

Putting out the Fire, or Fanning the Flames?

How Regulating Secret Service Files and Personnel Affects Contestation over the Communist Past.

Vincent Post

Department of Political Science

McGill University, Montreal

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Abstract

Transitional justice practices that address legacies of human rights abuse have proliferated in recent decades. In East and Central Europe, transitional justice legislation has primarily targeted communist-era spying and surveillance. Transitional justice is often assumed to facilitate reconciliation, allowing societies to work through and ‘move past’ their pasts. Yet although scholars have developed a rich literature on transitional justice, the concrete effects of these practices remain under-investigated. This dissertation challenges conventional wisdom by demonstrating that rather than contributing to reconciliation, transitional justice legislation can instead reinforce and perpetuate contestation over past human rights abuses. It argues that the transitional justice agenda is primarily driven by policy entrepreneurs, a small group of highly passionate individuals who dedicate their professional careers to this cause. These policy entrepreneurs draft key transitional justice legislation, introduce it to parliament, and implement the legislation once it is adopted. Under their leadership, transitional justice legislation is imbued with strongly worded and divisive ideological components, contributing to renewed contestation over the past. Two additional factors can further enhance this effect: (1) if dedicated ‘memory institutes’ implement transitional justice legislation; (2) if the legislation facilitates the declassification and publication of secret service files. To make this argument, this study draws upon 72 elite interviews conducted in the Czech Republic and Slovakia, close readings of transitional justice legislation and related primary documents, and quantitative analysis using the author’s original database on Czech and Slovak media coverage of the communist past from 1990 to 2012.

Résumé

Les pratiques de justice transitionnelle qui abordent les conséquences reliées aux abus des droits de la personne ont proliféré au cours des dernières décennies. En Europe centrale et orientale, la législation liée à la justice transitionnelle a principalement ciblé l'héritage de l'espionnage et surveillance communiste. La justice transitionnelle est souvent censée faciliter la réconciliation, en permettant aux sociétés de surmonter et tourner la page de leur passé. Pourtant, en dépit du fait que les chercheurs aient développé une riche littérature sur la justice transitionnelle, les effets concrets de ces pratiques restent peu étudiés. Cette thèse remet en question les idées reçues en démontrant que plutôt que de contribuer à la réconciliation, la législation liée à la justice transitionnelle peut à la place renforcer et perpétuer la contestation sur les abus des droits de la personne. La thèse soutient que le programme de justice transitionnelle est principalement attribuable à des entrepreneurs politiques, un petit groupe d'individus très passionnés qui dévouent leur carrière professionnelle à cette cause. Ces entrepreneurs politiques élaborent les projets de loi clés concernant la législation de justice transitionnelle, les introduisent au parlement et assurent leur mise en œuvre une fois leur adoption obtenue. Sous leur direction, la législation liée à la justice transitionnelle est imprégnée de fortes formulations et de composantes idéologiques qui divisent, ce qui contribue à renouveler la contestation sur le passé. Deux facteurs additionnels peuvent renforcer cet effet : (1) si les « instituts pour la mémoire » mettent en œuvre la législation liée à la justice transitionnelle; (2) si la législation facilite la déclassification et publication de dossiers de services secrets. Pour soutenir cette argumentation, cette étude se base sur 72 entretiens avec des élites réalisés en République tchèque et en Slovaquie, sur une lecture attentive de la législation de justice transitionnelle et de documents primaires s'y rapportant, ainsi que sur une analyse quantitative utilisant une base de données originale de l'auteur sur la couverture médiatique du passé communiste des médias tchèques et slovaques de 1999 à 2012.

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CHAPTER ONE – Policy Entrepreneurs and Political Contestation. A Theory of Transitional Justice Effects

Introduction

The 2013 Czech general elections saw a new party make its appearance on the Czech political stage. Out of nowhere, ANO 2011 (ANO stands for *Akce nespokojených občanů*, Action of Dissatisfied Citizens – but the acronym means ‘yes’) laid claim to 47 seats out of the 200 in the Czech lower house, second behind the social democrats (ČSSD) who gained 50 seats. This astonishing victory was made all the more remarkable by the fact that the ANO leader, Andrej Babiš, had been hounded throughout the campaign by accusations that he had collaborated with the communist secret service (*Státní Bezpečnost*, StB) before the Velvet Revolution. The Slovakian-born Babiš denied the charges and sued the Slovakian Institute for National Memory (*Ústav Paměti Národa*, ÚPN). Founded in 2002, Bratislava-based ÚPN curates the files of the former communist secret services and makes them available to the public. On the basis of Babiš’s (incomplete) StB file, ÚPN argued that he had signed an agreement to collaborate with the StB.

The courts did not rule in Babiš’s case against ÚPN until well after the elections, and so the pall that the allegations cast over Babiš stayed with him after his electoral victory. As coalition talks that included ANO got underway, his troubles got worse when the Czech President made it clear that he would not appoint Babiš to the cabinet. Relying on a controversial interpretation of the 1991 lustration law, which bans people with a secret service past from holding a range of civil service offices, Miloš Zeman argued that since Babiš could not produce a ‘lustration certificate’ confirming that he had *not* worked with the StB, he was ineligible for a post in the cabinet. Zeman (who himself had opposed the lustration law when he was Prime Minister between 1998 and 2002) ultimately backed down and appointed Babiš as Finance Minister on January 30, 2014. On that same day, Babiš’s case was heard in Slovakia and in May, the court ruled that the files did not

prove that Babiš had knowingly collaborated, and therefore that ÚPN had falsely listed him as a collaborator.¹

The story of Andrej Babiš illustrates the role that the communist past continues to play in East and Central Europe. First of all, it indicates that elite views rather than bottom-up public pressures drive the transitional justice movement. To paraphrase Faulkner, for many political actors the communist past is far from dead, it is not even past (Faulkner, 1975/1951:Act 1, Scene 3). Elites on both the right and the socialist left emphasized that Babiš's involvement with the StB and his membership in the Czechoslovakian Communist Party (*Komunistická Strana Československa*, KSC) made him unsuitable for office.² Yet voters gave Babiš the single largest gain in seat share any party has seen since the inaugural 1990 elections that reinstated democracy in what was then still Czechoslovakia. After over a year in office as Finance Minister and Deputy Prime Minister, Andrej Babiš remained one of the most popular politicians in the Czech Republic. In six polls between December 2013 and January 2015, he was described as 'trustworthy' by more than 50 per cent of all respondents, scoring higher than any other politician in the country.³ Moreover, the Babiš story shows that post-communist transitional justice laws in both countries – the Czech lustration law that Zeman referenced, and the Slovakian law that created ÚPN and declassified Babiš's file – have a significant impact on contemporary political dynamics.

The Babiš episode is far from unique. Across the post-communist region, the legacy of communism features prominently in politics. The fact that the past is still such a central part of

¹ My description of the Babiš/Zeman conflict first appeared in *The Monkey Cage* on November 20, 2013 under the title 'Is Zeman Ze Man?'. It is available at: <http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/11/20/is-zeman-ze-man/>, accessed July 19, 2015.

² Babiš even sued one right-wing party leader, Miroslav Kalousek (TOP 09), for slander. 'Nejsem udavač StB, rozzlobil se Babiš a chce soud s Kalouskem' [I Am Not an StB Informer. Babiš Gets Angry and Wants to Take Kalousek to Court], *Lidové Noviny*, September 18, 2013, available at: http://www.lidovky.cz/babis-poda-trestni-oznameni-pro-pomluvu-na-kalouska-a-zeniska-pub-zpravy-domov.aspx?c=A130918_165430_ln_domov_jzl, accessed July 24, 2015.

³ 'Důvěra vrcholným politikům - leden 2015' [Confidence in Top Politicians, January 2015], *Centrum pro výzkum veřejného mínění*, February 9, 2015. Available at: <http://cvvm.soc.cas.cz/institute-a-politici/duvera-vrcholnym-politikum-leden-2015>, accessed July 19, 2015.

everyday political life raises the question, “What precipitates this ongoing contestation?” The ongoing salience of transitional justice raises another question: “What are the concrete effects of transitional justice legislation?” Taken together, these two issues inspire the research question that guides this dissertation:

How does transitional justice legislation affect political contestation over the past?

My central claim in this dissertation is that transitional justice legislation can increase contestation over the communist past. I further argue that the laws produce contestation because of the ways in which committed policy entrepreneurs promote the transitional justice agenda.

At the outset, it is worth noting that it is not, of course, uncommon for the past to be the subject of political debate – but it also is not inevitable. This dissertation focuses on empirically understanding when, why, and how the past becomes and remains politically divisive. In doing so, it eschews normative judgment and concentrates on the process that produces and reproduces political division over historical episodes, even as they slip into the past. This dissertation proceeds from the notion that attitudes can persist without intervention, but debate is a form of collective behaviour that needs a constant cause that renews it in order for there to be ‘on-going’ contestation. Without fuel on the fire, debate dwindles. What are the processes that keep contestation going, who are involved, and what motivates them? These are the questions that drive this dissertation.

The coming section reviews the existing literature on transitional justice by first offering a working definition of transitional justice and then discussing two different perspectives on what transitional justice might accomplish. It shows that while transitional justice effects are a core concern, existing literature cannot definitively tell us what transitional justice achieves or how it affects contestation over the past. Drawing on this review, in Section 1.2, I propose a new perspective on how transitional justice comes about, focusing on the role of policy entrepreneurs as the central movers behind transitional justice legislation. Section 1.3 then explains how these policy entrepreneurs shape the impact of transitional justice laws. I argue that transitional justice legislation reinforces contestation because policy entrepreneurs embed inherently divisive interpretations of the past into the legislation during the drafting process and act on those interpretations during the

implementation process. On this basis, Section 1.4 presents three hypotheses that this dissertation will test, along with the methodology that these tests will rely on. Section 1.5 places the dissertation's contribution in a broader context and previews the remaining chapters.

By testing this argument empirically, this dissertation contributes to the literature on transitional justice by addressing the effects of transitional justice, an important gap in that literature. A comprehensive theoretical framework is developed to make this possible. This framework introduces the concept of the policy entrepreneur to the study of transitional justice and outlines a structure for understanding the effects that transitional justice can have. The essential mechanisms on which the theory relies are not confined to a specific setting or a particular set of laws. They could also present themselves in situations with different legacies and other forms of transitional justice. Similar dynamics may be observed in other parts of the world as the politics of the past can become the purview of a niche group of dedicated political actors.

1.1 The Impact of Transitional Justice: A Review of the Literature

In the relatively short history of transitional justice, the impact of these practices has received scant attention. Only recently has the field prioritized this issue, acknowledging the importance of understanding what transitional justice actually accomplishes. Much work remains to be done. However, before examining the existing literature and empirical research, we first need a working definition of transitional justice.

Transitional Justice Defined

Significant academic attention to transitional justice, which included coining that very term, first came in the 1990s in the wake of the third wave of democracy. Like the third wave, transitional justice is a global phenomenon that encompasses many forms of addressing a history of human rights abuse. The International Center for Transitional Justice offers the following definition:

Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses.

These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms.⁴

Transitional justice comes in a range of forms and practices, much like the human rights abuses that it addresses.⁵ Common forms of transitional justice include truth and reconciliation committees. The most well-known is South-Africa's *Truth and Reconciliation Commission* (R. Wilson, 2001), but there were also the *Gacaca Courts* in Rwanda (Rettig, 2008). In addition, transitional justice covers international or domestic tribunals and trials (Bass, 2002), vetting or screening procedures known as lustration (De Greiff and Mayer-Rieckh, 2007), as well as property restitution and rehabilitation of political prisoners (Stan, 2009). In addition, transitional justice can refer to grass-roots memory initiatives and certain forms of memorialization and commemoration.⁶

Following the collapse of communism in East and Central European, post-communist countries have adopted a range of transitional justice practices that lend themselves well to comparison because they address a similar legacy of human rights abuse across the region. The main focus of post-communist transitional justice policies has been dealing with the legacy left behind by the communist secret services in the form of a staggering volume of dossiers collected by vast numbers of secret service personnel and informers.⁷ The files had the potential to gravely disrupt politics

⁴ 'What is Transitional Justice?', *International Center for Transitional Justice*, available at: <https://www.ictj.org/about/transitional-justice/>, consulted March 5, 2015.

⁵ See Olsen et al., 2010, for a global overview of transitional justice policies.

⁶ Another approach to transitional justice is to ignore the past and look to the future in an attempt not to let old divisions persist. Spain's 1975 *pacto de olvido* is a key example (Alonso and Muro, 2011:5), but this approach has also been noted in Argentina (where it was called *el punto final* – Huntington, 1991:223). In Eastern Europe, this approach was advocated by Poland's first post-communist PM Tadeusz Mazowiecki (who called it a thick line, *gruba kreska*) and in Czechoslovakia by President Václav Havel, who also spoke of a thick line, or *tlustá čára*, to be drawn under the past (Michnik and Havel, 1993).

⁷⁷ Other forms of transitional justice have been observed as well, including the prosecution of members of the former regime (Stan, 2009; Offe, 1997), restitution of property and/or financial compensation to victims (Offe, 1997:90; Comisso, 1995; Appel, 2005:390). In addition, scholars have studied the removal from the public space of symbology referencing the former authoritarian regime, such as statues and memorials (Esbenshade, 1995; Forest and Johnson, 2002, 2004; Gill, 2005).

in the post-communist countries: they contained a great deal of sensitive information collected on citizens as well as the identities of those who had done the spying and informing. Regulating these files requires dealing with both of these types of information. In each case, a decision fraught with moral and political dilemmas needs to be made on whether such information is to be released to the broader public; in the case of the informers, a further decision needs to be made with regard to the consequences there should be for collaboration. Transitional justice legislation regarding secret service files addresses three complementary issues: to what extent should files be declassified, what should be the consequences for informers (and others involved in the regime), and who should implement this legislation?

A policy called lustration has been a common response to the first two questions. This practice of vetting or screening of employees and/or political candidates for involvement in the communist secret service has been adopted in many countries in the region (Stan, 2009; David, 2011). Nalepa (2009:4) describes lustration in terms of three parameters:

- set X of social and political positions in the new regime (e.g., civil service or political office)
- set Y of actions in the old regime (such as informing for the secret service), and finally
- set Z of consequences that members of X face if they are found to have engaged in Y

Where lustration has been adopted, the policies vary greatly when it comes to the set of people that are targeted, the pre-1989 activities that they are targeted for, and the consequences that screening has for these individuals. Bulgaria's 1992 laws, for instance, applied only to positions in the banking sector and to academics, and did not require lustration for positions in the civil service or for elected office. The Polish law from 1997 required lustration for some elected offices, including the presidency, but it did not bar those found to have worked with the Secret Service from such positions. Instead, it informed candidates of its findings, and published the facts that were determined only if a candidate chose to continue his/her campaign (Stan, 2009:83-86). While the Polish law applied to a handful of positions, the 1991 Czechoslovakian lustration law applied to hundreds of thousands of people and actually barred them from assuming certain civil service

positions if they were found to have collaborated. Unlike the Polish law, however, it did not require lustration for elected office, only for a broad range of civil servants.

File access laws similarly vary across the region in terms of the scope of access that they provide, trading off the desire for transparency with privacy concerns (see Stan, 2004, 2009; Offe, 1997). In some cases, people can only access their own file or that of close relatives; in other instances, a broader range of files is accessible. In addition, some laws censor the files with regard to personal information pertaining to other individuals, including the identity of the secret service personnel and informers who contributed. With the proliferation of the Internet, parts of the secret service archives (typically meta-documents, such as lists of all the individuals ‘evidenced’ in the secret service files) are now available on line. Public access to files is now more widespread than lustration. Citizens in Bulgaria (since 1997), the Czech Republic (since 1996), Germany (since 1991), Hungary (since 1994), Poland (since 1998), Romania (since 1999), and Slovakia (since 2002) can now access the files that were collected on them during the communist period.

In many cases, file access laws came along with a third form of transitional justice that addresses the legacy of secret policing: the creation of National Memory Institutes (Mink, 2013). Starting with the German Office of the Federal Commissioner for the Records of the State Security Service of the former GDR (*Bundesbeauftragte für die Stasi-Unterlagen*, BStU) in 1991 and the Polish Institute of National Memory (*Instytut Pamięci Narodowej*, IPN) in 1997, countries across the post-communist region have created government offices dedicated to dealing with the communist past. Although they have different official titles, I refer to these institutes collectively as ‘memory institutes’. The memory institutes are tasked with a diverse set of duties. First, they curate the secret service archives, implementing the laws on file access by facilitating public access to documents both in their physical form and on-line. Second, they perform an academic function, employing historians and other interested researchers to study human rights abuses and the workings of the secret police. Third, memory institutes serve to educate the general public about human rights abuses under the previous regime. Finally, memory institutes can be a part of efforts to prosecute perpetrators of human rights abuse, and they may be involved in the implementation of other forms of transitional justice, such as lustration or restitution laws. These organizations give an institutionalized face and voice to transitional justice.

For the remainder of this analysis, I will use the term ‘transitional justice’ specifically to refer to these three forms: lustration, file access, and memory institutes. They fall squarely under the broader definition of transitional justice and are frequently presented as attempts to redress legacies of human rights abuse. These policies all address one crucial element of the communist past: the legacy of secret police surveillance. Moreover, they have been the subject of an on-going debate about the possible outcomes. For instance, supporters maintain that policies such as lustration will contribute to ending the endemic political scandals surrounding secret service involvement of politicians and officials, (David, 2003:391,427; 2006:365; Šiklová, 1996:61), the potential to blackmail civil servants and politicians over their secret pasts (Kamiński and Nalepa, 2006:384; Williams et al., 2005; Offe, 1997; Horne, 2012:415), and the tactical but illicit use of the files by the party or parties controlling the government (Kiss, 2006). David shows that part of the reasoning underlying lustration laws was to end ‘wild lustrations’ – unregulated lustrations by elected officials or private individuals based on clandestine use of the secret service files. Analyzing the motivations for lustration that were forwarded in parliaments in Poland, Hungary, and the Czech Republic, he reaches the conclusion that lustration “was also supposed to calm down the tempestuous political situation (...) caused by mutual denunciation of competing politicians” (David, 2003:398) as well as the “escalated mutual accusations and deepened mistrust among people” (David, 2006:365). Calhoun agrees, arguing that after the many distracting scandals created by the ‘thick line’ approach, the late Polish lustration might contribute to fostering stability (Calhoun, 2002:518-519)

However, these views rely heavily on the justifications of transitional justice proponents that equate stated goals with expected outcomes. They also neglect both the political environment in which transitional justice legislation is introduced, and the interests of the political actors who introduce the laws. For this reason, Roman David disagrees with those who suggest that regulating the files will bring stability and end the politicization of the communist past. Instead, he argues that transitional justice creates a demand for more transitional justice because it reinforces the notion that communists are still a force to be reckoned with. In David’s words: “[i]t is apparent that the lustration systems fostered, if not created, divergent recollections about the past within

each country and that different memories of the past in turn affected the existence of each lustration system”. (David, 2011:160)

Transitional Justice Effects

Scholars have only recently started paying attention to the practical results of transitional justice. The 2009 edited volume *Assessing the Impact of Transitional Justice* and a 2010 special issue of the *International Journal of Transitional Justice* titled ‘Transitional Justice on Trial: Evaluating Its Impact’ placed the issue squarely on the agenda – but much work remains to be done (IJTJ, 2010, Van der Merwe et al., 2009, cf. Fletcher and Weinstein, 2015). A review of the transitional justice literature by Thoms et al. (2010:1) came to the conclusion “that empirical evidence of positive or negative effects is still insufficient to support strong claims”.

Addressing this gap is important for two reasons. First of all, what transitional justice purports to do is central to the concept itself. As an example, consider the definition offered in the *Encyclopedia of Transitional Justice*: “Transitional justice comprises a variety of judicial and non-judicial means through which states and societal groups seek to come to terms with past human rights violations *by providing truth, justice, redress, and reconciliation*” (Stan and Nedelsky, 2013:xli; emphasis added). This definition builds in some caution by including the phrase ‘seek to’, which implies that states and societal groups might not get what they hope for. But at the same time, the goals and expected outcomes – truth, justice, redress, and reconciliation – of transitional justice are an explicit element of the definition. Similarly, the ICTJ definition offered above states clearly that the goal of transitional justice is to redress the legacies of massive human rights abuses. The ICTJ definition also includes ‘redress’ as part of the definition, without addressing what that means in practice, in what way transitional justice accomplishes that goal.

