring) openness in public life in Poland broadly interpreted, through allowing society to judge facts from the past of those people participating actively in public life, for whom these facts can be recognised as compromising.’¹⁰⁵ Introducing the draft law in the March 2006 parliamentary debate, Law and Justice spokesman Arkadiusz Mularczyk said that it was underpinned mainly by the idea of ‘openness and transparency of public life’ and that its main purpose was to ‘reveal the past of those people fulfilling public functions’.¹⁰⁶ Similarly, Civic Platform parliamentary caucus leader Jan Rokita said that ‘it is high time to finish with the secrets, pretend-secrets, pseudo-secrets, gossip and tittle-tattle that have accompanied the lustration procedure in the recent years’ and that the way to tackle these various problems was ‘openness, only openness’.¹⁰⁷ Speaking in the same debate, Law and Justice deputy Marek Suski argued that: ‘The efforts of Polish society for openness, (and to) reveal the agents of the Polish People’s Republic are a fight for justice’. This, he said, was ‘the key to constructing a justice-based state - (and in determining) if Poland is honest, or (if Poles are being) lied to’.¹⁰⁸

Speaking in the July 2006 debate on the draft law, Law and Justice deputy Zbigniew Girzyński said that the new legislation, ‘introduces a...completely new principle for...lustration’. He continued: ‘We have not passed a lustration law, we have passed... a law for revealing information contained in the documents of the communist state security service organs.’¹⁰⁹ Indeed, Mr Girzyński argued that: ‘this law ends the lustration process. We are not passing new principles for lustration. We are approving the revelation of all of these materials. We want to finally end the game of files. Every public person will have to reveal their file.’¹¹⁰ Speaking in the same debate, Civic Platform spokesman Sebastian Karpiniuk also argued that thanks to the ‘full openness’ of the archives which the new law would facilitate, Poles would ‘finally be able differentiate victims from executioners, decent people from informers or apparatchiks of the Polish People’s Republic’s security service apparatus’, thereby ‘guaranteeing decency in politics and public life’.¹¹¹ On another occasion, Mr Karpiniuk said that the new law was ‘all about the complete openness of public life. The

¹⁰³ See: ‘Cały ten antylustracyjny zgiełk’.

¹⁰⁴ See: ‘Rokita: wraca szansa na wspólne rządy PO i PiS’, *Gazeta.pl*, 13 June 2005.

¹⁰⁵ See: *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*, p31.

¹⁰⁶ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r.*, p136.

¹⁰⁷ See: *Ibid*, p139.

¹⁰⁸ See: *Ibid*, p158.

¹⁰⁹ See: 22. *Posiedzenie Sejmu w dniu 20 lipca 2006r.*, p295.

¹¹⁰ See: ‘Nowa lustracja nadchodzi’, *Gazeta.pl*, 21 July 2006.

¹¹¹ See: 22. *Posiedzenie Sejmu w dniu 20 lipca 2006r.*, p296.

biographies of those who are active in public life have to be screened adequately'.¹¹² Similarly, also speaking in the July 2006 debate Self-Defence spokesman Mateusz Piskorski argued that through the new law '(w)e want to achieve full openness of public life as a value in itself'.¹¹³ While admitting that the new process would be 'difficult, costly and, for many, unpleasant', League of Polish Families spokesman Daniel Pawłowicz argued that 'this is a price that we have to pay for peace, for honesty and for truth'.¹¹⁴