Second, normative arguments about transitional justice overwhelmingly rely on empirically unsubstantiated claims about what transitional justice *does*. Whether it is transparency, justice, reconciliation, or democracy, supporters present transitional justice as a way to achieve social change in the wake of violent conflict or political repression. And this behaviour is not limited to political actors: scholarship on transitional justice is also prone to making surprisingly confident assertions regarding presumed effects. It is therefore of crucial importance to gain a greater

understanding of what is actually accomplished by transitional justice through careful empirical research.

As noted above, however, little research systematically addresses this question. Existing literature has focused primarily on other issues, in particular the variation in the extent to which countries implement transitional justice, and the moral and legal underpinnings of transitional justice.⁸ Many studies have emphasized description rather than analysis, eschewing an explanatory framework. Transitional justice effects are often discussed but they are under-theorized, and this literature does not provide ready-to-test hypotheses.

That said, reviewing the existing literature can be helpful to build up a theoretical framework for understanding transitional justice effects. This literature can be divided into two broad, generally distinct, although not entirely incompatible, perspectives: (1) a transition-centric view that locates transitional justice and its impact in the regime change process, and (2) a post-transition view which presents transitional justice as part of the politics of democratic states. Both perspectives on what *causes* transitional justice provide suggestions as to what transitional justice may or may not accomplish. The post-transitional view in particular offers fertile ground for hypothesizing transitional justice effects, even though I take issue with some common assumptions that characterize this perspective. Moreover, some scholars have started addressing transitional justice effects empirically, and I draw on this work in my theory building.

Transitional Justice as a Tool for Democratizers

The earliest research on post-communist transitional justice focused on explaining why some countries went further than others in adopting it. This research stressed the different opportunities created by different types of transition from communism, as well as by different levels of repression under communism. In a nutshell, more transitional justice was expected where communism had been harsher and where regime collapse was more sudden. (e.g., Moran, 1994;

⁸ Many theorists and legal scholars are concerned with the moral and legal implications of transitional justice, asking questions such as ‘is forgiveness possible?’ (Digeser, 2001), ‘is lustration legal, or constitutional?’ (Stewart and Stewart, 1995; Kosař, 2008) and ‘are justice and truth compatible?’ (Elster, 2006; Šimonović, 2004).

Huntington, 1991:215; Barahona de Brito et al., 2001:ch. 1; Elster, 2006; Huyse, 1995). Typically, this literature expected transitional justice to disappear from the political agenda as the transitional moment ended.⁹

This first wave of research presented transitional justice not only as a central part of the transition to democracy, but also as a panacea for a range of ills that plague democratizing societies. Scholars tended to support this claim by making bold, sweeping statements about the positive effects that transitional justice could have on democratizing societies.¹⁰ To cite one example at length, Lavinia Stan opens her major volume on transitional justice across the post-communist realm by contending that:

Beyond permitting a return to normalcy, transitional justice signals the break with the authoritarian past and the willingness of the political class and of the larger society to work together, rather than against each other, for the common good and in the national interest. Confronting the past honestly, vigorously, and constructively helps democratizing societies to bridge the great chasm dividing victims, victimizers, and by-standers, and to reconstruct the national political community on firmer bases. Transitional justice rebuilds trust among citizens and between citizens and the state, and in doing so allows the community and the state to come together and solve the problems of the nation (Stan, 2009:3).

She is not alone in linking transitional justice to positive effects on democratic politics. For instance, several scholars have argued that transitional justice deters authoritarians elsewhere (Barahona de Brito et al., 2001; Kritz, 1996) and that it can contribute to peace building and

⁹ This view dovetails with the common sense notion expressed by some (Holmes, 1994; Brown, 1997) that over time, with other arguably more pressing issues appearing on the political agenda, interest in the communist past would naturally dwindle and wither away, at least as far as politics is concerned. Misztal (1999:31), too, argues that “it is rather surprising that Poland, while being so busy with the numerous problems of economic restructuring, devotes so much of its energy to dealing with the past”.

¹⁰ Many similar claims rely on Santayana’s dictum that “those who forget their past are condemned to repeat it”. In the context of democratization after communism, this is taken to mean that addressing the past and doing justice to it is a condition that must be met in order for democratization to be successful. Such an effect would be produced in a variety of different ways: some argue that transitional justice causes a democratic norm shift; others maintain that transitional justice helps remove old elites; yet others suggest that transitional justice helps the legitimacy of the new regime; that it deters authoritarian leaders elsewhere; and even that doing justice itself constitutes transition.

reconciliation between groups (Gauck, 1994; Quinn, 2009). This, as well as the release of new information about the authoritarian past that transitional justice can elicit, may contribute to a norm shift and increases popular support for democratic values (Backer, 2003) and the legitimacy of a new regime. For example, some argue that lustration and prosecutions in particular can contribute to elite replacement, removing old *nomenklatura* and destroying their networks, while replacing them with a new, younger generation that presumably cherishes more democratic values (Bertschi, 1994; Von Beyme, 1996; Elster, 2006:ch. 3; Higley and Lengyel, 2000).

Three issues have made it difficult for such claims to be tested empirically. First of all, in many cases the expected impact is formulated in terms that are conceptually vague and imprecise, leaving readers wondering what predicted results entail in practice. As an example, imagery from the psychology of individual trauma pervades the discussion of how transitional justice can impact societies, helping them ‘come to terms with the past’, or to ‘deal with it’, ultimately leading to ‘catharsis’ (e.g., Kritz, 1996:218; Pye, 2000, 2003). Kritz, for instance, maintains that “[p]rosecutions can provide victims with a sense of justice and catharsis – a sense that their grievances have been addressed and can hopefully be put to rest, rather than smoldering in anticipation of the next round of conflict”. Speaking of lustration in East and Central Europe, Appel (2005:401-402) argues that “[i]t fulfilled the cathartic need to punish the perpetrators of past injustices without violating an individual’s right to life or liberty without sufficient evidence of past crimes”. Bruce (2008:104), finally, says that “[t]he opening of the archives has provided another very important path to catharsis”. What those outcomes look like in practice, and what the mechanism is that would allow transitional justice to bring those outcomes about, is not clear.

Second, although such claims are typically not made as full-fledged causal arguments, they often underpin normative views about transitional justice. Or rather: normative understandings about the practice of transitional justice lead authors to assume effects for which there is no evidence. In many cases, the claimed ‘effects’ are moral rather than causal. Some scholars state, for example, that transitional justice is not morally acceptable because its legal foundations violate the rule of law (e.g., Stewart and Stewart, 1995). This is taken to mean *ipso facto* that transitional justice undermines democracy. However, there is no explicit causal mechanism through which the attitudes or behaviour of key actors would be affected. A related symptom is that in many

instances, the stated goals of transitional justice supporters are conflated with the eventual outcomes. (e.g., Horne, 2009b). In other cases, the same happens to assumptions about the ulterior motives of transitional justice supporters (e.g., Kiss, 2006). In practice, however, the overlap between actors' (true or stated) intentions and the outcomes of their design may be limited (Pierson, 2004).

Third, some authors draw a conceptual rather than a causal link between democracy and transitional justice. Teitel (2002), as well as Dimitrijević (2006), regard transitional justice policies as constituting transition. For them, it is not so much a matter of causation as it is a matter of logical (and moral) equivalence: to transition to democracy is to do justice. In Dimitrijević's words "different processes of obtaining knowledge, seeking recognition, and institutionalizing acknowledgment about the true nature and consequences of the misdeeds from the close past are necessary for democracy" (2006:369). Teitel is skeptical of overly idealized views of law as an "entirely self-enclosed inaugural and foundational force" (2002:214) but remains committed to the "transformative significance of legal acts" (2002:3) and "channels through which (...) transformative law helps to construct liberalizing change" (2002:213), arguing ultimately that "legal responses play an extraordinary, constitutive role in such periods [of political transformation]" (2002:4).

These issues have become the subject of empirical research only recently and the findings thus far have been inconclusive. A growing number of studies focus on the relationship between transitional justice and democracy, human rights records, and/or political trust. An early effort by Letki (2002) found a positive relationship between lustration and democratization but noted that the direction of the causal arrow was unclear and the relation might be spurious. Relying on more sophisticated methodology and a larger set of cases, Horne (2014a) and Rožič (2012) have argued that transitional justice (lustration in particular) can deepen liberal democracy, but Rožič notes that a pre-existing base level of democracy is necessary for transitional justice to occur. Looking at the protection of human rights, Lynch and Marchesi find "that lustration had no real immediate or cumulative effects on government respect for physical integrity rights" (Lynch and Marchesi,

2015:91). Other research has linked transitional justice to improved human rights protections, but these studies have generally excluded post-communist Europe.¹¹

Emerging research suggests that transitional justice may affect levels of public trust. Scandals and instability, as well as a widely held impression that former communists still hold key positions in politics, can have implications for trust in government institutions and political actors. Rožič (2015) has also argued that lustration may curb corruption. However, the findings have thus far been inconclusive. For instance, Horne (2012) sees transitional justice as a source of trust but also notes elsewhere that “lustration is correlated with declining interpersonal trust or, depending on the model, has no relationship with trust. These findings (...) cautiously corroborate the assertions of the critics of transitional justice who have worried that lustration measures, file access, and the public dissemination of information about secret police collaboration could undermine interpersonal trust” (Horne, 2014b). Nalepa, stressing politicians who “use and abuse lustration policies to their own advantage”, similarly finds that lustration in Poland has not contributed to trust (Nalepa, 2012).

Of course, political trust is not the same as democracy, and given that consolidated democracies continue to produce transitional justice legislation, we should not overestimate transitional justice as a *cause* of democratization. This, perhaps, is why the extensive political science literature on democratization staunchly ignores transitional justice, or at best offers a curt dismissal. Huntington (1991: 211-231) is one of the few who deals with the subject at some length, focusing strictly on human rights trials. However, the take-away point from his treatment of the ‘torturer problem’ is that under most conditions, democratizing regimes are better off avoiding prosecutions of former regime protagonists. Linz and Stepan do not discuss transitional justice in much detail in their

¹¹ Kathryn Sikkink’s *The Justice Cascade* (2011) has focused on the impact of human rights prosecutions. Her analysis finds that trials have bolstered democracy in Latin America and that countries where trials took place are less repressive. This research has now moved forward, relying on a world-wide dataset containing instances of amnesties, truth commissions, and human rights prosecutions (see Olsen et al., 2010, for an overview of the dataset). However, the data collected in this research project do not make it possible to speak to East and Central Europe with any authority, since the central forms of transitional justice implemented in that region are not captured in the Transitional Justice Database. This data source is available at: <https://transitionaljusticedata.com>, accessed March 5, 2015.

seminal *Problems of Democratic Transition and Consolidation* – other than to summarily dismiss the Czechoslovakian lustration law as ‘one of the most morally and democratically dubious pieces of ex post facto state purging legislation in all of East Europe’ (1996:317).

Indeed, like Huntington and Linz & Stepan, many scholars argue that transitional justice policies may actually detract from democratization. They are concerned that transitional justice might violate norms of rule of law, undermining the democratic credentials of new regimes. They stress problems such as discrimination, violation of the principle of retroactivity, and the assumption of collective guilt that underlies the policies. However, it is not clear that these problems would actually jeopardize political democracy.¹² In addition to undermining rule of law, there is the concern that especially retributive transitional justice may be counterproductive. For instance, Linz (Linz, 1978/1995:131) warns that singling out past wrongdoers can create a disloyal, undemocratic opposition. Huntington (1991:231) also argues against transitional justice in most cases, suggesting that the political costs would outweigh the moral gains. Huntington suspects that

¹² Elster (2006), for instance, argues that it is impossible to punish all who are guilty, or return all that was stolen, or even to objectively establish guilt in situations where people had no choice but to cooperate with the system – and he believes that, for these reasons, it is best not to do anything. Ackerman (1992:69-71) agrees, going so far as to argue that it is best not even to seal the files, but simply to burn them. While Ackerman is alone in going so far as to suggest file burning, a broad range of scholars (Stewart and Stewart, 1995; Kosař, 2008; Boed, 1998), post-communist politicians (Šiklová, 1996; Michnik and Havel, 1993), and international organizations (the International Labour Organization registered its disapproval of Czechoslovakia’s lustration law, and several cases have been argued in front of the European Court of Human Rights) believe that it is not possible for lustration to be implemented in a morally and legally acceptable way. It should be noted that there is no consensus on the extent to which different transitional justice measures violate key legal principles. Several scholars have argued that transitional justice does not need to violate the retroactivity principle (Kamiński and Nalepa, 2006; Posner and Vermeule, 2004) and can be in accordance with rule of law criteria (Letki, 2002: 544). As far as international law goes, Orentlicher (1991:255) has argued that in many cases it actually obligates countries to prosecute former wrongdoers, and as a result, a closer analysis of European Court of Human Rights cases by Horne (2009a:737-738) reveals that international organizations do not have principled objections to transitional justice and while they may disagree with parts of it, they have not uniformly condemned it *in toto*.

transitional justice can place democratic transitions in danger by alienating or angering former elites and their supporters, but he does not offer a systematic empirical treatment of this claim.¹³

Transitional Justice as a Tool in Political Competition

The fact that transitional justice has remained on the political agenda well after transition is completed – prompting some researchers (e.g., Raimundo, 2012; Aguilar, 2008) to speak instead of post-transitional justice – indicates that we should look for its effects in the context of post-transition democratic politics rather than focusing on the nature of the previous regime or the transition process itself. In East and Central Europe, what is that post-transition context like?

Political context is central to the more recent literature on transitional justice. This literature has moved past the transition-centric view, emphasizing that transitional justice has remained on the political agenda of post-communist states and is used as a tool in political competition. Writing as early as 1996, Helga Welsh predicted that “the issue of how to deal with the former communists and state security agents will probably continue to resurface” (Welsh, 1996:425). Over the many years since, Welsh has been proven right again and again.

Two main elements shape the political climate in which transitional justice in East and Central Europe is produced. First, post-communist politics across the region has been characterized by disagreement over the moral legacy of the communist past. In post-communist societies, there is no widely held consensus among elites or the population at large regarding the communist past or transitional justice as a tool to deal with that past. Second, the post-communist period has been punctuated by a series of scandals surrounding the involvement of politicians, officials, and public figures in the communist regime.

¹³ McAdams (2006) and Dimitrijević (2006) reject Huntington’s realism, arguing that rather than stability and transitional justice being mutually exclusive, transitional justice is actually a prerequisite for reaching a stable society. They point to the case of Spain, where reformers initially agreed on a *pacto de olvido* (pact of forgetting) not to address the Franco past and the Civil War politically, a position that observers now argue has become untenable as the past is politicized more and more (Alonso and Muro, 2011:5; Shevel, 2011).

Such scandals have characterized post-communist politics from 1989 through the present day. These scandals involved the publication of information – often from the secret service files that transitional justice legislation regulates – on the role that a politician or public official played in the communist regime, and the secret service in particular. To give some examples, in Hungary, a scandal dubbed ‘Danubegate’ erupted in 1991 when it became apparent that the secret service followed opposition leaders well into 1990 (Stan, 2009: 109 Stan, 2009:109; Williams et al, 2005) which caused ‘Danubegate’ when it became apparent in 1991. In addition, both the Horn and the Medgyessy governments faced allegations of communist involvement (Kiss, 2006). In Romania, there are ‘scores of press reports regarding former Securitate members’, and conspiracy theories abound, some of the most controversial of which involve church dignitaries (Stan and Turcescu, 2005). In Poland, President Kwaśniewski faced accusations of collaboration (Appel, 2005) and in the summer of 2008, Poland’s Institute for National Memory revealed that Lech Wałęsa had collaborated with the secret service for a brief period before becoming an opposition leader (see Nalepa, 2009:230-233, see also Appel, 2005; Osiatyński, 1992, on the ongoing accusations made against Wałęsa). Earlier, two cabinets in Poland (the Olszewski government in 1991 and the Oleksy government in 1994) had collapsed over the issue of the secret service files. In Germany, controversy arose over the precise content of the files collected on former Chancellor Helmut Kohl, which resulted in the law being amended (Bruce, 2008). In the Czech Republic, revelations and accusations from the secret files were a staple of everyday politics, starting in the early 1990s. The most well-known example dates back to 1991, when dissident Jan Kavan was linked to secret service work during his time in exile. Kavan successfully fought this claim in court (Šiklová, 1996; Appel, 2005). The recent case of Czech politician Andrej Babiš, discussed in the beginning of this chapter, amply illustrates that the pre-1989 past of politicians and public officials continues to be controversial.

These scandals fueled debate over the communist period and kept transitional justice on the political agenda in Eastern Europe (Williams et al., 2005). These debates started in the dissident movements during communism, where liberals, conservatives, and leftists formulated starkly divergent critiques of communist rule. To be sure, these dissidents found common ground as they

opposed the regime, and dealing with the secret services was a central part of their demands.¹⁴ The central position that demands for justice and the secret service files took in the transition prompted McAdams (2006:131) to argue that the Stasi headquarters in Berlin's Normannenstraße served as East Germany's Bastille.¹⁵ But once the revolution was over and demands for justice could be put into practice, the first post-communist parliaments and governments no longer saw eye to eye on the issue of transitional justice.

With the fight against the communist regime no longer available to unify them, the opposition started to divide. One of the central divisive issues was the question of how to deal with the communist past. While it was not passed everywhere, lustration was on the agenda all over the former Soviet Bloc.¹⁶ The political division over the communist past gained strength as East and Central Europe entered the 21st century and the European Union. Galasińska and Galasiński (2010)

¹⁴ In Czechoslovakia, the Civic Forum demanded an investigation into police brutality in January 1989 when students gathered to commemorate the self-immolations of Jan Palach and Jan Zajíc twenty years earlier (Suk, 2003:ch. 1, cf. Appel, 2005). In Germany, the focal point of the protests was the Ministry for State Security (*Ministerium für Staatssicherheit*, i.e., Stasi) in the Normannenstraße, where workers were in the process of destroying files by burning them (Bruce, 2008:83-4, 105). At the same time, “calls for lustration accompanied the December 1989 regime change” in Romania (Stan, 2009:128, 132), in Poland “...the return of confiscated property appeared in the 1990 constitution amended after Solidarity gained power” (Appel, 2005:393), and in Hungary the reburial of Imre Nagy was one of the key events of 1989 (Benziger, 2000).

¹⁵ Of course, historical redress was important elsewhere as well, for instance in the Baltics, but also in Ukraine, where reinterpretation of Ukraine's past immediately came on the agenda after independence (Shevel, 2011) and in Belarus, where, in so far as it possible to speak of an opposition, it distinguishes itself from the Lukashenka regime in terms of how it views Belarusian identity, history, and the Soviet Union period in particular (Bekus, 2010). In the wake of Euromaidan, Ukraine's Soviet past in particular has received a lot of attention – see Section 6.2.

¹⁶ Kopeček (2010) and Suk (2011) show that the nascent party system in the Czech Republic divided over different views of how to deal with the communist past and what it represented in Czech or Czechoslovakian history. Williams (2003) and Szczerbiak and Hanley (2006:17) confirm the importance of this issue in Czechoslovakian politics between 1990 and 1993. Nedelsky (2009:48-50) even suggests that different views of communism and opinions with regard to lustration contributed to the breakup of Czechoslovakia. Elsewhere, the same issues mattered. Comisso argues that the 1991 Hungarian compensation law was “easily the most controversial legislation the parliament had dealt with” (1995:200-201); in Poland, the first democratic government under Jan Olszewski collapsed in 1992 in the face of a scandal caused by the government's handling of the secret police files (Stan, 2009: 81-2; cf. Łoś, 1995:158-159).

note that with the rise of the conservative Law and Justice party (*Prawo i Sprawiedliwość*, PiS) in 2005, Poland has seen a return to the politics of history, with the PiS forwarding a narrative of Polish history that stresses victimhood above all, and spearheading a new (but largely failed) attempt to implement a strong lustration policy to match the wholesale rejection of communism. Kiss (2006) and David (2006) make similar arguments about Viktor Orbán's centre-right Fidesz party in Hungary. Szczerbiak and Hanley (2006:17) argue that a 'residual cleavage' over the communist past structures post-communist politics (in addition to other issues such as the economy), with anti-communism an indisputable part of centre-right ideology across the region (cf. Hloušek and Kopeček, 2008).

On one side of this cleavage, the anti-communists represent the main proponents of transitional justice legislation in East and Central Europe. According to Appel (2005), lustration fits in with an anti-communist narrative, which insists on a sharp distinction between communists and non-communists and brands the former as irredeemable. Although Appel offers no definition herself, anti-communism, as espoused by centre-right parties such as the Kaczyński brothers' PiS in Poland, Orbán's Fidesz in Hungary, and Topolánek's Civic Democratic Party (*Občanská Demokratická Strana*, ODS) in the Czech Republic, goes beyond simply rejecting Soviet-style communism. Instead it presents the entire communist period as exclusively negative, arguing in essence that the system produced nothing of worth. According to Tismăneanu, "Lustration is part of the overall treatment of the communist past" (1998:118, cf. Seleny, 2007:161), a treatment which overlooks that many dissidents and reformers came from within the communist party and paints a starkly black-and-white picture of the communist period.

On the other side are those politicians who reject this view as black-and-white. Not surprisingly, representatives of communist successor parties tend to reject anti-communism, as do people with a communist party history (10 to 20 per cent of the adult populations of East and Central European countries in 1989 were or had been members – Grzymała-Busse, 2002). But while it makes sense that the anti-communist narrative would not resonate with people with a past in the communist party, many former dissidents also reject this line of argument. Czech dissident-turned-president Václav Havel, for instance, had little time for the notion that responsibility for the communist system lay only with those who had held membership cards or who had been involved with the

secret police. As a result, opposition to the anti-communist narrative often comes from the very people that worked hardest to bring communism down.

Although this is a cleavage that, according to Letki (2002:529) “marks the politics of all East-Central European societies”, this debate attracts primarily elites and is not highly salient among the population at large. The same is true for the related debate over transitional justice: it is an elite affair. As Williams et al. (2005) and Szczerbiak (2002) stress, there is some popular support for transitional justice. Generally speaking, however, public opinion regarding the communist past in East and Central Europe is best described as ambivalent and occasionally nostalgic for the bygone days of ‘actually existing socialism’ (Ekman and Linde, 2005). Welsh stresses that ‘large segments of society hold a highly differentiated view of the communist period which has little in common with fervent anti-communism’ (Welsh, 1996: 423-4). Similarly, Nalepa finds no evidence that public demand drives the transitional justice agenda. She argues instead that that this policy agenda is supply-driven, and that the supply comes from strategic political parties (Nalepa, 2009:ch. 5).

There is broad support for two central components of Nalepa’s conclusion: transitional justice is the product of elites, and those elites act strategically.¹⁷ Indeed, several scholars have pointed out that while many proponents of prosecuting and lustrating former communists tout lofty ideals, their true goals are to sideline opponents and gain an electoral advantage. Kiss (2006) lists several possible goals, including diverting attention from other problems, embarrassing opponents in upcoming elections, undermining new coalitions by publishing details about members, and keeping coalition partners in check. Williams et al. (2005) show how political circumstances in East and Central Europe allowed parties (particularly on the right) in Poland, Hungary, and the Czech Republic to succeed in framing the issue of transitional justice to their advantage by stressing the continued presence of communists and secret service agents, keeping it on the

¹⁷ Horne (2009:350) objects to treating transitional justice in East and Central Europe as a part of ‘party politics’ but she does so on the basis of claims made by the very politicians introducing the legislation (she studies the passing of laws in Poland and Romania in 2006 in particular). Of course, these politicians have an interest in coating their initiatives in a thick layer of impartiality to maintain an image of legitimacy. In and of themselves, their claims as to what their legislation will achieve cannot provide us with much guidance as to the likely outcomes, yet Horne offers no actual evidence that those outcomes actually obtained.

political agenda, and using it as a rhetorical tool in the struggle for power. Szczerbiak (2002: 570) notes that the issue was ‘instrumentalized’ by political actors, becoming ‘entwined in the politics of the present’, while Ellis (1996:196) links the introduction and adoption or failure of lustration to ‘political partisanship’. Nedelsky (2009:38) places Czech transitional justice policies in the context of “ideological principles and the narrower concerns of power competition between former communists and their opposition”. Similarly, although they often refuse to attach a normative judgment to this finding, Nalepa (2009:233) and Appel (2005: 399) find that post-communist politicians have primarily been motivated by electoral success and political gain when it comes to implementing transitional justice. As an example, according to Nalepa (2009:213) “Adopting lustration was, therefore, a preemptive move [by communist successor parties in Hungary and Poland] to appease the median legislator in parliament with a moderate bill that this median preferred to the harsh proposal that would have been sponsored by anticommunists”.

In sum, the literature described in this section agrees that transitional justice is the product of elites acting strategically. Although the general view of elites dominating the transitional justice agenda is certainly plausible, this argument would benefit from a more specific account of who these elites are and what constitutes their interests.¹⁸ Typically, ‘elites’ are reduced to political parties, and what they stand to gain is often not clearly explicated. The politics of transitional justice is subsequently dismissed as ‘basically an elite power game’ (Holmes, 1994:35) and the secret service files as instruments in ‘political warfare’ (Von Beyme, 1996).

Many accounts do not explicate the rules of the game, or what informs the interests of the players, or what they stand to win. But most of the work on post-communist transitional justice assumes that the key actors are political parties, either working individually or in government coalitions. The central mechanism that shapes transitional justice, on this account, are the strategic interests of those parties. However, this partisan account does not survive sustained examination. To quickly reiterate, this partisan perspective on of transitional justice relies on at least one of two

¹⁸ The clear exception is Monika Nalepa’s *Skeletons in the Closet* (2009). In it, she formulates and tests clear hypotheses, explaining the timing and extent of transitional justice legislation on the basis of strategic behaviour of political elites.

conditions. First, the laws must include provisions that affect political actors in one way or another, either by preventing them from holding certain offices, or by disclosing adverse information about them. And second, a sufficient part of the electorate must care enough about those revelations for it to impact the popularity and electoral fortune of political actors – or at least, elites must have reason to believe that this is the case.

Upon closer inspection, neither condition is satisfied to the point that we would have to accept this partisan perspective on transitional justice. We have already seen that, across the post-communist region, electorates are more than happy to elect politicians with some type of communist blemish. Indeed, this chapter opened by describing the recent success of Andrej Babiš, currently the most popular politician in the Czech Republic in spite of tenacious allegations that he knowingly collaborated with the Czechoslovakian StB before 1989. Other examples abound. We have also seen evidence that voter demand is not what brings about transitional justice. Furthermore, analysis of the provisions of transitional justice legislation reveals that the legal effects – the way the provisions of a law constrain or empower citizens – are often overshadowed by the ideological components, the messages that laws send about the meaning of historical periods. These findings all undermine the partisan perspective on transitional justice, and raise the question what interests are behind transitional justice. This is where the policy entrepreneur comes in.

1.2 Policy Entrepreneurs

In contrast to the literature presented in the preceding section, which tends to present transitional justice as the domain of political parties, I argue that policy entrepreneurs are the main propelling force for transitional justice legislation. I define policy entrepreneurs as political actors who dedicate their professional life to achieving a narrowly targeted set of policy goals through the political system. The policy entrepreneur is strongly principled and often motivated by personal history. In legislation, policy entrepreneurs play a procedural role (initiator) and a substantive role (influence content and wording of legislation). Moreover, they are often involved in implementing legislation.

Although I am the first to introduce the policy entrepreneur as a pivotal figure in the politics of transitional justice, the concept has a long pedigree in political science. First introduced by Price

(1971) to describe congressional staffers with a propensity to work pro-actively, the concept was popularized by Kingdon (1984). Kingdon described policy entrepreneurs as “people willing to invest their resources in return for future policies they favor”, noting their ‘sheer persistence’ (p. 204) and their ‘solution-driven’ approach (p. 123). Writing in 2009, Mintrom and Norman see policy entrepreneurs as advocates who “distinguish themselves through their desire to significantly change things” (Mintrom and Norman, 2009:650).

Using the notion of the ‘entrepreneur’ as a political actor with something to sell has since become more widespread. For instance, De Vries et al. (2012) use the term ‘issue entrepreneur’ to describe politicians who seek to generate political competition around a new issue, one that they have an easier time controlling. Similarly, Finnemore and Sikkink stress the influence of ‘norm entrepreneurs’ in advocacy politics, whose work they describe as follows: “Norms do not appear out of thin air; they are actively built by agents having strong notions about appropriate or desirable behavior in their community” (Finnemore and Sikkink, 1998:896).

The common thread is that all of these works describe actors whose motivations depart from the conventional understanding of what drives politicians. Re-election is the classical motivator of political actors’ behaviour. Whether they look at individuals, or partisan politics, or governmental policy making, political scientists generally assume that actions are motivated by the need for political survival. In democracies, this motivator is the central mechanism ensuring the convergence of voters’ preferences and policy outcomes. However, although the wish to be re-elected is certainly common among political actors, it is not the only possible factor driving political agency. Policy entrepreneurs see party organizations primarily as convenient vehicles through which to promote their preferred policies and re-election is, at most, a means towards an end (indeed, some policy entrepreneurs never hold elected office themselves). The end, for the policy entrepreneur, is the realization of a certain, narrow set of policy goals. Policy entrepreneurs are individuals who are passionate about one specific policy area, and dedicate their professional careers to achieving a narrow set of goals within that policy area through the political system.

Policy entrepreneurs have a high level of expertise within their specific issue-areas,¹⁹ and they are typically well-embedded in broader, often transnational networks of experts. (Keck and Sikkink, 1998:31; Welsh, 2015). They share strong similarities with Bernhard and Kubik's 'mnemonic warriors'. In their *Twenty Years after Communism*, Bernhard and Kubik (2014) examine the politics of commemorating the communist past, and associate different memory regimes with the dominant role of different 'mnemonic actors'. One of those types is the 'mnemonic warrior', who they describe as actors that "espouse a single, unidirectional, mythologized vision of time. In this conception, the meaning of events is often determined by their relation to some 'paradise lost' or—negatively—an 'aberrant past'." (Bernhard and Kubik, 2014:13). This approach to history is what motivates the policy entrepreneur to invest a great deal of time and resources into asserting their position.

Arguing that policy entrepreneurs are the main drivers of post-communist transitional justice represents a departure from the literature presented in the previous section. The contribution to the literature in which this partisan perspective has been developed the most extensively is in Nalepa's *Skeletons in the Closet* (2009). In this book, Nalepa offers an explanation of the timing of lustration legislation. She notes that in Poland and Hungary, it had been the successor parties to the Communist regime which introduced lustration, apparently against their own interest, while the democratic reformers who brought down the communist system were not involved in this legislation. She argues (1) that reformers were not involved because their movements had been infiltrated by the communist secret service before 1989, and they feared exposure; (2) that successor parties were acting pro-actively, anticipating the electoral rise of right-wing parties that would not have skeletons in the closet, and were thus free to introduce harsher legislation. (Nalepa, 2009: Ch. 1).

The key components in Nalepa's account are parties, acting strategically, anticipating transitional justice legislation that might affect their reputation and electoral chances by influencing voters. In my dissertation, the starting point is that post-communist parties are not as involved in this

¹⁹ This expertise need not be exclusively of a scholarly nature; in some policy areas, family background and personal histories can form a source of both knowledge and inspiration for the policy entrepreneur.

legislation; that post-communist voters are not as passionate about the issue; and that post-communist transitional justice legislation does not affect parties quite as profoundly. Instead, my account of transitional justice (both causes and effects) hones in on the role of niche political actors, driven by ideology, who produce transitional justice legislation to promote their take on the past.

These policy entrepreneurs shape transitional justice in two distinct ways. First of all, they often take the initiative on legislation by lobbying for new bills or introducing them to the floor of parliament, sometimes even as opposition MPs. Governments often play a very limited role in passing transitional justice legislation, which also suggests that transitional justice is not the product of parties using the power of incumbency to implement transitional justice strategically. This practice diverges sharply from the standard operating procedure in parliamentary systems, where the legislative initiative lies squarely with the executive and parliamentary majorities generally serve as little more than a rubber stamp when it comes to implementing the government's agenda (see Kopecký, 2001 on parliaments in the Czech and Slovak Republics).

To be sure, policy entrepreneurs do not have the power to singlehandedly draft and pass legislation. In order to achieve that, broader political will and policy support needs to exist; policy entrepreneurs will be unsuccessful in an environment that is actively hostile to their demands. However, environments that range from indifferent to receptive can be conducive to policy entrepreneur success. Emphasis on the role of policy entrepreneurs, then, is not to deny or ignore the political contexts in which they act. But by itself, post-communist party competition is insufficient to produce the outcomes we observe. I argue that policy entrepreneurs are embedded in that context and rely on broader political support as they pursue their policy agenda – but it is the entrepreneurs who take the initiative and get the ball rolling. And it shows!

Second, not only do policy entrepreneurs champion transitional justice and initiate legislation, they also draft the proposals and play a key role in formulating the language of transitional justice laws. As a result, the rhetoric in transitional justice legislation often sharply departs from the precise regulatory language typically used in legislative texts. This is not simply a question of word choice; it deeply reflects and affects the symbolic and legal impact of the legislation.

In the case of transitional justice, policy entrepreneurs embed their highly normative understandings of the past into the legislative texts. Of course, by definition all transitional justice regards the past it addresses as problematic. However, when policy entrepreneurs craft transitional justice policy, they are primarily interested in putting forward their own interpretations of the past, views that generally are not part of the mainstream. This is consistent with the nature of the policy entrepreneurs, who have strong opinions about the issue to which they dedicate their careers. They pursue their goals uncompromisingly, even relentlessly. That means that transitional justice laws produced by policy entrepreneurs are not carefully crafted compromises that rest on broad, mainstream support. Instead, the non-consensus normative interpretations of the past embedded in the language of the laws reflect minority viewpoints.

As a result, transitional justice laws should be expected to create greater political contestation over the communist past. They emerge from a context in which the past is already a matter of elite controversy, and policy entrepreneurs take advantage of this to further their own agenda. And when they get the chance, they do so in a manner that reflects their dedication to principle, one that pulls no punches. Subsequent chapters will offer empirical support for the claim that, under the influence of policy entrepreneurs, transitional justice legislation leads to greater political contestation over the past. But what exactly do I mean by political contestation, and how exactly do policy entrepreneurs bring it about?

1.3 Paths to Contestation: The Impact of Ideology

I define political contestation as any disagreement among political actors, expressed through active debate that eschews compromise or consensus building. Disagreement lies at the heart of this definition – without opposing views there cannot be contestation. But contestation has an important behavioral component as well: privately held views must be expressed openly in order for there to be contestation. In democratic society, this behaviour is supposed to take the form of political debate and contentious politics, but the behavioral parts of contestation can also include violence. Lastly, in order for a political interaction to constitute contestation, those involved need to be primarily oriented towards expressing their views, and eschew consensus building. Political interaction that seeks consensus-building and compromise is not contestation but negotiation; contestation, at its core, is an argument, a fight.

Transitional justice leads to contestation in three separate ways, all of which involve the ideological message embedded in the legislation. The ‘ideological message’ refers to a non-consensus interpretation of the past embedded in the law that turns the law into a political symbol. This ideological mechanism is more about the spirit of the law than the letter: it has more to do with what a law represents than with what it requires. For policy entrepreneurs, the laws are symbols of anti-communism, a way to entrench their anti-communist ideology in legislation. Others have also noted this function of transitional justice legislation. Roman David (2011:60) distinguishes between laws on the basis of the (flexible or rigid) ‘perception of wrong-doers’ that they encode, while Sunstein (1996) has stressed the ‘expressive function’ of transitional justice. This central element of transitional justice legislation reflects the influence of principled policy entrepreneurs, whose key priority in promoting transitional justice legislation is a staunch rejection of the past. Virtually all transitional justice legislation has their anti-communist ideology prominently embedded in its preambles and other declarations. Since this ideology is not broadly shared, this ideological language leads to contestation, provoking opposition in particular among those who attach importance to how the communist past is commemorated. Given the staying power of formal legislation, the ensuing contestation is not confined to the immediate aftermath of the legislative process but carries into the long term, spilling over into a broader discussion of the communist past.

Thus, the first ‘path to contestation’ leads directly from the ideological components of transitional justice legislation to a response from those who do not share the policy entrepreneurs take on the past. This contestation does not involve actual implementation, it is purely about the spirit of the law. This is not to say that implementation has no consequences for political debate: how provisions are put into practice can also lead to contestation – but the ideological sauce in which the law is covered exerts a powerful influence here, both by influencing *exactly how* legislation is implemented, and by influencing whether the implementation of legislation is perceived as biased or not. Two transitional justice practices that can reinforce contestation over the communist past are (1) releasing information from the files and (2) the creation of a memory institute. Some transitional justice makes information available from the secret service archives. Some transitional justice legislation does this explicitly (declassifying the files). Other legislation relies on archival

data only to make formal decisions (e.g., lustration), but this can also lead to information emerging (for instance when a decision is challenged or when information is leaked). The second practice that can reinforce contestation is the creation of dedicated state organizations tasked with commemoration, writ large, of the communist past. These so-called ‘memory institutes’ have been set up in countries across post-communist Europe and have been put in charge of implementing transitional justice legislation, carrying out historical research, educating the public on human rights abuse, and making archival data from the previous regime available.

In the absence of policy entrepreneurs and non-consensus ideological content in the legislation, provisions like file access and lustration would produce much less political contestation. But given the context in which these provisions appear, they too can become a source of dispute, especially when policy entrepreneurs are also involved in the implementation of their laws. For instance, memory institutes can contribute to contestation when they serve as a platform for policy entrepreneurs to promote their ideology. Policy entrepreneurs can use the organizational resources of memory institutes (finances, media access) to give greater voice to a specific interpretation of the recent past (e.g., radical anti-communism), seeking to entrench these views in the public narrative. This tendency can be reinforced by the self-perpetuating logic that can exist in bureaucracies. Rather than neutral mechanisms for implementing policy, bureaucratic organizations develop an interest for organizational survival and will devote energy towards that goal, leading them to behaviour that underlines the *raison d’etre* of that organization (Jepperson, 1991).

A similar mechanism connects file declassification to contestation. Simply opening up an archive may not provoke debate, and even exposing someone for having collaborated with the previous regime need not be the subject of political contestation if the evidence is incontrovertible and the source is indubitable. This may change, however, if the legislation that facilitated access to the files has an ideological ring to it, or if the implementation of file access is provided by a memory institute that is perceived to have a political agenda. Media coverage, which may be encouraged by memory institutes, plays a key role in this process: the greater the coverage, the more likely it allegations will be disputed and debated. The nature of media coverage matters as well, with more sensationalist, less nuanced reporting more likely to lead to controversy. This is the core of Roman

David's argument in *Lustration and Transitional Justice*. David disagrees with those who suggest that regulating the files will bring stability and end the politicization of the communist past. Much to the contrary, David argues that some transitional justice creates a demand for more transitional justice as it reinforces the notion that communists are still a force to be reckoned with (David, 2011: 136). In David's words: "[i]t is apparent that the lustration systems fostered, if not created, divergent recollections about the past within each country and that different memories of the past in turn affected the existence of each lustration system" (2011: 160).

Although the three 'paths to contestation' (ideology, organization, and information) are conceptually distinct, they combine in practice to reinforce each other. The highest levels of contestation occur when all three mechanisms combine: ideological legislation that sets up an organization which serves as a platform for that ideology, and that is also tasked with releasing information from the archives. This accurately describes the memory institutes in Eastern and Central Europe.

To reiterate: the ideological significance of transitional justice legislation provokes contestation directly and indirectly, affecting the impact of provisions such as file access and the creation of a memory institutes. The contestation brought on by transitional justice legislation is primarily the result of ideological components in the laws and their implementation. Meanwhile, the strictly regulatory components of legislation (the letter of the law), taken by themselves, are not the source of a great deal of contestation. Opponents do not take issue with these elements of transitional justice as much as they do with ideological components. In this respect, they mirror the anti-communist policy entrepreneurs, who also value the spirit of a law over its letter.

These 'paths to contestation' are consistent with what the post-communist political environment tells us about the effects that we should expect from transitional justice laws. In a context in which consensus over the past is absent, we should expect transitional justice legislation to perpetuate and reinforce the cleavages that exist already and that shaped it. They are also consistent with the notion that policy entrepreneurs, rather than governments, bureaucracies, political parties, or public opinion, are the driving force behind transitional justice legislation in post-communist Europe. This argument may also corroborate the claims made in some of the literature discussed

above. For instance, evidence for increased contestation as a result of transitional justice can help explain the tentative link that Horne (2014b) found between lustration and political trust. Such evidence may contradict claims that transitional justice can contribute to reconciliation, instead creating the potential for deepening and institutionalizing divisions. Moreover, evidence for this account of transitional justice effects would demonstrate that there may be little to support perspectives that present transitional justice as primarily a partisan strategy or as a tool for democratizers. What we know about publics (mostly ambivalent) and parties (self-interested) does not match up with these perspectives on how transitional justice laws come about and on the effects that they are supposed to produce. Only by introducing the concept of policy entrepreneurs can we explain the content of transitional justice laws and the subsequent contestation that they cause.