This need for openness was justified on the grounds that the Polish public had a 'right to know' the background of its public representatives and authority figures. Bronisław Wildstein argued that the Polish Third Republic was 'was constructed on a fundamental inequality', namely that: '(a) democratic state builds the basic equality of citizens on the basis of equal access to information. Citizens have the right to know the past of those who want to represent it and have a right to know about the activities which were undertaken against it by the totalitarian regime. They have a right, and even an obligation, to know their contemporary past, which, in large part, is contained in the secret documents of the PRL (Polish People's Republic) secret services'.¹¹⁵ The 2006 Law and Justice draft law justificatory statement also drew attention to 'the (Polish) constitutional guarantee that gives citizens a right to information about persons occupying such functions (positions and professions requiring public trust)'.¹¹⁶ Similarly, speaking during the March 2006 debate on the new law, League of Polish Families spokesman Rafał Wiechecki said that 'this (law) is about the honest right of citizens to information. This is about openness in public life'.¹¹⁷ Moreover, speaking in the later July 2006 debate, Sebastian Karpiniuk argued that: 'The time has finally come...for a reckoning with the past (when) Poles finally have the right to know both their executioners as well as the functionaries representing the repressive apparatus of the Polish communist republic. Poles finally have a right to see who imprisoned them and who was imprisoned. They finally have a right to know who collaborated and by what methods they were recruited to collaborate'.¹¹⁸

Greater openness was also justified on the grounds that it would put an end to so-called 'wild' lustration, taking smears and the danger of blackmail based on the documents located in the communist security service archives out of politics. Explaining why he felt that openness of the files was so important, during the 2005 election campaign Civic Platform prime ministerial candidate Jan Rokita said that he could not imagine that a government could be effective 'in conditions where every week some group of functionaries, politicians, investigative journalists or provocateurs removed consecutive secret materials on anyone, whether it was a politician from the governing camp or an opposition politician.' 'This,' he said, was 'a situation in which governing is absolutely impossible'. A condition of effective governance was thus 'full openness and full information about biographies, especially of people active in politics. Without this you cannot govern'.¹¹⁹ Similarly, speaking in the March 2006 debate on the new law, Self-Defence leader Andrzej Lepper argued that, '(we have to) once and for all end this wild lustration, once and for all adopt a law which will be

¹¹² See: 'Młodzi lustrują'.

¹¹³ See: 22. *Posiedzenie Sejmu w dniu 20 lipca 2006r.*, p299.

¹¹⁴ See: *Ibid.*, p302.

¹¹⁵ See: 'Cały ten antylustracyjny zgiełk'.

¹¹⁶ See: *Projekt ustawy o ujawnieniu informacji o dokumentach organów bezpieczeństwa państwa komunistycznego z lat 1944-1990 oraz treści tych dokumentów oraz o zmianie innych ustaw*, p31.

¹¹⁷ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r.*, p133.

¹¹⁸ See: 22. *Posiedzenie Sejmu w dniu 20 lipca 2006r.*, p296.

¹¹⁹ See: 'Rokita: wraca szansa na wspólne rządy PO i PiS'.

clear, understandable and which will mean that Poland is not hell, but that we have survived hell.¹²⁰ Speaking in the same debate, his party's spokesman Mateusz Piskorski also said that: '(Our intention) is to liquidate the possibility of taking advantage of the materials which are at the IPN's disposal to carry out...dirty...political games'.¹²¹ League of Polish Families spokesman Rafał Wiechecki also claimed that: 'In Poland we...have had wild lustration, with people "playing" the files before every parliamentary election, every local government election, but also when filling public positions...We have to reveal the contents of the IPN archives and (reveal them) to everyone; to finally end this anarchic dance ('chocholi taniec'), to finally lance this boil that is bringing down Polish democracy...We have to end wild lustration'.¹²²

Similarly, speaking in the July 2006 debate, Law and Justice deputy Zbigniew Girzyński said that: 'We want to finally end the situation which has meant that up until now you could play with the files, that you could take advantage of leaking information against people in order to ruin their political careers, or ruin them in every other area of public life in which they function.'¹²³ Civil Platform spokesman Sebastian Karpiniuk also said that, 'only full openness of the archives...will lead to a situation in which no person performing a public role or fulfilling an occupation of public trust can be blackmailed by so-called smears ('haki') in the files...the more openness, the fewer half-truths and understatements.'¹²⁴ He continued: '(p)ersons fulfilling, or seeking to fulfil, public functions cannot work honestly when they are being blackmailed by potential security service materials relating to their past. We have to definitively finish with this.'¹²⁵ Criticising what he called 'a gurgling lustration swamp' and 'the game of files', Self-Defence spokesman Mateusz Piskorski also said: 'We want to avoid wild lustration...We want to avoid phenomena like the loud Wildstein list...We want to avoid what we have had to deal with over the (last) 10-20 years, unconfirmed allegations...We want to be in a position where there will not be a situation in which any public functionaries can be blackmailed by files that allegedly exist on them'¹²⁶. On another occasion, Mr Karpiniuk drew on his experience as a local councillor where he said that he had often wondered if some of the decisions taken in his town were due to blackmail based on the manipulation of secret knowledge contained in the communist security service files.¹²⁷

Communist security service links with post-communist elites

Another recurring theme that ran through the discourses of calls for more radical lustration and files access laws was often bound up with the idea that these processes were required to end the entanglement of the communist security services with post-communist economic, political and cultural elites. It was widely felt that, through their connections with the world of business and politics which stemmed from (often corrupt) communist-era networks, many former communist security service functionaries and other officials linked to the previous regime enjoyed privileged positions in the Polish state. This prompted many citizens and political figures to question the virtues of the 'amnesty but not amnesia' option. These

¹²⁰ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r.*, p148.

¹²¹ See: *Ibid*, p131.

¹²² See: *Ibid*, p133.

¹²³ See: 22. *Posiedzenie Sejmu w dniu 20 lipca 2006r.*, p295.

¹²⁴ See: *Ibid*, p296.

¹²⁵ See: *Ibid*, p298.

¹²⁶ See: *Ibid*, pp298-299.

¹²⁷ See: 'Młodzi lustrują'.

discourses often included explicit references to the various scandals that were linked to the processes of privatisation, awarding of contracts, and interference with the legislative process that emerged in Poland at the beginning of the 2000s. They were felt to shed light on the ability of networks linked to former communist service functionaries to exercise influence in various formal and informal power structures. For example, pro-lustration commentator Bronisław Wildstein argued that the work of the parliamentary investigative commission into the so-called ‘Orlen affair’ showed that ‘communist security service networks are still alive’ and this ‘game of files’ was possible ‘precisely because this knowledge is (only) available to (the) chosen ones, and this situation is optimal for former functionaries (including those in Russian intelligence) who have this knowledge.’¹²⁸

Defending Mr Wildstein’s actions in releasing his infamous list, another pro-lustration commentator Piotr Skwieciński argued that, ‘various structures of a business-financial character have an “SB” (and “military”) provenance and, in addition to former communist security service functionaries, their membership also includes former (security service) collaborators. These structures carry out an active economic, financial and political game, and secret collaborators participate in this game’. He described this ‘corrupt network’ as ‘the core of the real social system of the Third Republic’ which the ‘post-UB mafia’ was committed to defending against attempts by the then-opposition to try and break up. Defending the importance of more radical truth revelation, Mr Skwieciński argued that ‘the possible revelation of the existence of agent entanglements in the media and business communities would be a change whose importance it is difficult to overestimate...This would allow the discovery of the prior sources of part of the existing financial and financial-mafia construct. And also one of the sources of the support that the oligarchic system still enjoys in part of the media’. He defended Mr Wildstein’s actions as ‘acting in a state of higher necessity’ as ‘the revelation of at least part of the post-UB entanglements’ because it ‘increased the chances of breaking up that (Third Republic network) system’.¹²⁹

Similarly, pro-lustration sociologist Barbara Fedyszak-Radziejewska argued that ‘(t)he work of the three (Sejm) investigative commissions (Rywin, PZU¹³⁰ and Orlen) shows how much our present reality is immersed in the past. And among of the more important elements of this past are the assets of the IPN archives’. She bemoaned the fact that - while there were a substantial number of historians carrying out research and writing important books, and those who had been invigilated could learn the truth about what the communist regime meant for them personally - very few journalists took advantage of this possibility. She put this down to the fact that ‘the elite “holding power and government over our souls” has blocked the articulation of these demands (for lustration and de-communisation) in public debate, in spite of the clear and stable support of Polish society for these processes.’ She interpreted the fact

¹²⁸ See: ‘Cały ten antylustracyjny zgiełk’.