1.4 Hypotheses and Methodology

At this point, it is useful to summarize the preceding argument by stating clearly the hypotheses that this dissertation will test. Following that, this section will outline the methodology employed in this analysis to test those hypotheses.

Hypotheses

On the basis of the discussion thus far, I derive three research hypotheses. Hypotheses 1 and 2 are:

- 1) Policy entrepreneurs are the primary force behind the adoption of transitional justice laws.
- 2) Transitional justice laws, as written and promoted by policy entrepreneurs, increase the level of political contestation over the past.

This pair of hypotheses reflects the central argument in this dissertation: transitional justice produces greater contestation, and it does so because of the work of policy entrepreneurs. As the discussion above made clear, I argue that policy entrepreneurs introduce ideological components into transitional justice legislation that reinforce contestation over the past. Ideology reinforces contestation both directly (as opponents of legislation take issue with non-consensus interpretations of the past embedded in the text of the law) and indirectly (by creating perceptions of bias in the implementation of a law's provisions). By themselves, the regulatory components of transitional justice (the provisions that constrain or empower citizen behaviour) need not produce

contestation. However, when implemented by policy entrepreneurs, these components *can* lead to contestation. This anticipated interaction effect is captured in the third hypothesis:

- 3) Transitional justice laws, as written and promoted by policy entrepreneurs, increase contestation especially if they (1) release information from the secret service files and/or (2) create a dedicated bureaucratic agency ('memory institute') for implementation.

This last hypothesis reflects the notion that not all transitional justice legislation is created equal – the extent of the impact that they have on contestation depends on the exact provisions.

Case Selection

To test these hypotheses, I consider the impact of transitional justice legislation in the Czech Republic and Slovakia. Existing as Czechoslovakia between 1918 and 1993, the countries share the same legacy of human rights abuse at the hands of the communist secret service. The StB employed thousands of employees and informers to keep tabs on the population.²⁰ Over the course of four decades of KSČ rule, colossal amounts of files were collected and stored. However, once the two countries went their separate way as of January 1, 1993, the politics of both countries diverged sharply. For instance, while the Czech Republic was a front-runner in consolidating liberal democracy and a market economy for most of the 1990s, Slovakia lagged behind, seeing its entrance to NATO and the EU jeopardized (Vachudova, 2005). Former communist party members have been far more influential in Slovakia than in the neighboring Czech Republic (Kitschelt, 1995). Under these conditions, the Czech Republic has adopted a broader range of transitional justice measures than Slovakia has (Nedelsky, 2004).

Importantly, however, both countries have adopted legislation to address the legacy of the communist secret service. In addition, these laws are comparable: the 2002 Slovakian law based its file access portion on legislation created in the Czech Republic. The 2007 Czech law that introduced a Memory Institute, in turn, was based on the 2002 Slovakian law. In addition to

²⁰ This organization was known as *Státní Bezpečnost*, StB, in Czech, or *Štátna Bezpečnosť*, ŠtB, in Slovakia. For simplicity's sake, I will be using the abbreviation StB throughout, regardless of context.

lawmakers copying each other's work, there are also linkages in terms of the personnel working in the transitional justice bureaucracies in both countries. The primary difference between the two countries is not *how* they addressed their shared communist past, but *how often*. This setting – similar laws addressing a similar legacy, adopted and implemented in dissimilar political climates – means that this pair of cases presents a robust test of the hypotheses. If transitional justice contributes to political contestation in these different settings, such a finding is less likely to be due to local idiosyncrasies and may be generalized more readily.

In addition to between-case comparison, these cases also lend themselves to within-case comparison over time, offering an additional source for inferential leverage. Starting from 1989, this dissertation encompasses a quarter century of post-communist politics in both countries. This long time range covers all relevant transitional justice legislation in both countries, and makes it possible to examine both the immediate impact and the long-term effects of these policies. In addition, studying an extended time period permits examination of the creation and functioning of transitional justice policy under different political conditions (e.g., changes in incumbent parties). This makes it possible to test alternative explanations focusing on party politics as well.

Data Collection

This dissertation tests the proposed hypotheses in different, mutually reinforcing ways, using data from a broad range of sources. Over 70 elite interviews and hundreds of news reports, minutes from parliamentary debates, legal texts, and other original language documents underpin a reconstruction of transitional justice and its impact. Meanwhile, over 2,000 front pages, collected from two Czech and two Slovakian newspapers on the basis of a randomized process, are used to construct a database allowing a statistical test of the hypotheses.

I conducted elite interviews between January and May 2013. Respondents for the interviews were selected for their involvement in the creation of transitional justice legislation and their role in the debate over the communist past. This group of political actors include several dozen former and current members of Parliament and the Czech Senate, a number of respondents that served as cabinet ministers, and three former Prime Ministers. Respondents from across the political spectrum were selected in both countries, including a former MP for the Czech successor party,

the Communist Party of Bohemia and Moravia (*Komunistická Strana Čech a Moravy*, KSČM) and representatives of defunct parties such as the Freedom Union (*Unie Svobody*, US) in the Czech Republic. In addition, the list of political actors includes civil society activists involved in political action regarding the communist past. In particular, two respondents, one Czech and one Slovak, who had been imprisoned for long stretches of time during the 1950s agreed to an interview. Both are active in the Confederation for Political Prisoners (KPV) in their country. The interviews with these political actors provide excellent insights into the parliamentary process at the basis of transitional justice legislation (both successful and unsuccessful), respondents' views on the functioning of current legislation (and the need for change), as well as their general views on the communist past in the Czech and Slovak Republics.

In addition to these political actors, a number of former and current memory institute staff were interviewed. Their responses offer further insight on the implementation of transitional justice and the motivations of the people involved. These interviews concentrated on the functioning of memory institutes, commenting in particular on conflicts taking place inside the institutes as well as political debate regarding the institutes, while also discussing links with news media. This issue was also discussed in interviews with the third group of respondents: political journalists (primarily print, but also a few radio and television journalists). These interviews covered the role that the communist past generally and the legacy of the secret service in particular plays in their reporting, especially given transitional justice legislation that provides access to secret service archives. These interviews focused on how journalists see the newsworthiness of the issue and how they treat revelations regarding public figures' involvement with the communist regime. For example, I interviewed the authors of the 2008 article alleging that Milan Kundera had provided information leading to the arrest and decade-long imprisonment of an anti-regime agent in 1950.

These semi-structured interviews, which lasted between thirty minutes and two hours, were conducted in Czech and primarily took place in respondents' offices or in public places such as coffee shops. The response to interview requests was high as many respondents were eager to

discuss the issue and to introduce connections from their network to the interviewer.²¹ However, respondents from some groups were more difficult to approach (for instance, younger politicians with no direct link to the issue, and journalists working for more progressive outlets such as *Právo* in the Czech Republic) and were not included. This omission does not bias the results of this analysis, however, as these respondents are not crucial to the phenomenon that this dissertation investigates.

Table 1.1 Overview of Elite Interviews

Category	Number of Interviews: Czech Republic	Number of Interviews: Slovakia
Political Actors	23	21
Officials/Civil Servants	6	7
Journalists	10	5
Total	39	33

Second, a broad range of historical documents complement the data from the interviews to reconstruct the legislative process that leads to transitional justice legislation as well as any contestation that follows. This includes the analysis of parliamentary debates, proposed bills, and adopted legislation. In addition, I study media reports covering key events, including legislation being approved by parliament, conflicts regarding the implementation of transitional justice, and controversies concerning the public revelation of secret service collaboration or other forms of regime complicity. Lastly, I accessed party manifestos and public opinion surveys to present an additional take on perceptions of the communist past in Czech and Slovak society as well as the role that the issue plays in the politics of both countries.

Third, I used systematically collected newspaper coverage to conduct longitudinal statistical analysis examining the relationship between transitional justice legislation and the media salience of the communist-era secret service. Specifically, I constructed a time-series-cross-sectional (TSCS) regression model to test hypotheses 2 and 3, controlling for a number of additional factors of potential importance. Salience, the dependent variable in this analysis, serves as a proxy for

²¹ It is not possible to calculate a precise response rate given that it is not certain how many requests reached the potential respondent. However, I estimate that over fifty per cent of those approached ultimately agreed to an interview.

broader contestation over the communist past. It is measured by observing the quarterly percentage of front pages that mentioned the communist-era secret service, in two newspapers for each country. These mainstream newspapers, the two largest in both countries (*Lidové Noviny* and *MF Dnes* in the Czech Republic, *Pravda* and *SME* in Slovakia), were published continuously for the entire research period (1990-2012), with the exception of *SME* which did not appear until 1993. Restricting the analysis to front pages allowed me to focus on the most important news stories while ignoring less relevant coverage buried deep within the newspaper. This decision also facilitated the time-consuming process of data collection. For the 1990s, data was available only on microfilm or in hard copy, and was inspected visually. For this period, the analysis was restricted to sixty front pages per year, resulting in a total of 2,290 front page observations from thirty-eight years of coverage distributed over the four different publications. These front pages were selected on the basis of a randomized process which involved selecting a start-date in early 1990 at random and sampling every sixth issue following that date. For the period starting around the year 2000, data was collected from online resources, allowing the full population of front page coverage to be analyzed.

The statistical technique took into account the clustered nature of the dataset, which is composed of repeated measurements over time for a number of different units. This type of dataset, which allows researchers to simultaneously assess effects over time and between different cross-sections (the newspapers), is unsuitable for regular regression analysis (OLS) because it violates the assumption of independence of observations. I addressed this issue by adding a number of controls (e.g., a lagged dependent variable) to the regression model and by calculating panel-corrected standard errors (PCSEs). The regression model also includes a number of substantive variables (e.g., level of democracy, political position of the incumbent government, and a dummy coded 1 for quarters during which an election was held) that control for possible alternative explanations.

On the basis of these different data sources, this mixed methodological framework makes it possible to conduct more than one test for the hypotheses in this analysis. The great benefit of this decision is that the different tests cross-validate each other, allowing me to draw conclusions with greater confidence. Also, by covering an extended time period and including explicit controls, both the quantitative and the qualitative components of this analysis provide leverage to test and

confirm or disconfirm alternative hypotheses. Table 1.2 provides an overview of the different ways in which this analysis tests my three hypotheses.

The qualitative analysis is the backbone of this dissertation, providing a comprehensive analysis of transitional justice legislation in both countries (including the Czechoslovakian period up to 1993). It examines all relevant aspects of this legislation in detail, including early drafts, unsuccessful bills, parliamentary debates, the resulting laws, their implementation, and the way political actors, journalists, and others react to both ideological and regulatory components in the legislation. The different data sources also cross-validate each other, with archival documents confirming interview comments and interviews with journalists corroborating quantitative findings on the salience of the communist past in media coverage.

Table 1.2 Hypotheses Testing Overview

Hypothesis	Process Tracing Analysis	Large-N Media Coverage Analysis
Policy entrepreneurs are the primary force behind the adoption of transitional justice laws.	Hypothesis tested by examining the parliamentary process that produced transitional justice in both countries, as well as the subsequent implementation of the laws.	n/a
Transitional justice laws, as written and promoted by policy entrepreneurs, increase the level of political contestation over the past.	Hypothesis tested by investigating the extent and nature of opposition to transitional justice legislation itself and its implementation.	Hypothesis tested by estimating the effects of introducing transitional justice on contestation levels measured over time
Transitional justice laws, as written and promoted by policy entrepreneurs, increase contestation especially if they (1) release information and/or (2) create a dedicated bureaucratic agency for implementation	Hypothesis tested by considering the impact of these two legal mechanisms, in interaction with the ideological perspective already embedded in the legislation.	Hypothesis tested by comparing effect sizes of transitional justice laws, which match one or both conditions in the hypothesis, or neither.

Meanwhile, the media analysis serves primarily as a test for the hypothesis that transitional justice contributes to political contestation over the past that it addresses. Because the statistical technique

estimates effects for individual pieces of legislation in each country, this analysis can also confirm or disprove the third hypothesis, which anticipates different effect sizes for different types of laws in the two countries.

1.5 Plan of the Dissertation

In closing, this chapter has presented an overview of the transitional justice literature, demonstrating that this literature falls short when it comes to understanding the effects of transitional justice. In response to this gap, I argue that we should expect transitional justice legislation to increase political contestation over the past because it is the product of policy entrepreneurs, rather than conventional politics. Policy entrepreneurs – individuals who dedicate their professional careers to achieving a narrowly defined policy agenda – use transitional justice legislation to institutionalize their non-consensus interpretations of the past.

Table 1.3 Overview of Dissertation Argument

The communist past and transitional justice:

- are the subject of elite-level debate.
- remain visible due to scandals.
- but are not politically salient to voters or to how parties appeal to voters.

Instead, policy entrepreneurs:

- draft and design transitional justice legislation.
- take the initiative to introduce legislation in parliament.
- remain involved in the implementation.

The legislation that they produce:

- has explicit ideological components reflecting the policy entrepreneurs' anti-communism.
- reinforces contestation primarily because of the ideological language.
- includes limited regulatory components, which by themselves do not reinforce contestation.

In this ideological context, political contestation is further reinforced when policy entrepreneurs:

- implement laws that release information from the secret service archives.
- lead the formal organizations (memory institutes) that implement transitional justice.
- encounter an explicit and sophisticated rejection of their anti-communism.

These ideological components of the laws, in turn, are primarily responsible for reinforcing contestation over the past. They increase contestation directly (simply by virtue of being part of legislative language) and indirectly (by creating the impression of bias in the implementation of

transitional justice legislation). Table 1.3 provides an overview, which will return as a check-list in the country chapters and in the conclusion.

The remainder of this dissertation will test these arguments on the basis of data from Slovakia and the Czech Republic. First of all, newspaper coverage will be used to test the central assertion in this dissertation: that transitional justice legislation increases contestation over the past. Chapter 2 presents the findings from this statistical analysis. On that basis, the qualitative section of this dissertation (Chapters 3 through 5) dissects this relationship, answering the ‘why’ question by tracing the causal mechanism connecting transitional justice legislation to political contestation. Chapter 3 sets the stage with an overview of communism in Czechoslovakia (1948-1989) and the first transitional justice laws, adopted before the Czech-Slovak split on January 1, 1993. Chapters 4 (Czech Republic) and 5 (Slovakia) apply the argument to the two cases, finding strong evidence for the influence of policy entrepreneurs in shaping transitional justice laws, and for the increased political contestation that those laws produce. Finally, Chapter 6 concludes with a broader discussion of the results and their implications for transitional justice policy and for post-communist politics in East and Central Europe.

CHAPTER TWO – Salience of the Communist Past in Czech and Slovak Newspaper Coverage, 1990-2012

Introduction

This chapter tests the central hypothesis in this dissertation, which is that transitional justice contributes to greater political contestation over the past. To reiterate, the central interest in this dissertation is to link transitional justice legislation to contestation over the communist past in general and the legacy of the communist-era secret service in particular. One of the easiest ways to measure political contestation over an issue is to see how frequently it ends up on the front page of leading newspapers. This chapter presents those data, providing evidence in support of the hypothesis that transitional justice produces greater contestation over the communist past. In addition, it considers conditions that enhance this basic effect of transitional justice on political contestation, providing tentative support for the two additional hypotheses offered in Chapter 1. First, by comparing the effects of different types of transitional justice, this analysis suggests that transitional justice increases contestation especially when it creates a so-called ‘memory institute’ and/or when it facilitates access to secret services files. This confirms the third hypothesis in this dissertation.

2.1 Data Collection

Analyzing newspaper coverage presents clear advantages in terms of access to the data – more readily analyzed than spoken word, for instance – and comparability. Systematic content analysis offers a way to create a data series going back to 1990 that can map in a consistent manner the ascent and decline of political issues. Restricting my analysis to news outlets that cover primarily political and economic news allows me to interpret the coverage that these newspapers present as an indicator of the ongoing political debate. As such, newspaper coverage represents an excellent way of assessing some of the empirical, observable implications of the hypotheses presented in the Chapter 1. Moreover, it is a source that elites pay attention to – and given that the politics of transitional justice is understood in the literature as an elite affair, analyzing broadsheet newspapers that cover political news is a natural choice. In addition, looking specifically at

coverage in politically oriented newspapers allows me to focus on mentions of the communist past that occur in a context of political contestation, as opposed to a potentially more a-political, more purely commemorative frame. Additional research design choices (e.g., search term dictionary, data unit selection) intended to undergird the measurement validity of this analysis are discussed below (cf. Adcock and Collier, 2001).

Data for this analysis is collected from four newspapers, two each from the Czech Republic (*Lidové Noviny* and *Mladá Fronta Dnes*) and from Slovakia (*Pravda* and *SME*). These newspapers are the largest non-tabloid newspapers in their respective countries. As such, they are close to the mainstream of the Czech and Slovak media landscape.²²

In the Czech Republic, *Lidové Noviny* (‘People’s Newspaper’) has a long tradition going back to the 19th century. Banned under communist times, it resumed publication in the late 1980s (cf. Žantovský, 2014:274) and swiftly became a prominent outlet. *Mladá Fronta* (‘Young Front’), meanwhile, was originally the outlet of the Socialist Youth Union (*Socialistická Svaz Mladěže*, SSM) but shed that legacy after 1990. This shift is reflected in the slight title change: *Mladá Fronta* became *MF Dnes* (‘MF Today’). During the 1990s, both newspapers came under the ownership of the same publisher, and the two outlets are similar in style and outlook. Politically speaking, both fall on the centre-right, although neither is an outright party mouthpiece by any stretch of the imagination.²³

In Slovakia, *Pravda* (‘Truth’) is the largest newspaper. Originally the voice of the Slovakian Communist Party (*Komunistická Strana Slovenska*, KSS), the paper continues to be politically on

²² Audit Bureau of Circulation Czech Republic, available at: <http://www.abccr.cz/overovana-data/periodicky-tisk/>, accessed July 25, 2015; Audit Bureau of Slovakia, available at: <http://www.abcsr.sk/>, accessed July 25, 2015. For further details on the editorial policies of these outlets, consult Chapters 4 and 5 which report on the interviews I conducted with numerous journalists and editors.

²³ Including a more left-wing newspaper would have been of interest, but the key candidate (*Právo* [Right], originally *Rudé Právo* [Red Right], the official outlet of the KSČ Central Committee) reaches a smaller readership than either *Lidové Noviny* or *MF DNES*. Moreover, on a more practical note, access (archival or online) to this outlet is severely restricted.

the left. This has typically meant that *Pravda* is more supportive of politicians that are broadly speaking on the left such as Mečiar and his HZDS during the 1990s, and Fico's SMER-SD after 2002.²⁴ *SME* ('We Are'), meanwhile, came about in 1993 when it broke away from *Smena* ('Change') in response to what it perceived as interference on the part of the Mečiar government. *SME* came into conflict with Mečiar's government on several additional occasions until Mečiar left office in 1998. Politically, it remains on the right, and has offered severe criticism of the Fico-led social democratic governments (2006-2010, 2012-present).

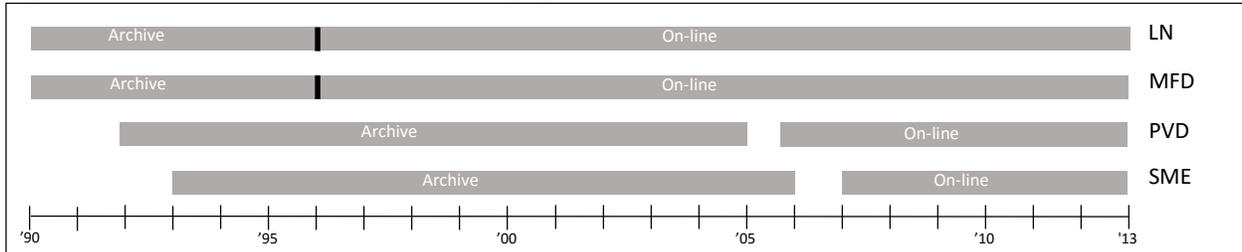
The political climate in which these four newspapers are embedded (described in Chapter 1) suggests that the Czech outlets will likely pay greater attention to the communist past than their Slovakian counterparts. This anticipated difference is likely generated at least in part by the fact that the Czech journalistic mainstream skews more to the right, whereas *Pravda*, Slovakia's largest broadsheet tends left. The drive to report on the communist legacy and ways to address it is more frequently found on the right, but while those on the left might not agree, this does not produce the same levels of output. Instead, the outcome is more frequently for the left to ignore the issue altogether, rather than to write rejoinders to right-wing invectives. To be sure, this is not always the case. As an example, Poland's *Gazeta Wyborcza* opposes the Polish anti-communist transitional justice laws and its editor Adam Michnik has spoken out against Polish transitional justice on many occasions (e.g., Michnik and Havel, 1993). However, *Pravda* will likely not fit this pattern, given that Michnik's roots are in the dissident movement, whereas *Pravda* carries the legacy of being the former official Communist Party outlet in Slovakia. The impulse to set the record straight on communism is greater for dissidents than it is for former communists.