¹²⁹ See: Piotr Skwieciński, ‘Wildstein i wyższa konieczność’, *Rzeczpospolita*, 3 February 2005.

¹³⁰ PZU (Powszechny Zakład Ubezpieczeń) was a monopolist communist-era state insurance agency which was later converted into a state-owned company and established a number of subsidiaries. These included PZU Życie, which appeared to be particularly active in diverting large sums of public money into private investments, the mass media and political parties. The company seemed to have corrupt connections to many important political and business figures and the scandal involved both former and current security service officers. See: ‘Reshaping of Elites and the Privatization of Security’. A Sejm investigative committee set up in January 2005 found in its September 2005 report that the state treasury had lost billions of zloties in the 1999 sale of shares in PZU to the Dutch insurance company Eureko and Polish Gdańsk BIG bank by the then Solidarity Electoral Action-led government. It called for former treasury ministers Emil Wąsacz and Aldona Kamela-Sowiński to be summoned before the State Tribunal to account for their role in the sale.

that ‘the milieu holding senior positions in the formal and informal structures of power’ had blocked these processes as being due to fact that ‘hidden behind this there is a defence of (their vested) interests’.¹³¹

Two other pro-lustration sociologists, Radosław Sojak and Andrzej Zybertowicz, also argued that lustration was ‘the one procedure thanks to which we can get to know important mechanisms of systemic transformation. The mechanisms that are responsible for the chronic illness of the Third Republic’. Again, linking the need for lustration with recent scandals they asked: ‘Is it possible (after the Rywin affair) to write about the functioning of the media without taking into account the behind-the-scenes dimensions? Is it possible (from the time of the Orlen and PZU commissions) to analyse the improprieties of small and large-scale privatisation without analysing the (communist security service) agent dimension? Is it possible (after the Starachowice affair)¹³² to write monographs about local Polish milieu without taking into account the politico-criminal networks?’ Arguing that the Polish state could not afford to ignore the way that the hidden, behind-the-scenes aspect of the country’s systemic transformation had played out, they claimed that ‘(w)ithout lustration we cannot correctly diagnose Polish problems. Without staring into the eyes of communist evil we cannot be in a position to deal with today’s weaknesses.’¹³³

Similarly, pro-lustration commentator Tomasz Wiścicki argued that the climate surrounding the revelation of the communist security service archive contents had changed and was much more favourable to greater file access due to ‘the revelations of the scale of the scandals in which the communist secret services played the main role. Through the common effort of journalists, parliamentary deputies in the investigative commissions, certain public prosecutors we have learned how the “privatisation of the police state” was not the imagining of fantasists.’ At the same time, ‘weaknesses and internal disputes in the post-communist camp have meant that the notorious unity of this group has started to crack and some of them have started to “fess up”’.¹³⁴ Law and Justice leader and prime minister Jarosław Kaczyński also argued that lustration was designed to ‘eliminate dangerous people from public life, break up old links between officers and agents, who - according to our knowledge - to this day play a considerable role in our political and economic life.’¹³⁵

Speaking in the March 2006 debate on the new lustration law, Self-Defence leader Andrzej Lepper argued that, ‘if you examined the careers of the chairmen of state treasury companies after 1989, chairs of supervisory boards, those who took over our national assets to then pass them on to others, in the communist party and the preceding communist system, then you immediately come to the conclusion that the majority of them are in fact the (former communist security) service (functionaries), these are collaborators, these are people who - whether they wanted to or not - did something in the previous system, they were not pushed

¹³¹ See: ‘Dlaczego pikieta?’.

¹³² In the Starachowice affair, Democratic Left Alliance parliamentary deputy and local party boss Andrzej Jagiello was implicated in a scandal involving Starachowice local government officials who co-operated with local criminals. He tipped off fellow party members on the city council to warn them of a planned operation by the Central Bureau of Investigation (Centralne Biuro Śledcze: CBS) in which they would be detained by the police, apparently quoting information obtained from the party-nominated deputy internal affairs Minister Zbigniew Sobotka.

¹³³ See: Radosław Sojak and Andrzej Zybertowicz, ‘Lustracja dla chóru’, *Rzeczpospolita*, 22 February 2005.

¹³⁴ See: ‘Poszerzyć zakres lustracji’.

¹³⁵ See: Adam Leszczyński, ‘Lustracyjne wolty szefa PiS’, *Gazeta Wyborcza*, 5 July 2006 <http://wyborcza.pl/1,75515,3460171.html> (accessed 27 July 2006).

aside from power, (they) were just given responsible tasks'.¹³⁶ 'These people', he continued, 'have certainly benefited from these changes' because 'no government, no legislature, no Sejm after 1989 has done what it should have, that is: it has not adopted an appropriate law which would ensure openness of these (communist security service) archives.' Arguing that post-1989 privatisation scandals were linked to the need for a lustration law and that 'it is time to finally break it (this link) so that we can have a reckoning of all these privatisations, these scandals, knowing who is who. And then we will have openness.'¹³⁷ In the same debate, League of Polish Families leader Roman Giertych claimed that the 1989 round table agreement between the communist regime and sections of the democratic opposition had 'identified certain (security) services, certain milieu which are, to this day, untouchable'. In an allusion to veteran democratic opposition activist and post-communist media magnate Adam Michnik and his Agora conglomerate, Mr Giertych argued that this untouchability was 'built on fictional moral authorities' who were actually 'caricatures of that period (of anti-communist opposition)' and who 'as a result of a conspiracy, grabbed media capital and power.'¹³⁸

Speaking in same debate, Law and Justice deputy Marek Suski argued that '(t)he extremely privileged position of people linked to the repressive apparatus of the Polish People's Republic is proof of the strong legal-mental link between the Third Republic and the People's Republic. This is an important element of the post-communist (system)'.¹³⁹ 'These people,' he claimed, 'are still taking advantage of their acquired rights, rights that are still invoked, when we try and take away something (of the) entitlements of the former functionaries of the services of the repressive apparatus of the Polish People's Republic.' For example, a 'sizeable proportion' of the most successful businessmen in post-communist Poland, such as those who ran the PKN Orlen company, 'are in part people whose origins are to be found in the communist and People's Republic security services. Opening up the archives would certainly have prevented the plotting with the head of the KGB for Poland (of) the sale of our strategic businesses to a foreign power that had enslaved Poland for several decades.' He argued that a proportion of the communist security services 'undoubtedly continued their activity in free Poland...but this footprint, this influence on the pace of events is also hidden, made secret, like the SB archives.' He continued, 'the more we find out about the activities of these services, the more we understand the complexity of contemporary social and economic situation, because undoubtedly the influence of the (communist security) services on our economy - as the Orlen affair showed - is huge.' The fact that these scandals were found to be linked to the communist security services showed that 'a lack of lustration also greatly harms the economy. A failure to push these people - for whom betrayal was, for years, a method of functioning, a kind of way of living - aside from positions of influence, is continually, and increasingly, coming back to take its toll upon us.'¹⁴⁰ League of Polish Families deputy Rafał Wiechecki also argued that, 'everyone knows full-well that the connections in Poland between the secret services and the world of business and politics still exist. We know that files are still held, that people who were employees, functionaries of the security organs, have certain information, have certain documents and are holding on to these documents'. These documents are 'a sword which is hanging over certain people. You have to do this because if

¹³⁶ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r*, p149.