Data from these newspapers were collected in one of two ways. For the most recent years, on-line databases were accessible for all four newspapers (*Lidové Noviny* and *MF Dnes* from 1996 onwards, *Pravda* from 2005 onwards, and *SME* from 2007 onwards). For most of the 1990s and early 2000s, this resource does not exist and data collection relied on visiting archives and either scanning micro-film or photographing physical copies of the newspapers. To focus on the most important news of the day while avoiding the less relevant stories buried inside (and at the same

²⁴ For a more in-depth overview of Slovakia's post-independence political landscape, see Chapter 5.

time, to facilitate the time-consuming process of data collection and analysis), the analysis of newspaper coverage was restricted to front pages. In doing so, I employ a common tactic in media content analysis (see Lacy et al., 2001, for examples) that permits researchers to control for changes in newspaper length.²⁵ For the later years that have online sources available, analysis was restricted to front pages in order to make measurements from both data series commensurable.

Figure 2.1 Data Sources for Four Newspapers



To further speed up collection and analysis of the earlier newspaper coverage, a random sample of approximately 60 front pages per year was drawn.²⁶ To draw this sample, I relied on a systematic sampling technique, selecting at random a starting point during the first week of 1990, and selecting every sixth day after that (see: Krippendorff, 2013:116). Applying a six-day period generates a ‘constructed week’ in which each weekday (except Sunday) is represented in the sample (Lacy et al., 2001; Riffe et al., 1993).²⁷ This method produced a total of 2,290 front page observations from 38 years of coverage distributed over four different publications. In the case of the Slovakian sources, narrow gaps separate the period covered by archival data from the period for which online data is available. For those hiatus periods, salience scores were interpolated by taking mean scores for adjacent periods.

²⁵ In the early 1990s, newspapers in East and Central Europe frequently consisted of no more than a dozen pages; in later years, publishers were less constrained and issues were up to five times longer.

²⁶ Regrettably, the image quality of archival data did not permit automatic text recognition, necessitating visual inspection and manual coding of a smaller sample of all newspaper coverage.

²⁷ When Sundays were sampled, I selected an adjacent front page, alternating between Saturday and Monday. The slight overrepresentation of those weekdays in the sample does not affect the results as instances of front pages mentioning the communist past occur equally throughout the week.

With data collected, the analysis consisted of a simple word count, counting strictly mentions of the Czechoslovakian communist-era secret service.²⁸ This is where the impact of transitional justice laws is to be expected, since the laws that are the subject of this study are selected specifically because they target this particular element of the communist legacy. While a more inclusive set of search terms would allow us to more broadly gauge discussions over the communist past, it would also make the search results much less accurate. As an example, the search term ‘communist’ would produce many hits referring to current Czech politics, in which a communist party remains active. Similarly, looking for words commonly but not exclusively associated with the secret service (for instance, collaborator, snitch, or agent) would produce many unrelated finds. A positive side-effect of visually inspecting scans or photographs of well over 2,000 front pages is that it permits the researcher to get a sense of the accuracy of the measurement tool being used. These numbers are presented below.

Table 2.1 Reliability of Search Terms (Front Pages with/without Mention)

	Observed: Mention	Observed: No Mention
Actual: Mention	175	44
Actual: No Mention	5	2066
Misclassified	2.78%	2.08%

Table 2.1 shows that 2241 out of 2290 front pages (98 per cent) were classified correctly. This indicates that this measurement tool is highly accurate, capturing the vast majority of newspaper articles addressing the issue, without capturing a great number of false positives. A minor exception is that Czech and Slovak media will on occasion refer to the German *Stasi* or the Romanian *Securitate* generically as *státní bezpečnost*, since that is what *Stasi* and *Securitate* translate to in Czech and Slovak. In further analysis, those five observations were not counted as mentions of the StB. The vast majority of the errors were false negatives, which suggests that the measurement tool used is conservative and errs on the side of caution, underestimating rather than overestimating mentions of the communist secret service. This raises the standard for accepting

²⁸ To be exact, the search term includes the abbreviations the full declension of *Státní Bezpečnost*, in Czech, or *Štátna Bezpečnosť*, in Slovakian, along with the abbreviations StB (Czech) and ŠtB (Slovakian). In addition, it includes the full declension of *estébák* (in Czech) and *eštebák* (in Slovakian), the noun derived from StB/ŠtB denoting an individual working for or collaborating with the secret police.

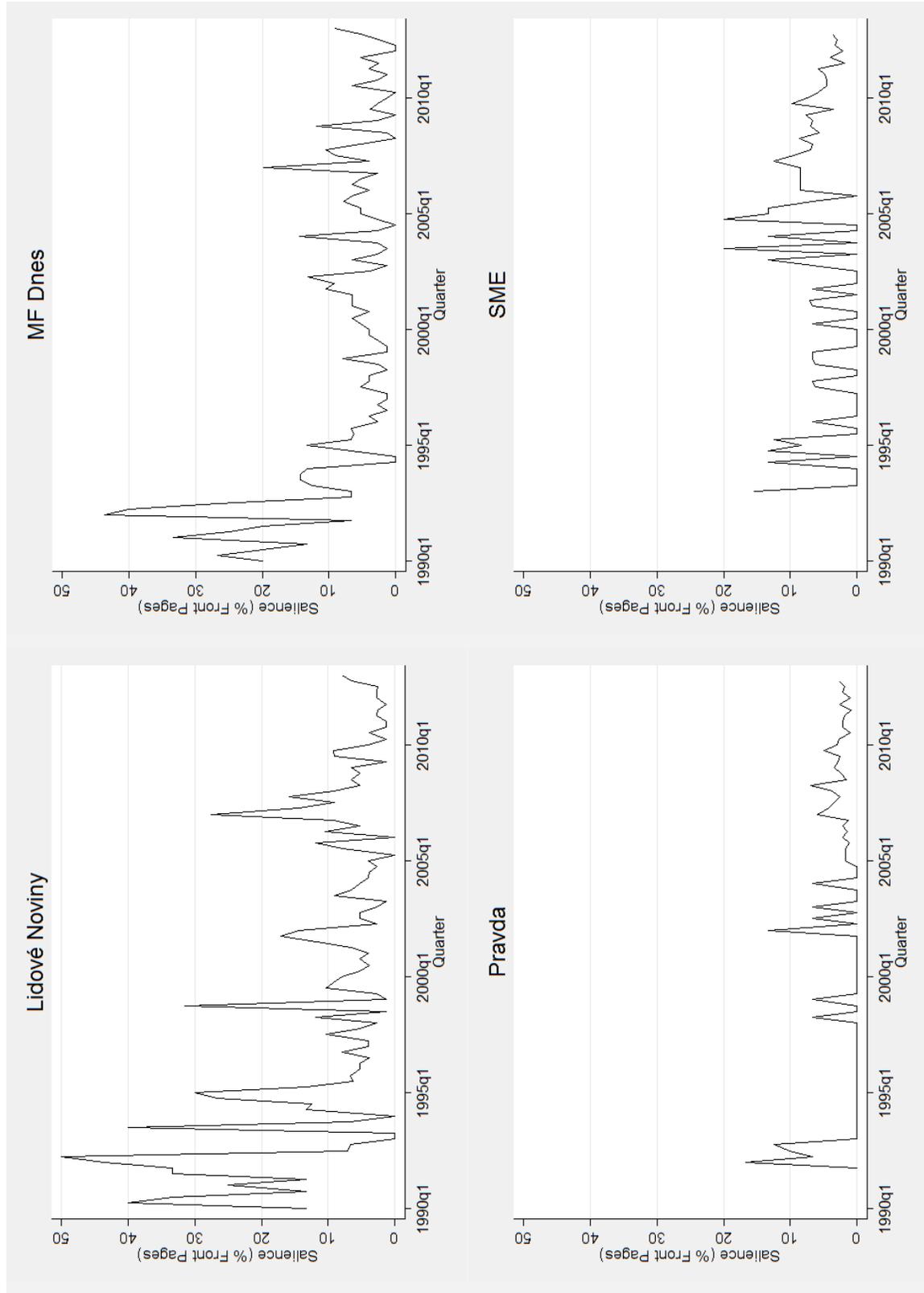
the hypotheses. These numbers are based on the front pages that were sampled, scanned or photographed, and visually expected, but they provide confidence that the coverage collected electronically is reliable as well.

By merging the sampled data collected from scans and photographs with the on-line data, I construct a full time series for the 1990-2012 period for both Czech newspapers. For the Slovakian outlets, data start a little later: in 1991 for *Pravda*, due to data unavailability; in 1993 for *SME*, as a result of the fact that the newspaper did not exist before then. For use in further analysis, salience data are aggregated and presented at the quarter level as the percentage of front pages mentioning at least one of the search terms. This decision strikes a balance between a higher number of observations than year-level salience, on the one hand, and the need to avoid over-inflating the number of observations by simply repeating the same observation month after month or week after week. An additional consideration is that data for many of the independent variables (e.g., level of democracy) are not available at the quarter level, let alone the month level. To be sure, the results in this analysis are not themselves the product of over-inflation; conducting the statistical analysis with year-level observations produces similar results throughout.

For the sampled front pages, the quarter-level statistic is based on around 15 observations. For the data collected from on-line data bases, page number information (i.e., on which page did the article appear in the print edition) is available for the Czech outlets but not the Slovakian outlets. As a result, Czech data collected on-line reflect accurate information of the number of front page articles, whereas for the Slovakian data I need to assume that in one eighth of all coverage is on the front page. This proportion is based on the Czech data, which typically sees 10 to 15 per cent of all articles appear on the first page.²⁹

²⁹ Regression coefficients and their standard errors presented below do not change appreciably when I implement assumptions that the proportion of newspaper articles published on the front page is 10 per cent or 15 per cent of the total number of articles.

Figure 2.2 Saliency of the Communist Past in Two Czech and Two Slovakian Newspapers



Note: Y-axes represent the percentage of front pages that contained one or mentions of the search terms on a quarterly basis.

2.2 Salience over Time

Quarterly salience levels for the four newspapers – measured as the percentage of front pages that contains one or more of the search terms – are presented in Figure 2.2 above. The data suggest two main conclusions. First, over time, salience of the communist past declines sharply as of the mid 1990s – but after that, levels of salience remain more stable and even exhibit signs of resurgence. Second, salience varies from one newspaper to another, with the Czech outlets paying more attention to the issue than their Slovakian counterparts, and the more right wing outlets (*MF Dnes*, *Lidové Noviny*, *SME*) covering the issue more frequently than the more left-wing *Pravda*. These conclusions, which match the initial anticipations listed above, are captured in the descriptive statistics presented in Table 2.2.

Table 2.2 Descriptive Statistics for Salience, Four Newspapers

	Minimum	Maximum	Average	Average (93-12)	Annual Trend	Annual Trend (93-12)
Lidové Noviny	0.0 %	50.0%	9.87%	7.47 %	-.75%	-.32%
MF DNES	0.0 %	43.8 %	7.53%	5.17 %	-.64%	-.16%
SME	0.0 %	20.0 %	5.17%	5.17 %	+.15%	+.15%
Pravda	0.0 %	16.7 %	2.21 %	1.77 %	-.00%	+.16%

Salience of the communist past declines over time in most cases. By far the greatest amount of attention to the communist secret service was paid during the early 1990s when communism and the Velvet Revolution were recent memory. During one quarter, half of the sampled front pages of *Lidové Noviny* mention the communist-era secret service. That salience declines after this initial period is especially clear in the Czech case – lines of best fit for both *Lidové Noviny* and *MF Dnes* decline at about .15 to .20 per cent per quarter.³⁰ Lack of data for the Slovakian case make it impossible to demonstrate the same finding for Slovakia. However, four of the five highest levels of salience of the communist past as reported in *Pravda* were recorded during 1992 (the first full year observed for *Pravda*). This strongly suggest that in Slovakia as well, the early 1990s show high levels of salience of the communist past. This finding of persistent salience confirms the

³⁰ Keeping in mind that these newspapers publish approximately 80 issues per quarter, a 1.25 per cent change represents one more/fewer front page per quarter mentioning one of the search terms.

earlier description of post-communist politics, which emphasized on-going contestation over what the communist past represents.

This is an intuitive result and should not come as an arresting surprise. Although political issues frequently exhibit a certain ebb and flow, they are most salient immediately following key events that place the issue on the political agenda. In the case of the communist past and the Czechoslovakian StB, the end of communism and the dissolution of the secret police clearly qualify as events that precipitate a great deal of attention for the workings of the communist system. As the unique events of late 1989 and early 1990 slide into the past, new events attract attention, and this is reflected in declining coverage of the communist past on front pages. That salience would be high in the years just after the Velvet Revolution is not in need of explanation – but that salience persists at a stable level after that is. To be sure, while this pattern is common for historical events, I do not argue that it is impossible for any issue to remain salient. Instead, as I have argued in Chapter 1, *in the absence of agency or new information*, issues will tend to disappear. However, new events and new information can revive an issue. The question this research addresses is whether transitional justice laws in the Czech and Slovak Republics belong to the class of events that will revive an issue (and contestation over it) or not. Does transitional justice fan the flames, or put out the fire?

Figure 2.2 does not help us address that question; to do so will require multivariate regression. What those time series data do convey is that, while the communist past receives more attention during the early 1990s than it does afterwards (certainly in the Czech Republic, but most likely also in Slovakia), the issue does not disappear altogether. When we ignore the first years after the Velvet Revolution, the level of salience is remarkably stable. Indeed, while a linear line of best-fit shows a statistically significant decline, when a quadratic line is fitted, both Czech series display an increase over the last five to seven years of the research period, bottoming out around 2006 rather than showing ongoing diminishing salience. While the low-points on those fit lines are the product of all data-points rather than something that reflects events in that exact year, the fact that a low point is reached before the end of the research period indicates an upswing in salience over the past decade or so.

This result confirms the Chapter 1 description of post-communist politics, which emphasized ongoing contestation over what the communist past represents, and shows that the examples offered in that chapter are not isolated instances but part of a broader pattern. This finding is also consistent with my analysis of media coverage of pre-1989 political involvement of Czech cabinet ministers. This analysis argues that there was an increase in media salience after 2000 (Post, n.d.). Although analysis for Slovakia is complicated by missing observations for the early 1990s, the post-independence trend is similarly a stable one, especially in the case of *Pravda*. For *SME*, the line of fit even shows a slight increase over time (.04 per cent every quarter) but this coefficient does not reach conventional levels of significance. ($p = .123$).

To sum up, over time, the levels of salience in the four newspapers display a decline after the early 1990s but stable levels over decades afterwards. Indeed, the evidence for *Lidové Noviny*, *SME*, and *MF Dnes* even suggests a potential increase in salience levels over the last decade of the research period. While it is premature at this point to link this increase to transitional justice, the persistence and potential resurgence of the communist past as a political issue is worth noting. The coverage captured by this measurement tool is only the tip of the iceberg: the search terms do not include broader terms like ‘communism’ or ‘communist party’, and the analysis does not include stories buried inside the newspaper. That newspapers continue devote precious front page real estate to the narrow issue of the communist secret service demonstrates the staying power of the issue – or to be more exact, it demonstrates that some fuel at least is being added to the fire.

Having considered shifts in salience over time, we can now turn to the difference in patterns between the four newspapers. The data presented in Figure 2.2 demonstrate two things. First of all, the Czech newspapers cover the StB far more frequently than their Slovakian counterparts. For the entire research period, 8.7 per cent of Czech front pages mention the StB, versus 3.6 per cent of all Slovakian front pages. These averages, which a t-test shows to be significantly different ($p < .000$), translate into a Czech front page story on the StB every other week, versus a Slovakian front page story dealing with the StB every five weeks. Of course, this difference between the two countries is in part the product of missing 1990-1992 data for Slovakia; those observations inflate the Czech average and would likely do the same to the Slovakian average. Excluding that period brings the averages closer together: 6.3 per cent of Czech front pages mention StB, as opposed to

3.5 per cent of Slovakian newspapers. This difference remains statistically significant, however ($p < .00$).

Second, while the Czech outlets resemble each other strongly, their Slovakian counterparts do not. Saliency in *Lidové Noviny* and *Mladá Fronta Dnes* is at similar levels and the data series follow each other closely over time, correlated at .704 ($p < .00$). Meanwhile, the Slovakian newspapers in this analysis are quite dissimilar, and coverage in *SME* is not significantly correlated with coverage in *Pravda* ($r = .126$, $p = .267$). Looking strictly at the post-1993 period makes clear that the difference between Czech and Slovakian newspapers is really a difference between *Pravda*, on the one hand, and *SME*, *MF Dnes*, and *Lidové Noviny* on the other hand. As of 1993, average saliency for *MF DNES* and *SME* is identical at 5.2 per cent, and the difference in averages between *SME* and *LN*, while still significant ($p < .01$) declines to 2.3 per cent, down from 4.7 per cent. This pattern is consistent with the political leanings of the newspapers, with the more right-wing outlets paying more attention to the legacy of the communist secret service than left-wing *Pravda*.

2.3 Multivariate Analysis

Before proceeding with regression analysis, it is first necessary to discuss the independent variable, Czech and Slovak transitional justice legislation, in more detail. Secondly, it is necessary to consider the various challenges created by the fact that the observations in the dataset are connected in both time and space. Thirdly, it is important to incorporate additional independent variables into the model in order to control for elements of the political, social, and economic context that could serve as potential alternative explanations for changes in the saliency of the communist past.

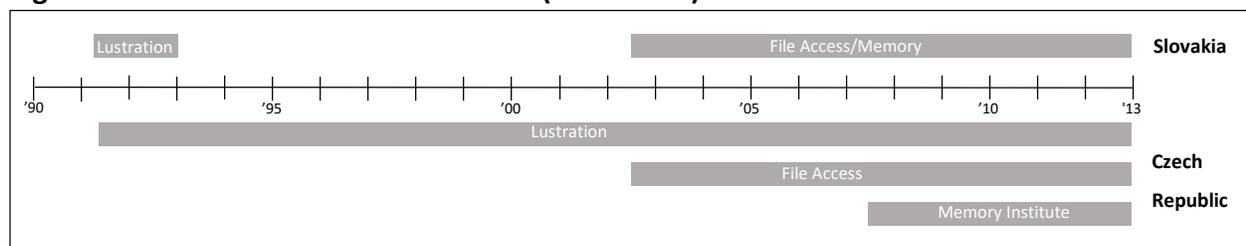
The central independent variable in this analysis is transitional justice legislation. Although the concept of transitional justice encompasses a broad range of initiatives, I am primarily interested in those laws that address the legacy of the secret services. In the Czech and Slovak Republics, there are three types of laws that meet that general category.³¹ First, there are lustration laws, which prevent citizens with a background in the former regime (including the secret service) from taking

³¹ Appendix C offers a full overview of all pertinent legislation.

up positions in the new regime. This typically concerns civil service positions, and not elected office. Second, there are file access laws, which regulate the conditions under which citizens can access secret service files. Thirdly, legislators in both the Czech Republic and Slovakia have set up Institutes of National Memory, which facilitate file access, investigate the functioning of the secret service, educate the public, and conduct historic research.

The Czech Republic has generally gone further than Slovakia in terms of transitional justice. In particular, where the lustration law was not implemented in Slovakia after independence, it was kept on the books and renewed twice in the Czech Republic. The Czechs were also first to declassify secret service files. However, the 1996 law strongly curtailed access. In 2002, Slovakia caught up by passing a law that simultaneously enabled file access and set up an Institute of National Memory to oversee implementation of that law. In that same year, the Czechs massively extended file access (drastically expanding beyond the 1996 law). A Czech counterpart to Slovakia's memory institute was created in 2007. Slovakia, which did not implement the Czechoslovakian policies it inherited, has no lustration policy today.³² The laws passed in 2002 created a similar level of file access in both countries and is treated as the actual implementation of file access in the Czech Republic (rather than 1996). Figure 2.3 offers an overview.

Figure 2.3 Transitional Justice Time Line (1990-2012)



It is worth noting that the laws on both side of the border are highly comparable: the Slovaks modeled their 2002 file access law on the law that had been passed in the Czech Republic earlier, and in turn the Czechs took some inspiration for creating a memory institute from the Slovakian

³² Slovakia's 2002 *Law on National Memory* is sometimes identified as a lustration law, but it does not identify any offices for which lustration is required. Indeed, a 2002 bill that did include such provisions was rejected by the Slovakian parliament.

example. In the regression analysis, I employ three dummy variables, for lustration, file access, and the memory institute. On the basis of Figure 2.3, these dummies are coded 1 for every quarter during which the respective policy was in place, and 0 for all other quarters.

There are some obstacles to properly gauging the effect of transitional justice, especially in Slovakia. First, the 2002 law in Slovakia created file access and a memory institute, which makes it impossible to tease apart the impact of those two conceptually distinct forms of transitional justice. Thankfully, the Czech Republic implemented file access and a memory institute a little over 5 years apart. This will permit estimation of two separate effects, although it is not possible to disentangle the two effects for Slovakia.

A second issue is that lustration was implemented at a very early point in the research period – during the 8th quarter after 1989. This leaves very little time before implementation to serve as a baseline. Moreover, as discussed above, the seven quarters preceding the passage of the lustration law were quite turbulent and can in no way be taken as a typical period in the history of the Czech and Slovak Republics. In addition, the effect for Slovakia is even more difficult to assess. One newspaper (*SME*) did not start coming out until after Slovakian independence, by which point the lustration law was a dead letter. For *Pravda*, although it was being published during that time, no data was collected for the period preceding lustration. While some explanatory leverage may be gained by comparing coverage from the Czech and Slovak Republics – one case had lustration for almost the entire period, the other had lustration for almost none of it – estimates for a lustration effect will have to be treated with suspicion.

Before constructing and evaluating a regression model, it is furthermore necessary to take into account the pooled nature of the dataset. Consisting of 4*93 sets of observations, this type of dataset is known as time-series-cross-sectional (TSCS).³³ TSCS datasets consist of N*T sets of

³³ Beck (2001:2) distinguishes between a panel dataset and a TSCS dataset. In panel data, T is frequently small and cannot be extrapolated; N, meanwhile, is a sample from a larger population, and one can generalize for that whole population. In TSCS datasets such as the one in this analysis, T is large (at least 10) and can be used as a basis for general inferences.

observations, and permit the researcher to simultaneously assess effects over time and between subjects. However, the interdependent character of the observations violates a number of assumptions of the classic linear regression model (CLRM), including hetero-skedasticity, auto-correlation, and auto-regression (Kennedy, 2008:41). In brief, hetero-skedasticity refers to error terms (or residuals) not being constantly distributed over the range of a particular independent variable, but skewing higher towards one end of that range. To take ‘time’ as an example, hetero-skedasticity occurs when the residuals of a regression are larger for later observations than they are for early observations, or *vice versa*. Auto-correlation, similarly, violates the assumption of stable (spherical) errors. However, as the term suggests, auto-correlation occurs when errors are not randomly distributed but instead are correlated with one another. Both of these problems frequently occur in time series data because observations at time t are commonly strongly related to observations at time $t-1$. The same issue affects not only the error term (residuals) but also the values of the variables themselves: a strong link frequently exists between variables and their own lags. This last phenomenon is known as auto-regression.

As a result of these challenges, a straight-forward Ordinary Least Squares (OLS) model is not appropriate. Although coefficients would not be biased, the problems listed above typically make it impossible to effectively assess the standard errors for coefficients, and in turn to calculate a confidence interval. Following work by Beck and Katz (1995, 1996), Beck (2007), and Butler and Wilson (2007), I will address these issues in two separate ways. First, by calculating the standard errors in a more robust, restrictive way, and second, by adding a number of terms to the regression equation that will mitigate the potential for hetero-skedasticity, auto-regression, and auto-correlation, in order to improve the general accuracy of the prediction.

To start with the calculation of standard errors, in a widely cited article entitled *What to do (and not to do) with Time-Series Cross-Section Data*, Beck and Katz (1995) propose using panel-corrected standard errors (PCSEs). They demonstrate that errors calculated in this way are more accurate, while the Parks (1967) method typically underestimates errors (and thus overestimates significance). In the two decades since publication, PCSEs have become standard operating procedure for TSCS data, and are easily implemented in common statistical programs. However, this method does not address the residuals in any way. Indeed, PCSE does not produce estimates

that are different from OLS, it takes those estimates and residuals as a given and then proceeds to calculate standard errors and confidence intervals in a more restrictive way. Given that heteroskedasticity, auto-correlation, and auto-regression do not exist at the level of the standard error of the coefficient, PCSEs cannot address those problems.

As a result, writing in 2007, Beck reminded readers that the P in PCSE does not stand for panacea. In the same special issue of *Political Analysis*, Wilson and Butler (2007), address two key additions to TSCS regression models: Lagged Dependent Variable (LDV) and fixed effects (unit dummies). Keeping in mind that in TSCS datasets, problems are caused by correlation of errors across units and over time, it is necessary to control for those repetitions. Adding a lagged dependent variable into the model controls for the extent to which observations at time t are related observations at time $t-1$. At the same time, adding in dummy variables for the different units (cross-sections – the newspapers, in this analysis) acknowledges some of the heterogeneity that can exist from one unit to another. That is to say, adding fixed effects into the model gives each unit its own intercept (constant) but other than that, the same regression equation is fitted across the units. If units are so different that variables have positive effects in one unit and negative effects in another, pooling the observations for both units will produce inconsistent results. In order to assess the potential for conflicting equations, it is necessary to run separate equations for the separate units.

A further issue that this analysis needs to contend with is the ‘non-stationary’ nature of the time-series – i.e., the fact that salience is not stable over time but tends to decline, and tends to have particularly high values in the early 1990s. In time-series analysis, it is common to de-trend data before proceeding with a further analysis of the patterns exhibited by the data. In order to control for the natural decline that the salience of any historical period will experience, I include the natural logarithm of the amount of time (in quarters) elapsed since 1989. Using the logarithm captures the nature of the decline of salience over time, which is rapid at first but then slows down, rather than linearly decreasing at an identical rate for each time period.

Besides the issues raised by the pooled nature of the data, it is important to address some substantive factors that might account for variation in the dependent variable. The literature discussed at length in Chapter 1 suggests two broad sets of controls whose inclusion in a

multivariate model can be warranted. First of all, this literature has presented transitional justice as a strategic game between parties. This suggests that the impact of transitional justice on political contestation is contingent on key political events such as election campaigns, as well as elements of the distribution of political power. To capture key political events, an election dummy is coded 1 for every quarter during which elections occurred, and 0 for every other quarter. Including this variable in the model allows us to estimate whether the communist past is more likely to be mentioned during election campaigns. In addition, I construct a measure of average government position to see if coverage is affected by whether the incumbent government skews left or right. To construct this measure, I use the Chapel Hill Expert Survey general left-right score (0-10, where 0 is extreme left and 10 is extreme right) for each party in the government, weighting each party for the number of cabinet posts it holds (Bakker et al., 2015). The expert surveys were held in 2002, 2006, and 2010; for each government the most proximate data were used, meaning that 2002 data were applied to the 1990s. Party positions were available for the majority of government parties, but in a small number of instances where no scores had been assigned, I applied scores of 3 for a left wing party, 5 for a centrist party, and 7 for a right-wing party. In addition to these two measures of political context, I include two general variables, one to capture civil liberties and political rights (Freedom House scores, recoded so that 12 is the most democratic and 0 is the least democratic) and another one that reflects the status of the economy (GDP growth percentage).

This produces the following equation:

$$\begin{aligned}
 \text{SALIEN}_{i,t} &= \alpha \\
 &+ \beta_1 * \text{LUSTRATION}_{i,t+1} + \beta_2 * \text{FILES}_{i,t+1} + \beta_3 * \text{INSTITUTE}_{i,t+1} \\
 &+ \beta_4 * \text{MFDNES}_i + \beta_4 * \text{PRAVDA}_i + \beta_6 * \text{SME}_i \\
 &+ \beta_7 * \text{ELECTIONS}_{i,t} + \beta_8 * \text{GROWTH}_{i,t} + \beta_9 * \text{GOVTPOSITION}_{i,t} + \beta_{10} * \text{CIVILRIGHTS}_{i,t} \\
 &+ \beta_{11} * \text{LN}(\text{TIME}_t) + \beta_{12} * \text{SALIEN}_{i,t-1} \\
 &+ \varepsilon_{i,t}
 \end{aligned}$$

A few things about this equation may be worth pointing out. The dependent variable is the salience level at time t for unit i . Time is unit-invariant – its observations are the same for all four units. For that reason, those terms do not receive the i -subscript. At the same time, the newspaper dummies are time-invariant – constant over the entire research period – and do not receive the t -

subscript. The intercept α is constant for all observations, regardless of time and place, and so does not receive either subscript. The error term ε is specified for each observation and receives both subscripts. Lastly, in order for the policy dummies (lustration, files, institute) not to capture coverage of the laws themselves being passed, these variables receive a positive one-quarter lag. Table 2.3 presents an overview of all the variables used in the present analysis.

Table 2.3 Variable Overview

Variable	DEPENDENT VARIABLE		
	Minimum	Maximum	Mean
Salience _{i,t} (% Front Pages)	0	50	5.86
Variable	INDEPENDENT VARIABLES		
	Minimum	Maximum	Mean
Policy Dummies (1,0)			
Lustration _{i,t+1}	0	1	.51
File Access _{i,t+1}	0	1	.54
Memory Institute _{i,t+1}	0	1	.40
Newspaper Dummies (1,0)			
MF DNES _i (CZ)	0	1	.26
Pravda _i (SK)	0	1	.24
SME _i (SK)	0	1	.23
Controls			
Elections _{i,t} (1,0)	0	1	.07
GDP Growth _{i,t} (%)	-11.6	10.7	2.94
Government Left-Right Position _{i,t} (0-10 scale)	3.35	7.29	5.44
Civil Liberties and Political Rights _{i,t} (Freedom House, 0-12 scale)	7	12	11.05
Time elapsed _t (quarters, logged)	1.61	4.53	3.77
Salience _{t-1} (% , lagged)	0	50	6.04

As a first step, Table 2.4 presents regression results for the individual newspapers. The newspaper behave in a manner that is consistent with the bivariate evidence presented in both Figure 2.2 and Table 2.2. In particular, with the exception of Pravda, all three newspapers show increased salience of the communist past following the introduction of file access legislation and the creation of a memory institute.³⁴ Meanwhile, the effect of lustration varies highly from one newspaper to

³⁴ Including control variables truncated the time period for which Slovakian data was available, making it impossible to estimate a lustration coefficient for *Pravda*. The other Slovakian newspaper, *SME*, never appeared during the brief period in lustration was a federally mandated policy.

another – but as noted above, the coefficients for lustration are to be approached with considerable caution.³⁵ However, file access and memory institute laws affect the three papers in similar ways, producing significant results, even when controlling for additional factors that might impact contestation over the communist past. With a few exceptions, the controls themselves do not produce significant effects on coverage.

Table 2.4 Newspaper Level Equations (1990-2012)

Independent Variables	LN	MFD	Pravda	SME
Lustration	14.45 (6.85)**	-0.57 (4.79)		
File Access	5.98 (3.16)*	6.68 (2.38)***	1.36 (1.22)	4.52 (2.11)**
Memory Institute	12.79 (4.44)***	6.29 (2.89)**		
Elections	1.04 (3.34)	4.40 (2.32)*	0.49 (1.11)	-0.75 (1.93)
GDP Growth	0.44 (0.36)	0.25 (0.24)	-0.03 (0.09)	0.31 (.16)*
Government Left-Right Position	-1.65 (0.97)*	-.52 (0.67)	-0.26 (0.29)	-0.29 (.50)
Civil Liberties and Political Rights	-2.61 (3.64)	-2.91 (2.48)	0.27 (0.50)	1.96 (0.89)**
Time since 1989	-15.25 (4.04)	-9.40 (2.91)***	-0.69 (1.78)	-6.11 (3.22)*
Salience (Lagged)	0.08 (0.11)	0.22 (0.10)**	0.05 (0.11)	-0.12 (0.11)
Constant	82.19 (36.04)**	70.32 (23.89)***	2.15 (4.26)	6.04 (7.90)
R ²	0.396	0.545	0.081	0.212
N	89	89	81	79

DV: Salience of the Communist Past (0-100, Quarterly Data)

Panel Corrected Standard Errors (PCSEs) are reported in parentheses.

***p<.01 **p<.05 *p<.10

Finding positive and significant coefficients for the file access and memory institute laws suggests these two transitional justice policies affect at least a considerable subset of journalistic output in a consistent manner. The effects found in this model are not only significant, but also substantively important. Effect sizes of 6 to 10 per cent roughly translate to an additional front page article every two to three weeks. The fact that the variables behave more or less consistently across the

³⁵ In addition to some of the issues listed above (the short period without lustration during 1990 and the beginning of 1991 is not representative and cannot serve as a baseline) the decision to include a logged time variable wreaks havoc on the lustration coefficient as well as the constant.

newspapers suggests that we are justified in including all observations in a pooled TSCS regression. However, since it appears that the variables of interest do not affect *Pravda* coverage in the way that it affects the other three newspapers, the same model is also estimated for the three newspapers without *Pravda*. Results from these two regressions are presented in Table 2.5.

Table 2.5 Multivariate Analysis: Czech and Slovak Republics (1990-2012)

Independent Variables	Model 1	Model 2
Lustration	5.16 (3.43)	6.71 (3.60)
File Access	2.94 (1.46)**	4.19 (1.60)***
Memory Institute	3.94 (1.38)***	5.51 (1.59)***
MF DNES (CZ)	-1.83 (0.73)**	-1.88 (0.73)**
Pravda (SK)	0.51 (3.66)	
SME (SK)	3.22 (3.68)	4.33 (3.88)
Elections	1.63 (1.19)	2.07 (1.47)
GDP Growth	-0.03 (0.10)	0.05 (0.13)
Government Left-Right Position	-0.75 (0.28)***	-0.94 (0.35)***
Civil Liberties and Political Rights	1.83 (0.41)***	1.82 (0.57)***
Time since 1989	-9.96 (1.35)***	-11.97 (1.57)***
Salience (Lagged)	0.19 (.05)***	0.17 (0.06)***
Constant	19.93 (4.66)***	25.93 (4.16)***
R ²	.416	.389
N	338	257

DV: Salience of the Communist Past (0-100, Quarterly Data)

Panel Corrected Standard Errors (PCSEs) are reported in parentheses.

***p<.01 **p<.05 *p<.10

The model presented here shows results that are consistent with the findings from the regressions for the individual newspapers. File access and memory institute laws produce an increase in salience of the communist past – especially in the more right-leaning newspapers. When *Pravda* is taken out of the equation, effect sizes increase substantially for both file access and memory institute laws. At the same time, lustration effects fail to attain statistical significance in spite of their substantial size. The effects of memory institutes are larger than they are for file access, offering some support for the hypothesis that especially file access policies and memory institutes contribute to increased contestation.

The transitional justice effects are robust to the inclusion of several controls in the model, as well as the implementation of several ways to address the fact that this dataset is a pooled time-series. The substantive controls include civil rights (positive effect) and government left-right position (negative effect). That latter finding indicates that the further the government is to the left, the more likely the communist past is to end up on the front page – albeit by a very small margin. This would be in line with right-wing editors using the issue against left-wing incumbents. This suggests partisan-strategic political use of the issue, which would lead one to expect that the communist past would also be more likely to turn up during election campaigns. The evidence does not support this hypothesis, however.

To get a more substantive handle on the practical meaning of the coefficients in model 2 (which omits the *Pravda* observations), it is useful to replicate some of the actual legislative scenarios that occurred in the Czech Republic and Slovakia. Doing so can help disentangle the impact of the different policies, which in practice are highly correlated. Slovakian file access was created at the same time as a memory institute (ÚPN), and the Czech memory institute (ÚSTR) only ever existed while a file access policy and a lustration policy were also in effect (see Figure 2.3). By setting the variables in the equation to the values which correspond to those scenarios, we can see what level of change was produced in practice by the introduction of new policies. We can also consider the counterfactual: what would salience levels be in the absence of transitional justice policies? To implement these different scenarios, I use the method described in King (2000). This method generates predicted values for particular combinations of values on the independent variables in a regression equation, as well as confidence intervals for those predicted values. These predicted confidence intervals incorporate standard errors of all independent variables in the model, as well as the constant, so they are not simply the standard error of the coefficient in question.

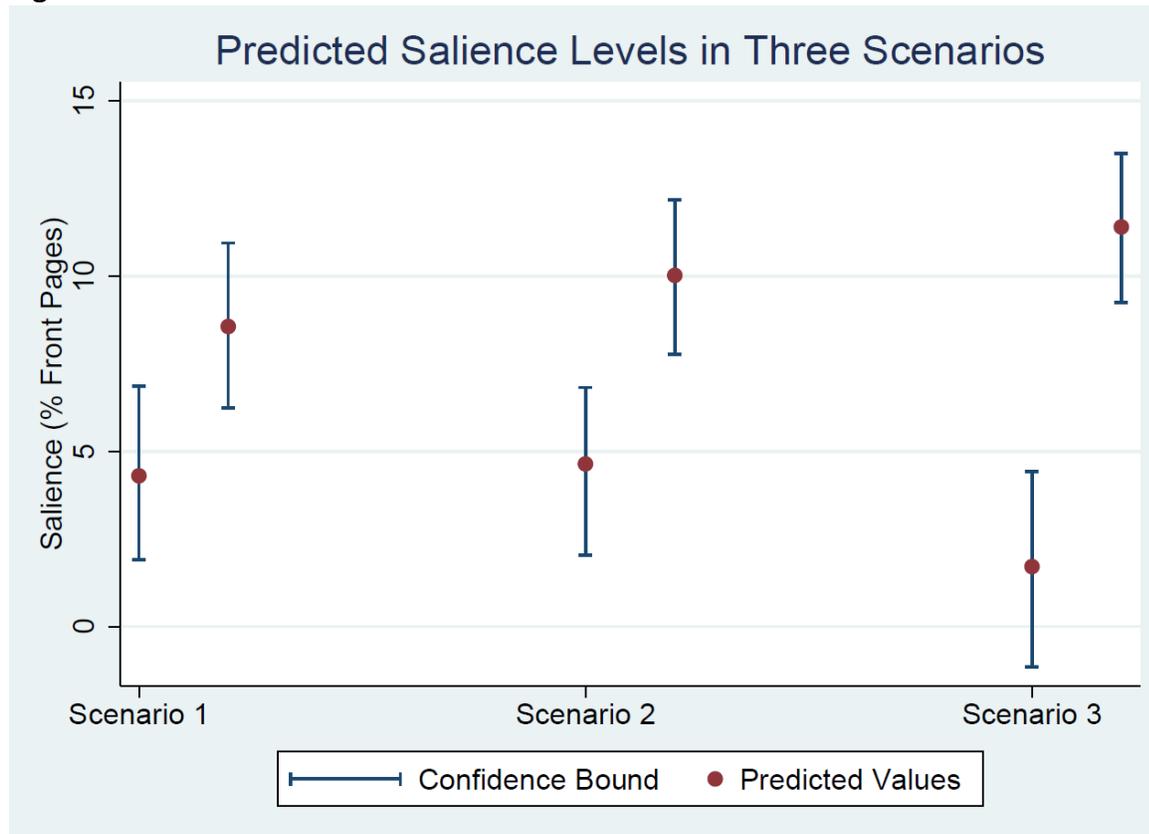
By manipulating the value of one variable, for instance one of the policy dummies, it becomes possible to inspect the impact of that variable in a specific setting. To illustrate the regression findings presented in Table 2.5 (Model 2) above, I show three scenarios³⁶:

³⁶ Because of the difficulties discussed above in interpreting the coefficients for lustration, running that scenario is not of great use.

- 1) **Adoption of the Czech File Access law in 2002.** This scenario compares predicted coverage in *Lidové Noviny* with and without the law, given that lustration was in effect but that there was no memory institute. This scenario keeps the control variables at constant values.³⁷
- 2) **Adoption of the Czech Memory Institute law in 2007.** As in Scenario 1, this scenario looks at *Lidové Noviny* coverage with and without the new law, keeping in mind that both file access and lustration laws were in place, and keeping controls constant.
- 3) **Adoption of the Slovakian Memory law in 2002.** This law created both file access and a memory institute, in a setting where there was no lustration law in effect. The scenario looks at the shifts this produces in *SME* coverage. Other controls are kept constant.