¹³⁷ See: *Ibid*, p150.

¹³⁸ See: Wojciech Czuchnowski, 'Wszystkie partie chcą otwarcia archiwów bezpieki', *Gazeta Wyborcza*, 11 March 2006.

¹³⁹ See: 12. *Posiedzenie Sejmu w dniu 9 marca 2006r*, p157.

¹⁴⁰ See: *Ibid*, p158.

you don't we will reveal them'. This was, he argued, one of the mechanisms that caused corruption within the post-communist Third Republic but thanks to the lustration bill, '(t)his sword will no longer be there.'¹⁴¹

Sometimes (although perhaps not as often as one might have expected) the need for greater lustration and file access was linked to, and became entwined specifically with, the radical 'Fourth Republic' project which was, as noted above, was based on a harsh critique of post-1989 Poland as corrupt and requiring far-reaching moral and political renewal, with the broadening of the scope of lustration coming to be seen in many people's minds as a key element of such a renewal. Specifically, as noted above, the notion that political life in the post-communist period was manipulated by the former (but still influential) communist-era security services prompted many Poles to question the virtues of the so-called 'thick line' approach towards transitional justice. In debates on the new lustration and file access law, these were reflected in calls for the dis-entanglement of the ruling elite from such secret networks. For example, speaking in the March 2006 debate in support of the proposed new lustration law, Mr Suski argued that: 'Knowledge about the people who make up the elite, who was on the side of darkness and who was on the side of light, is the dawn of the Fourth, just Republic. This dawn, this (new) beginning, (is what) Law and Justice is seeking.'¹⁴² Similarly, Stanisław Pięta, another Law and Justice deputy, argued that 'without truth and justice there is no honest Poland. Without these values there will be no Fourth Republic.'¹⁴³

Interestingly, this explicit link was more often made by commentators rather than politicians, and frequently by opponents of lustration, and Law and Justice and the Fourth Republic project more generally. For example, anti-lustration commentator Jacek Żakowski saw demands for lustration in general, and the 'Wildstein list' in particular, as part of what he termed 'the conservative-republican revolution' (rewolucja konserwatyno-republikańska: RKR). 'The motor of the RKR' was, he argued 'universal frustration at the state of politics and the state. Its vehicle is meant to be lustration and de-communisation. Its fundamental principle is breaking the evolutionary continuity reaching back to the years of the PRL. Its effect: excluding a large segment of the elite, changing the rules of the game, releasing energy.' The objective of the Wildstein list was, therefore, according to Mr Żakowski, to 'achieve such a temperature in public life, such a boiling of emotions, that would justify implementing the politically, culturally and socially radical turn about which the supporters of the Fourth Republic dream.' What he termed 'the Wildstein avalanche' helped to achieve this because it 'fuels the demand for radical change. It strengthens the feeling of uncertainty and ambiguousness, lack of credibility of the elites - whose representatives found themselves among those thousands of persons of an unclear status - the weakness of institutions, the tardiness of procedures, stiffness of the legal corset.'¹⁴⁴

Similarly, Janina Paradowska, another anti-lustration commentator, saw the drive for more radical lustration and file access laws as 'the next stage of the pre-election offensive of groupings of the so-called Fourth Republic and attempt to polarise the political scene, strengthen the extremes and crush the liberal centre'. Seeing 'political tactics and hypocrisy' as lying behind the call for moral renewal, she saw this as an attempt to divide Poles into pro- and anti-lustration camps with those in favour being 'for moral renewal, for cleansing public

¹⁴¹ See: Ibid, p135-136.

¹⁴² See: Ibid, p158.

¹⁴³ See: Ibid, p163.