The results of this clarification procedure are presented in Figure 2.4 below, with the ‘before’ prediction on the left and the ‘after’ prediction on the right. The findings confirm the second hypothesis again, suggesting strong impacts in particular for the introduction of a memory institute. In the first scenario, salience almost doubles (from 4.3% to 8.6%) as the result of file access – but as the overlapping confidence intervals indicate, this effect is not significant at the 95 per cent level (but at the 90 per cent level, it is). The effects of a memory institute are greater – the 2007 Czech law (Scenario 2) is associated with an increase from 4.6% to 10.0%, *ceteris paribus*, while the 2002 Slovakian law (Scenario 3) sees a change from 1.7% to 11.4%. Both of these effects are significant at .95. These findings also support the hypothesis that the type of transitional justice policy matters. The particularly strong effect for Slovakia’s 2002 Law on National Memory, which combined file access and a memory institute (Scenario 3), suggests that bundling these two initiatives creates a greater impact.

³⁷ To be exact, newspaper dummies are set to 0, defaulting to reference category *Lidové Noviny*, except in Scenario 3 where *SME* is set to 1. Time is set to 2002 in Scenarios 1 and 3, and to 2007 in Scenario 2. Lagged salience and GDP growth are set to their means, while Civil Rights is set to 12 (democracy), Government Position is set to 5 (centrist government), and Election is set to 0. Consult Table 2.3 for a full overview of these variables.

Figure 2.4 Predicted Salience Levels in Three Scenarios

2.4 Conclusion

Legislators championing transitional justice laws in the Czech and Slovak Republics have offered many reasons to address the legacy of *Státní Bezpečnost*, but one of the things that they commonly stressed was the fact that not regulating the files did not make them go away. Instead, so they argued, without regulation, access, and transparency, the files would be prone to abuse by the limited few who did have access to them. Indeed, particularly in the Slovakian case, there is strong evidence suggesting that Vladimír Mečiar took advantage of the fact that he had access to the ŠtB files. In addition to politicians and officials abusing the files, it was pointed out that parts of the files had been available on-line since 1992, when activist Petr Cibulka published lists of collaborators.³⁸ While the lists were unreliable, and moreover, were only lists (as opposed to the actual files documenting the nature of alleged collaboration with StB), they still provided a source

³⁸ Cf. Stan (2011) on ‘vigilante justice’ in East and Central Europe.

of controversy. In this climate of scandal unsubstantiated accusations, opening up the files and providing transparency would take the wind out of the sails of rumor, and would put a stop to the ongoing debate while limiting the potential for clandestine use of the files.

The purpose of this analysis has been to assess that strength of that argument. Did transitional justice laws really put out the fire, ending continuous debate and contestation over the communist past? Or did they serve to keep the past on the political agenda? Chapter 1 presented the hypothesis that transitional justice laws increase contestation over the communist past, particularly when those laws facilitate or encourage media coverage of the communist past. The findings presented above in Table 2.5 offer support for the latter hypothesis. They show that in both the Czech Republic and in Slovakia, declassifying StB files and setting up Institutes of National Memory is associated with a lasting increase in the salience of the secret service legacy, offsetting the natural decline of the issue as communist rule recedes into the past. Further, the effects of the individual laws are consistent with the hypothesized expectations regarding different types of transitional justice, which emphasize especially the role of memory institutes and file access legislation in generating contestation.

Two new questions are raised by the evidence that transitional justice can increase the political salience of the legacies it addresses. The first question concerns the causal mechanism linking transitional justice to journalistic output. What is the journalistic practice that motivates publishing on the communist past? Under which circumstances do political journalists find news related to the StB publishable, and what is the role that transitional justice legislation plays in the journalistic process? The second question that this analysis raises regards the transitional justice laws themselves. Given the notion that transitional justice laws could reduce the salience of the communist legacy, why is it that they appear to achieve the opposite result? These two questions will be addressed in the qualitative section of this dissertation.

CHAPTER THREE – Czechoslovakia, a Tale of Two Countries?

The situation inside the police is worrisome. StB employees are still coming to work and are ignoring the ban on entering their workplaces. For instance, in Ústí nad Labem, up to 37 StB employees are still coming to work. After being fired, former deputy Lorenc continues to visit the Ministry of the Interior, leading discussions and holding meeting with his former employees...

Meeting of Defense and Security Commission of Czechoslovakian Federal Assembly, March 6, 1990 – reported by Suk (2003:360)

Introduction

For a little over three years, between November 1989 and midnight on December 31, 1992, Czechs and Slovaks addressed their shared legacy of the secret political police (StB) within a federal framework. The first major piece of legislation that was formulated in response to these questions was the lustration law, which was adopted by the Czechoslovakian Federal Assembly on October 4, 1991. The central argument in this dissertation is that transitional justice contributes to contestation over the communist past, and that it does so because policy entrepreneurs are the primary movers of the transitional justice agenda. Under their influence, transitional justice laws incorporate non-consensus interpretations of the past, and so invite opposition even aside from the impact of any of the actual provisions of those laws. This chapter will test this argument by carefully examining the legislative process that led to the lustration law, the language of the law, and its subsequent impact. The evidence from this analysis suggests support for the hypotheses at the federal level and in the Czech Republic during this brief period. In Slovakia, the leadership of Vladimír Mečiar, a smaller number of dissidents, and a greater willingness to work with moderate communists, produce a different, more pragmatic attitude towards dealing with the communist past during the early 1990s.

To examine how post-communist Czechoslovakia, up until the end of 1992, addressed the legacy of communist human rights abuse, I will first offer a brief historical overview of communism in Czechoslovakia. This overview serves the purpose of introducing the reader to the functioning of the communist regime, providing context for the key events that occurred during the early 1990s. It also shows that, in addition to the role played by Mečiar, differences between the Czech and Slovak Republics during the communist period can account for some of the divergence after communism. Taken together, then, the overview of regime repression in communist Czechoslovakia and the analysis of lustration in post-communist Czechoslovakia set the stage for transitional justice in both republics after independence (Chapters 4 and 5).

3.1 Communism in Czechoslovakia

On February 25, 1948, communists took power in Czechoslovakia. This completed a process that started with the end of the Second World War, during which the Communist Party of Czechoslovakia had become increasingly influential. The communists had been an important political force before Second World War, especially in the Czech lands. Over the course of the war, the communists gained popularity as the Soviet Union, which had not been involved in the 1938 Munich conference in which Czechoslovakia had been handed over to Hitler Germany, was seen as the liberator. As a result, the Communist Party (KSČ) was very successful in the 1946 elections (becoming the largest party in the Czech lands, and second largest in Slovakia, with about one third of the total vote) and communist leader Klement Gottwald formed a coalition government. During this time, KSČ worked towards a takeover. Following the Soviet template, intelligence gathering was seen by the communists as a key tool for building a power base. Consequently, this is where they placed their focus as they prepared to take control of Czechoslovakia, appointing their cadres in key positions in the *StB* and the army. Taking advantage of these resources, they infiltrated and discredited rival parties, especially the Democratic Party (Demokratická Strana, DS), which was the largest in Slovakia (Williams, 2001:28).

After the takeover, KSČ rapidly created a situation in which the party exerted full control over the state and established an exhaustive program of ideological indoctrination, seeking to penetrate into every part of Czechoslovakian society. The Constitution was amended to reflect the changes, giving KSČ a leading role in society, and the Communist Party attracted high levels of

membership. In 1950, one in four Czechs was a member, although membership in Slovakia remained lower at roughly 7-8 per cent of the population (Grzymała-Busse, 2002:32, 36). In order to ensure the leading role of the party in practice as well as in the constitution, the regime relied on the backing of the Red Army and political support from the Soviet Union. During the first decade, the StB expanded rapidly, recruiting 9,000 officers (one for every 1,700 Czechoslovakians) as well as a large but fluctuating number of informers. According to Williams, “one in every 80–100 adults alive in 1963 either was or had been a collaborator at some point since 1948” (Williams, 2001:34). Around 1960, the StB had 45,000 informers, but this number decreased sharply during the 1960s to about 5,000 by 1968. During the 1980s, the StB had approximately 15,000 informers.

These large numbers reflected not only the party-state’s desire to keep up to speed on the public’s mood, but also the limited efficiency of the informers and the low quality of the information that was provided. According to Williams, information that collaborators provided rarely led to prosecutions. In spite of its inefficiency, the StB was a pervasive part of life in Czechoslovakia. As Williams notes: “Like its counterparts in the Soviet Bloc, the StB was a distinctly unsecret police, more the party’s scarecrow than its sword and shield” (Williams, 2001:38). Although most of these informers were volunteers, StB did rely on blackmail to recruit informers and enforce compliance. Meanwhile, compensation (monetary or otherwise) for services rendered was restricted.

The level of repression decreased during the 1960 as liberalization set in, ultimately leading to the election of Slovakian-born Alexander Dubček as General Secretary of the Central Committee of the Communist Party in early 1968. The process of liberalization that he set in motion, known for its slogan ‘socialism with a human face’, ended in a military invasion. Until then, however, Czechoslovakians experienced hitherto unprecedented levels of political and civic freedoms. These freedoms allowed and inspired Czechoslovakian society (in particular the student movement) to challenge the central role of the communist party. Indeed, the extent to which economic and political questions were opened up, and the degree to which alternatives to Soviet-style communism were openly being considered, ended up being the undoing of the Prague Spring, as Soviet leader Brezhnev lost faith in Dubček's ability to control the situation and preserve the

dominant position of the KSČ. During the night of 21-22 August, the Warsaw Pact armies (excepting Romania) invaded Czechoslovakia. Afterwards, the Soviet leadership clamped down hard on all reform-minded elements inside the KSČ, setting into motion a process of 'normalization' that would characterize the remaining two decades of communist rule. Brezhnev summoned members of the Czechoslovakian Central Committee to Moscow to lay down the law and over the weeks and months that followed, gradually removed all reformers from high-ranking positions in the party. Dubček was initially removed from the scene, sent off to become Czechoslovakian ambassador to Turkey (a large cheering crowd awaited him when he landed in Ankara) but he was soon called back to Czechoslovakia. In 1970, he was expelled from the Communist Party and started work in the Slovakian forestry service.³⁹ While the party elites were being restructured under the new leadership of Gustav Husák,⁴⁰ the membership base went through a similar purging process. Throughout Czechoslovakia, reformist members were removed from the party and rank-and-file members were required to sign an affidavit stating their support for the invasion as a necessary measure to preserve socialism in Czechoslovakia.

Beyond effects on the party, the impact of the invasion reverberated throughout Czechoslovakian society. Between 1970 and 1989, hundreds of thousands of Czechoslovakians emigrated. Those that remained behind faced an increasingly repressive regime in which freedom of expression and freedom to travel were sharply curtailed. These two processes help account for a comparatively limited amount of anti-regime dissidence in Czechoslovakia during the normalization period 1970s and the 1980s. After some last protests in 1969 (including the desperate self-immolations of Jan

³⁹ It is worth noting how cautiously the Kremlin went about reforming KSČ - they took months to remove Dubček from the party leadership and two years to remove him from the party. This reluctance, starkly contrasting with the Stalinist method that had been abandoned during the 1950s, illustrates the extent to which the Kremlin and the new Czechoslovakian leadership were wary of the potential of popular backlash even after the strong display of power during the 1968 invasion.

⁴⁰ Husák is an interesting figure. Slovakian, like Dubček, he was a victim of intraparty purges in the 1950s and spent some time in jail during that time, narrowly escaping the death penalty. The liberalization of the 1960s saw him released from prison and rising (again) in the ranks of the communist party, advocating a reformist approach. In spite of this background, he became the face of the normalization regime that Brezhnev enforced from Moscow.

Zajíc and Jan Palach in January and February,⁴¹ and the riots after Czechoslovakia beat the Soviet Union at hockey in March), the normalization period was largely characterized by a turn away from political activity and public engagement.⁴² In effecting this trend, the StB was a key repressive tool for the Husák regime as it established its hold over society. Under the influence of the liberalization of the 1960s, the role of the StB had become less prominent, shifting gradually away from overt, violent repression towards surveillance and monitoring of the population at large, but after the invasion, it regained its central position as a repressive tool for the Husák regime.

The normalization period saw comparatively little anti-regime activity. In what little dissidence did emerge under normalization, a playwright called Václav Havel played a defining role. His writings provide a nuanced analysis of the workings of the communist structure, for which he held all of society responsible.⁴³ With a number of others, Havel drafted the *Charta 77* petition. Initially signed by 242 individuals (another 1,750 followed up until the Velvet Revolution), *Charta 77* called upon the Czechoslovakian government to honor its commitment to human rights that resulted from the Helsinki Accords, which it signed in 1975. The regime interrogated and jailed the spokespeople for *Charta* (one, Jan Patočka, died during interrogation) and organized an 'anti-

⁴¹ Zajíc and Palach were both students who set themselves on fire to protest the Warsaw Pact invasion and the ensuing changes. Both died as a result of the trauma. Their deaths made a deep impact, attracting a lot of attention across the world. Later in 1969, their example was followed by Evžen Plocek, who also died, but the regime successfully kept his protest from receiving much attention at all. See: 'Palach, Zajíc a Plocek. Před 43 roky vzplála v Jihlavě živá pochodeň' [Palach, Zajíc, and Plocek. Forty-Three Years Ago, a Living Torch Blazed in Jihlava], *MF Dnes Jihlava Edition*, 4 April 2012, available at: http://jihlava.idnes.cz/palach-zajic-plocek-pred-43-roky-vzplala-v-jihlave-ziva-pochoden-p7n-/jihlava-zpravy.aspx?c=A120404_143440_jihlava-zpravy_bor, accessed July 20, 2015.

⁴² Late communism in Germany is described in a similar way. There, people coined the term '*Nischengesellschaft*' [Niche Society] to describe a society of people withdrawn from the public realm into the private realm, seeking a reprieve from state interference.

⁴³ A particularly poignant piece of writing in which this argument is eloquently expressed is Havel's 1978 essay entitled 'Power of the Powerless' (*Moc Bezmocných*). Using the humble example of a greengrocer grudgingly displaying a sign that reads 'Proletarians of all Countries, Unite' in his store window, Havel argues that the communist regime as it exists in the 1970s relies on public lies like that of the greengrocer. As an alternative, Havel offers 'life in truth'. (Havel, 1991).

charter' which it required public figures and celebrities to sign.⁴⁴ The *Charta* was the largest accomplishment of the dissident movement in Czechoslovakia, which is telling. Compared to neighboring countries such as Hungary and Poland, where civil society was stronger, acts of dissent in Czechoslovakia were few and far between.⁴⁵ The other side of this coin is that the normalization regime was more repressive than its counterparts, especially in Poland and Hungary, allowing fewer concessions in terms of religious and political expression, foreign travel, and economic liberalization.

Within Czechoslovakia, in turn, there was a marked distinction between the Czech Republic and the Slovak Republic in the extent to which dissent was voiced. A first difference is that opposition to the regime was more widespread in the Czech part of Czechoslovakia than it was in the Slovak part.⁴⁶ For instance, the vast majority of the *Charta* signatories were Czechs, only a few Slovaks signed – six out of the initial 242, by 1989: 40 out of approximately 2,000 (Žantovský, 2014:401). Secondly, while dissent in the Czech part was dominated by liberals and reform communists, Slovakian dissent attracted mostly Catholics seeking to practice their faith.

Economic factors as well as different types of repression account for the differences between Czech and Slovak dissidence. Based on collectivization and nationalization, the centralized communist economy brought greater wealth to Slovakia than it did to the Czech lands. Prior to communism, Slovakia was a primarily agrarian economy and communism made headway in modernizing Slovakia, bringing higher standards of living, better housing, electricity, running

⁴⁴ Szczygiel's *Gottland* contains a chapter describing this episode. (Szczygiel, 2006:79-104).

⁴⁵ To be sure, though, while easily the most important act of dissent in normalized Czechoslovakia, *Charta* is not the only act of dissidence. Among several that are worth mentioning, there are the 'Underground' punk musicians including Plastic People of the Universe, and the 'Committee for the Defense of the Unjustly Prosecuted' (*Výbor na Obranu Nespravedlivě Stíhaných*, VONS). In addition, many emigré(e)s worked to oppose communism in Czechoslovakia from abroad. See Bolton, 2012; Falk, 2003.

⁴⁶ Slovaks were not entirely passive; in 1988, half a million Czechoslovakians – mostly Slovaks - signed a petition that originated in Slovakia, demanding greater religious freedom. In March of that year, the 'Candle Manifestation' saw thousands protest peacefully on Hviezdoslav square in Bratislava. In the literature on dissidence in Eastern and Central Europe, these key events are often overlooked as the Czech movement is over-emphasized.

water, waste disposal, in addition to urbanization, industrialization, automated labour, and so on. The Czech Republic, by contrast, was already highly industrialized before communism, and its economy did not benefit from communist policies in the way that Slovakia's did (Musil, 1980:17). Secondly, in Slovakia, the regime was more adept at incorporating and neutralizing dissidence. The Czech dissidents were more vocal because they had little to lose: most of them were expelled from their professional careers and socially isolated. In Slovakia, the regime was more pragmatic. As Slovakian dissident Fedor Gál puts it: "If they wanted to get rid of an economist in Slovakia, they sent him [to work in] a research institute, those places were understood as storage space for politically useless people".⁴⁷

Czechoslovakian communism remained firmly in power until the very end of 1989, as a result of the limited scope of the dissident movement and the generally apathetic population coupled with the high levels of repression and the rigid stance of the regime towards transforming the communist regime (Kitschelt, 1995: 453; Linz and Stepan, 1996: pt. IV; Sharman, 2003). Elsewhere in the region, mass mobilization of the population (especially Poland) as well as reform coming out of the Communist Party (especially Hungary) had produced considerable change much earlier on. The essential catalyst for these changes were the combined processes of *perestrojka* and *glasnost'* that Mikhail Gorbachev set in motion following his rise to General Secretary of the Central Committee of the Communist Party of the Soviet Union in March 1985. However, Gorbachev's policies did not inspire much change in the Communist Party of Czechoslovakia, and the effects of *perestrojka* and *glasnost'* barely made themselves felt in Czechoslovakia during most of the late 1980s. On November 17, 1989, well after Solidarity won the June, 1989 elections in Poland, well after the round table talks in Hungary had taken place, and also after the wall had come down in Germany, protests started up in Czechoslovakia (Suk, 2003; Hanzel, 2006; Krapfl, 2009; Ondruš, 2009).

Spreading from Prague, the protests were galvanized after police brutality was (falsely) reported to have led to the death of one Martin Šmíd on Prague's *Národní* Avenue. Soon, hundreds of

⁴⁷ 'Co dřív: moc, nebo koncepce?' [What's First: Power, or Concept?], *Listy*, Issue 2, 2005, available at: <http://www.listy.cz/archiv.php?cislo=052&clanek=020506>, accessed July 20, 2015.

thousands gathered on city squares throughout the country, and a general strike on November 27, 1989 brought the regime to its knees. The protesters organized politically in two separate organizations: Civic Forum (*Občanské Fórum*, OF) in the Czech Republic and Public against Violence (*Verejnost' Proti Násiliu*, VPN) in Slovakia. Both organizations denounced police brutality and emphasized non-violence, embracing it as their own approach towards achieving change and stressing it as something they demanded from the authorities. The non-violent nature of this rapid regime change is reflected in the 'velvet' moniker that is used to refer to it.⁴⁸

Over the course of December 1989, the KSČ gave up the positions of power it held one by one. On December 10, a reform government led by Marián Čalfa took office.⁴⁹ On December 28, dozens of new MPs took over vacated seats in the Federal Assembly. One among them, Alexander Dubček, was elected speaker. A day later, the Federal Assembly elected Václav Havel President of Czechoslovakia.⁵⁰ One of the key challenges that laid ahead was the legacy of the StB, and efforts to examine and address this legacy were already underway. During the three year period that Czechoslovakia still remained united, the item persisted on the political agenda; after the split, the issue continued to be contested in both republics. The coming section investigates attempts to carry out transitional justice in post-communist Czechoslovakia in order to (1) test the argument forwarded in the first chapter; (2) describe and examine key events that shape subsequent transitional justice in each of the independent republics as of 1993.

⁴⁸ The revolution is called velvet (*sametová revoluce*), in Czech; the Slovaks refer to this period as the *nežná revolúcia*, or gentle revolution.

⁴⁹ Marián Čalfa became head of the *federal* government of Czechoslovakia. The heads of the governments of each of the two republics changed as well, with Milan Čič leading the government in Slovakia as of 10 December, and Petr Pithart becoming the Czech Prime Minister as of February, 1990. See Table 3.1 below.

⁵⁰ 'Zpráva o 21. společné schůzi sněmovny lidu a sněmovny národů' [Report on 21st Collective Session of the Chamber of the People and the Chamber of Nations], Federal Assembly of Czechoslovakia, Fifth Legislative Period (1986-1990), December 29, 1989, available at: <http://www.psp.cz/eknih/1986fs/slsn/stenprot/021schuz/porad.htm>, accessed July 20, 2015.