¹⁴⁴ See: Jacek Żakowski, 'Czyja Polska?' *Polityka*, 19 February 2005.

life, for good and against (communist security service) agents.’¹⁴⁵ Anti-lustration writer Krzysztof Burnetko also argued that, for Law and Justice in particular, lustration was ‘not just a condition of (its) credibility but also an element of a useful tactic after the wave of “bread or circus” electoral promises. It fits superbly with the mechanism of the progressing the revolution.’¹⁴⁶

However, Krzysztof Wyszowski, a veteran communist-era Solidarity opposition activist and pro-lustration commentator, also drew attention to this link arguing that the lustration law was ‘a matter that could determine the ability of the current Polish government to build the Fourth Republic.’ Mr Wyszowski drew attention to the fact that, in the run up to the 2005 elections, ‘those parties invoking the Solidarity ethos and a will to build the Fourth Republic, declared as one of their main slogans a will to completely open up and give wide access to the IPN archives’. While there were major differences between the two parties (Law and Justice and Civic Platform) on many issues ‘on the question of the new (lustration) law both parties (have) co-operated surprisingly well.’ Mr Wyszowski saw the Law and Justice party and President Lech Kaczyński’s determination (or lack of it) to carry through the lustration law as a test of the credibility of the Fourth Republic project: ‘The President faces an alternative. Does he want to build a Fourth Republic with those who will sooner or later take power and will evaluate, and possibly lengthen, his presidency? Or with those who are tired by the curious war of the so-called opposition with the SB and WSW (Wojskowa Służba Wewnętrzna – Poland’s communist-era military counter-intelligence agency), exhausted by permanent compromises, used to continual defeats.’¹⁴⁷

Conclusion

Poland is an archetypal case of late and recurring lustration. Although it began with a communist-forgiving approach and an initial avoidance of the issue, it retained a remarkable ability to endure and remain on the political agenda when one might have expected them to fade from public memory. Subsequent years were punctured by various attempts to renew efforts at lustration and file access with belated laws being adopted and, after some delay, becoming operational at the end of the 1990s and then more radical ones being approved (although not fully enacted) in 2007. This significant delay - and, more broadly, the recurrence of the issue in political debates - is one of the most striking features of Polish lustration and one that needs analysis and explanation. It thus provides us with an excellent basis for developing frameworks to explain the phenomenon of ‘late’ lustration.

Many of the attempts in the literature to tackle changes in lustration trajectory divide between: those who focus on the political and electoral-strategic drivers of its protagonists, and those who ascribe more ideological-programmatic motives to them. My position on this question - set out in my own writings and developed in co-authored work with colleagues working on other countries (Williams and Fowler) and those of others adopting the so-called ‘politics of the present’ approach - was that the issue recurred because it became instrumentalised as a political tool in post-communist power struggles. However, on reflection this approach needs to be modified because it fails to grasp fully the extent to which the motives of those pushing for lustration and transitional justice were, in part at least, programmatically and ideologically

¹⁴⁵ See: Janina Paradowska, ‘Politeczka’, *Polityka*, 19 February 2005.

¹⁴⁶ See: Krzysztof Burnetko, ‘Dogrywka’, *Polityka*, 10 December 2005.

¹⁴⁷ See: ‘Gra pozorów czy lęk prezydenta’.

driven and not motivated purely and simply by partisan interests and instrumental imperatives to gain a strategic advantage over political competitors.

At the same, as this paper shows, the lesson from the Polish case is that lustration and file access have clearly become entwined and bundled up with other, broader discourses on post-communist democratisation, specifically the radical 'Fourth Republic' critique of post-1989 Poland as corrupt and requiring far-reaching political and moral renewal, and political developments in post-communist politics which one needs to understand in order to make sense of the issue. This paper has identified the idea of pushing forward with more radical lustration and file access as an element of broader concerns about the need to deepen and improve the quality of post-communist democracy; particularly linked to a perceived need to tackle corruption and satisfy the public's 'right to know' the backgrounds of its public officials and authority figures. In the Polish case, this has often been bound up with the notion that officials linked to the former communist regime had taken advantage of communist-era networks to turn their old political power into economic power, which prompted many citizens and political elites to question the virtues of the 'amnesty but not amnesia' option.

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