3.2 Post-Communist Czechoslovakia

The StB was formally disbanded on January 31, 1990 by order of Richard Sacher, the OF-appointed federal Minister of the Interior. This was just one step (and not the last one) in the longer process of gaining control over the StB and the vast bureaucracy of the interior ministry, which existed at a federal as well as a republican level. Resistance from outgoing secret service personnel as well as disorganization among the new elites complicated this process. During the weeks following the Velvet Revolution, secret service personnel worked to shred StB files; once they were prevented from doing so, some of them continued to come to work, even after the organization they worked for had been formally disbanded (Suk, 2003:360). In this context, the idea of lustration as a tool to deal with elements of the communist regime was born. To be sure, neither the term nor the practice were invented in the 1990s. In fact, the term ‘lustration’ was copied from the StB itself, where it had been used to refer to the screenings for party loyalty that the StB conducted.

In addition to bequeathing the new regime with the term ‘lustration’, StB agents also cast a shadow over the new regime by destroying a considerable portion of the secret service files. Under the leadership of StB general Alojz Lorenc, officers set to shredding files as early as a week after the first demonstrations got underway on November 17, 1989 (Williams, 2001:48; Suk, 2003:356).⁵¹ An estimated 10 to 25 per cent of all files were destroyed during this time.⁵² In destroying evidence, they focused in particular on destroying ‘live files’ – files that had not yet been closed and that were still being maintained late in 1989. Also destroyed was evidence related to the StB’s infiltration of the dissident movements. The shredding hampered efforts on the part of the new

⁵¹ Lorenc, whose autobiography bears the snarky subtitle *Neskartované Vzpomínky*, Unshredded Memories (1992 Lorenc, 1992), was later convicted to four years in prison for his role during the Velvet Revolution, including the destruction of files. He fled to Slovakia and never served his sentence (cf. Mayer, 2009:120).

⁵² Elsewhere in the region, files were destroyed as well. In Berlin, for instance, citizens noticed ashes raining from the sky as the Stasi files were being burned. To this day, the German Federal Office for Stasi Files (*Behörde des Bundesbeauftragten für die Stasi-Unterlagen*) has a division that works on putting together shredded files. See: ‘Rekonstruktion zerrissener Unterlagen’ [Reconstruction of Shredded Files], *Behörde des Bundesbeauftragten für die Stasi-Unterlagen*, available at: http://www.bstu.bund.de/DE/Archive/RekonstruktionUnterlagen/_node.html, accessed July 20, 2015.

regime to locate the accomplices of the old regime and intensified the demand for full disclosure of StB activities, and especially the service's involvement during the November protests. Investigations into the role of StB had in fact gotten underway as early as November 28, 1989, when a parliamentary commission was convened to examine police brutality that had occurred 11 days prior. Chaired by Jozef Stank, a KSČ representative in the Federal Assembly, this commission included two student members delegated by the Civic Forum. The members first met on November 30, and delivered its first report on December 12, 1989.⁵³ In the end, however, the commission's final report did not satisfy the demand for full disclosure of StB activities, and a new commission was put together immediately after the June 1990 elections.

Table 3.1 Overview of Czechoslovakian Prime Ministers and Interior Ministers (1989-1992)

	Federal Level	Czech Republic	Slovak Republic
December 1989 – June 1990	PM: Marián Čalfa IM: Richard Sacher	PM: Petr Pithart IM: Antonín Hrazdíra	PM: Milan Čič IM: Vladimír Mečiar
June 1990 – June 1992	PM: Marián Čalfa IM: Ján Langoš	PM: Pithart IM: Tomáš Hradílek (until November 1990); Tomáš Sokol (after November 1990)	PM: Vladimír Mečiar (until April 1991); Ján Čarnogurský (after April 1991) IM: Anton Andraš (Until November 1990); Ladislav Pittner (After November 1991)
June 1992 – December 1992	PM: Jan Straský IM: Petr Čermák	PM: Václav Klaus IM: Jan Ruml	PM: Vladimír Mečiar IM: Jozef Tuchyňa
PM: Prime Minister; IM: Interior Minister			

Before those elections took place, the first lustrations got underway inside the interior ministries (federal and republican). Unsanctioned by any legislation, these 'wild' lustrations saw a range of

⁵³ 'Zpráva o činnosti společné komise sněmoven Federálního shromáždění a České národní rady pro dohled na vyšetření události ze dne 17. listopadu 1989 v Praze', [Message on Activities of the Joint Commission of the Chambers of the Federal Assembly and the Czech National Council for Oversight of the Investigation of the Events of 17 November in Prague], Print 211, Federal Assembly of Czechoslovakia, Fifth Legislative Period (1986-1990), 12 December 1989, available at: http://www.psp.cz/eknih/1986fs/tisky/t0211_00.htm, accessed July 20, 2015. Václav Bartuška, one of the two student members dispatched by OF to sit in on the commission meetings, published his recollections of the period in *Polojasno* (Bartuška, 1990).

actors take advantage of access to the files to investigate the StB involvement of other individuals. These initiatives came in a context in which the StB cadres were uncooperative, and actually difficult to dismiss within the existing framework of Czechoslovakian labour law. Ultimately, many StB officers remained employed at the interior ministry, and some of them were involved in the ‘wild lustrations’ (Suk, 2003:360).

It also came in a context in which political power was diffuse and disorganized. Sacher, the new federal Minister of the Interior, struggled (and failed) to control his ministry and to take charge of the transformation of the state’s intelligence services. This was compounded by the complex federalized structure of the interior ministry. Moreover, while Sacher lost control over the ministry that was his charge, the federal government had little control over Sacher, who preferred to report to the President (Havel) rather than the Prime Minister (Čalfa). Interviewed by Suk, Čalfa says he had no control over Sacher, and was fine with that because he did not want to create the impression that he was getting involved (Suk, 2003:357).⁵⁴ Suk describes the first Čalfa government as an incoherent, heterogeneous group that did not work as a team, and that included some individuals with strong personal ambitions (Suk, 2003:366). Suk is similarly harsh in describing the federal ministry of the interior as a ‘laboratory of political power’, due to weak and indecisive leadership, noting that processes of change ‘displayed elements of chaos and improvization’, and a method of ‘trial and error’ and that there was a lack of political will and vision to really address the situation thoroughly (Suk, 2003:367). As a result, between his appointment to the cabinet in late 1989 and the elections in early 1990, Sacher faced growing dissatisfaction with his functioning within the Czechoslovakian cabinet and among the grass-roots Civic Forum organizations. However, supported by Havel (whose staff preferred to retain this source of information from the files), Sacher stayed put until the elections in June 1990 (Suk, 2003:370). After the elections, he was replaced by Slovakian dissident Ján Langoš.

As members of the new regime gained power, various positions they now occupied gave them access (whether *de iure* or *de facto*) to the StB files. Numerous new power holders took advantage

⁵⁴ Čalfa did not want to be seen as interfering with Sacher because Sacher was appointed by the Civic Forum while Čalfa came from the Communist Party leadership.

of this opportunity, motivated by curiosity, a desire to clean house, or with a view to collecting dirt on political rivals. Governments enjoyed access and used it to vet staff. Suk gives the example of Czech Prime Minister Pithart. In February 1990, Pithart learned that Pavel Muraško, member of the Federal Assembly and of the Civic Forum Coordination Committee, had informed for the StB. Under the cover name ‘Rolo’, Muraško had participated in operation ‘Kamion’ in the early 1980s, undermining the distribution of exile literature. Pithart decided to take personal action: “I whispered to him ‘Mister Muraško, take all of your things and immediately leave the parliament building, and leave your office at Spalička [Civic Forum HQ], and never show yourself here again”. Suk writes: “After three tense minutes, Muraško got up and after more hesitation, slowly left, and was never seen again in parliament or at Spalička” (Suk, 2003:370). David (2003:398) reports a similar instance in which Petr Uhl, after being appointed as general director of the Czechoslovakian Press Agency, learned that 23 employees were listed as StB collaborators. David quotes Uhl: “I sharpened the situation, I literally blackmailed them. Either they leave voluntarily and nobody will know anything, or we will call a meeting in their departments and I will confront them [about their past]” (David, 2003:398).⁵⁵

In Slovakia, Interior Minister Vladimír Mečiar also took full advantage of his position. Two weeks after he was appointed, he had a staffer called Jaroslav Svěchota visit StB headquarters in Trenčín to remove his own file, as well as those of others for future use in discrediting opponents.⁵⁶ Restructuring the interior ministry, Mečiar did not fire StB agents, he simply moved them to other parts of the bureaucracy, where they could continue to be of service to him (Suk, 2003:369). By all accounts, Mečiar stood apart from his counterparts in the Czech Republic and in the federal government, who certainly engaged in illegal lustrations, but primarily to get rid of people they

⁵⁵ See also: Nečas, Vladimír, “‘Samuraj’, ‘Rudolf’, a ‘Reportér’” [‘Samurai’, ‘Rudolf’, and ‘Reporter’], *Respekt*, December 12, 1990, available at: <http://respekt.ihned.cz/c1-35913290-samuraj-rudolf-a-reporter>, accessed July 20, 2015.

⁵⁶ Benedikovičová, Mária, ‘Ako Mečiar prvýkrát porušil zákon a nechal z Tisovej vily odnieť spisy ŠtB’ [How Mečiar Broke the Law for the First Time and Had StB Files Removed from Tiso’s Villa], *Denník N*, February 15, 2015, available at: <https://dennikn.sk/47868/ako-meciar-prvykrat-porusil-zakon-nechal-z-tisovej-vily-odniest-spisy-stb/>, accessed July 20, 2015.

saw as inappropriate in a rule of law state, not to get rid of political rival. This anecdote (related to me by journalist Milan Žitný) illustrates the difference:

After the elections of the year 1990, Mečiar and Pithart were PMs, and Mečiar came to visit his partner in Prague. Pithart describes that they picked him up in Ruzyně and on the way to the city, Mečiar asked him "what do you have on your people"? And Pithart did not understand the question - On whom? "Well, who do you hold in the palm of your hand, that they might listen to you?" Pithart did not understand, because he thinks completely differently. So Mečiar bragged: "I have 'kompromaterialy' - compromising materials - on church dignitaries, journalists, politicians, I 'hold' all of them. What do you have?" Pithart understood, and said: "Me? I have nothing", and Mečiar just looked out the window. Pithart commented on it saying "I was no longer a partner for him. We did not have a thing in common".⁵⁷

The most prominent victim of Mečiar was Ján Budaj. Ján Budaj, leader of VPN and destined for a promising political career, saw his career cut short when Mečiar leaked information that Budaj had collaborated just prior to the 1990 elections. For months before that, the information had been in the hands of Mečiar as well as others with access to the secret service files (Suk, 2003:375 ff.) In March 1990, Mečiar had already enlisted StB agents in a protest against the election of Ján Budaj as speaker of Slovakia's parliament (Suk, 2003:369). Budaj, who was later cleared, says that he signed to get his passport back, which had been confiscated during an attempt to flee the country. Although there was broad support for Budaj within VPN, he stepped down. Suk describes the episode as one in which a naïve dissident movement, unprepared to engage in power politics, suffered at the hands of more rigorous politicians. In Slovakia, the VPN leadership agreed: "Mečiar simply deceived us and we let ourselves be deceived" (Suk, 2003:369; cf. Ondruš, 2009:92-113).

In addition to lustrations in the bureaucracy, there were parliamentary lustrations. This process was not legally sanctioned, and was not an initiative of the parties, the parliaments, or the government (Suk, 2003:377). Instead, it appears to have been a private bureaucratic initiative, implemented by bureaucrats in the federal ministry of the interior, including some who had themselves been StB agents and who parlayed their expertise into a position in the ministry during

⁵⁷ Interview with Milan Žitný, May 6, 2013, Bratislava.

the restructuring of the state bureaucracy. The outcomes of these lustrations were initially not meant to be made public, as they were being used to convince candidates not to run in the first place. One of them – ČSL leader Josef Bartončík – refused to relinquish his candidacy. This prompted Jan Ruml, former dissident and deputy to Minister Sacher, to take matters into his own hands. Speaking on national television on June 6, 1990, two days before the elections, Ruml denounced Bartončík as an StB collaborator. This decision was later classified by the Electoral Commission as a ‘grave violation of electoral law’, but Ruml faced no consequences and was appointed Czech Minister of the Interior two years later.⁵⁸ In spite of Ruml’s intervention, Bartončík was elected and took office.

After the June, 1990 Elections

The elections of June 8-9, 1990, confirmed broad support for the Civic Forum, in the Czech Republic, and Public Against Violence (along with the Christian Democrats), in Slovakia. The outcome provided continued mandates for Federal Prime Minister Čalfa and Czech Prime Minister Pithart. In Slovakia, the elections saw Mečiar emerge as VPN leader and Slovakia’s new Prime Minister. In this position, he continued to take advantage of access to the secret service files in the same way that he had done as Minister of the Interior in the Slovakian Čič government before the elections. Within a year, Mečiar was ousted following a conflict within VPN, but after the June 1992 elections, Mečiar returned as Prime Minister after his new party, HZDS, won the Slovakian elections.

The thirst for investigating the secret service and exposing its collaborators did not abate after the elections. The practice of wild lustrations continued in both republics. In Slovakia, Mečiar was now Prime Minister, and continued to take advantage of the power his position offered, making clandestine use of secret service files while strengthening his position through the tactical appointment of former StB agents. In the Czech Republic, Prime Minister Pithart forced Environment Minister Bedřich Moldan to resign from the cabinet in January 1991 (David,

⁵⁸ See Havel’s recollection in *To the Castle and Back* (Havel, 2007:160 ff.).

2003:398) on account of Moldan's alleged StB collaboration.⁵⁹ This illustrates the difference between the two Prime Ministers, even as both men relied on clandestine use of the StB files: Mečiar kept StB agents on, and built his power base on that foundation, while Pithart got StB agents out of the way, rendering them useless as pawns in a struggle for political power.

In parliament, lustrations also continued after the elections. The new federal parliament created a new commission to investigate the events of November 17, 1989. Chaired by Jiří Ruml, Jan Ruml's father, the commission offers a great insight into what 'Rebuilding the Ship at Sea' (Elster et al., 1998) meant in practice: the first task of the commission was to investigate itself. Three Commission members stepped down when it became clear that they had worked for the StB. Under Ruml's leadership, the commission lustrated the Federal Assembly, in spite of its mandate to investigate the violence that kick-started the Velvet Revolution. On 10 January 1991, the Federal Assembly adopted a declaration stating that it was unacceptable that StB officers and collaborators in higher office, and tasked the Commission with lustrating members of the Federal Assembly and members of the federal government. Those who were found to have collaborated were given 15 days to step down citing health reasons; if after those 15 days they had not given up their mandate, their collaboration would be made public.⁶⁰

This second round of parliamentary lustrations culminated in commission spokesperson MP Petr Toman taking the floor of the Federal Assembly on March 22, 1991, to list ten MPs who were listed in the StB files as collaborators.⁶¹ Besides Bartončík, whose StB registration had already been revealed, the most prominent victim this time around was dissident Jan Kavan (Šiklová,

⁵⁹ See also: Blažek, Bohuslav, 'Aféra Pithart versus Moldan' [The Pithart v. Moldan Affair], *Respekt*, January 21, 1991. Available at: <http://respekt.ihned.cz/c1-35916660-afera-pithart-versus-moldan>, accessed July 20, 2015.

⁶⁰ 'K postupu lustrací poslanců Federální shromáždění a členů vlády České a Slovenské Federativní Republiky' [On the Approach towards Lustrations of Members of the Federal Assembly and Members of the Government of the Czech and Slovak Federal Republic], Resolution 94, Federal Assembly of Czechoslovakia, Sixth Legislative Period (1990-1992), January 10, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/usneseni/u0094.htm>, accessed July 20, 2015.

⁶¹ Parliamentary Speech by MP Petr Toman, Federal Assembly of Czechoslovakia, March 22, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/014schuz/s014030.htm>, accessed July 20, 2015.

1996). Like others, he refused to give up his seat in parliament, and won the court battle in which he challenged the allegations. Later, he served as Foreign Minister. During the debate, several Federal Assembly members spoke up in support of Kavan and others that had been accused. Half of the accused were members of the communist faction, and some of them did speak up to defend themselves – but most of the opposition to the commission’s work came from individuals who had been prominent dissidents such as Jičínský, Sokol, Mlynárik, and Uhl. This episode contributed to the collapse of the Civic Forum in the spring of 1991. As the Civic Forum broke apart, those who supported the parliamentary lustrations followed Václav Klaus into the Civic Democratic Party (*Občanská Demokratická Strana*, ODS), while opponents (many of them dissidents) formed the Civic Movement (*Občanské Hnutí*, OH). In Slovakia, too, debates over lustration contributed to Mečiar’s decision to leave VPN and form a new party (*Hnutie Za Demokratické Slovensko*, HZDS).

The revelations led to two demands: a formal lustration law and access to the secret service files. The declaration adopted by the Federal Assembly following Toman’s statement called on those MPs who had been listed to resign (none did), and simultaneously called on the federal government to prepare a law ‘on treating information about StB personnel and operatives’.⁶² In response, on September 9, 1991, the Czechoslovakian government sent the federal assembly the bill that would become the lustration law. This law did not actually legalize parliamentary lustrations, but did extend the requirement of a clean StB sheet to positions in the bureaucracy. As for file access, the federal government was unwilling to accede to this request (Nedelsky, 2009:51). In a bit of historical irony, the federal Minister of the Interior who refused to provide access to StB files was Ján Langoš, who later became the key architect of the Slovakian file access law passed in 2002 (see Chapter 5).⁶³ A year later, however, this refusal was undermined when electronic lists of

⁶² ‘Ke zprávě vyšetřovací komise pro vyšetřování událostí 17. listopadu 1989 v Praze’ [On the Report by the Investigative Commission on the Events of November 17, 1989 in Prague], Resolution 123, Federal Assembly of Czechoslovakia, Sixth Legislative Period (1990-1992), March 26, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/usneseni/u0123.htm>, accessed July 20, 2015.

⁶³ In February 1992, Langoš did create a special division inside the federal ministry of the interior that was dedicated to prosecuting crimes committed by the regime. This division had access to the StB files. See: Spurný, Jaroslav and Jan Brabec, ‘Zákon proti komunismu’ [Law against Communism], *Respekt*, August 16, 1993, available at:

150,000 names listed in the StB archives were leaked. Former dissident Petr Cibulka published the lists, which he received on two floppy disks, just prior to the June 1992 elections (Stan, 2011).⁶⁴

Lustration Law

The Czechoslovakian lustration law, adopted on October 4, 1991, requires that applicants for a large number of functions in the public service, as well as those currently in those positions, submit a negative lustration certificate, to be issued by the federal ministry of the interior. Article one of the law lists over forty state organizations (including the army, the police, the judiciary, the offices of several high functionaries including the President, but also state owned enterprises, press agencies, and the academy of sciences) in which positions are to be subject to lustration.⁶⁵ However, the law did not extend lustration to any *elected* office, even though this was the existing practice that the federal assembly had wanted to codify. Presumably, the drafters of the law saw no room to create such legal provisions within the framework of Czechoslovakia's constitution and international treaty obligations. Positive lustration certificates were issued to StB officers, 'conscious collaborators of the StB' (and others listed in StB files in a number of capacities), members of screening committees established by the Communist Party after 1948 and again after the Prague Spring, members of the People's Militia's, Communist Party functionaries (but not rank-and-file members), and people who attended Felix Edmundovich Dzerzhinskiy High College for State Security Officers, in the Soviet Union, for more than three months.⁶⁶ A positive lustration was grounds for termination or rejection of one's application. In the first ten years of the law being in effect, over 400,000 certificates were issued (Nedelsky, 2004:76).

<http://respekt.ihned.cz/c1-35950060-zakon-proti-kunismu>, accessed July 20, 2015. See also: 'Odpověď na interpelaci poslance Jozefa Wagnera' [Answer to Interpellation by MP Jozef Wagner],_ Print 1212M, Czech Chamber of Deputies, First Legislative Period (1992-1996), November 1, 1994, available at: <http://www.psp.cz/eknih/1993ps/tisky/t1212m00.htm>, accessed July 20, 2015.

⁶⁴ These 'Cibulka lists' continue to be available on www.cibulka.com, accessed July 25, 2015. Zdena Salivarová-Škvorecká's *Osočeni* (The Slandered) (Salivarová-Škvorecká, 2000) contains a collection of 'true stories' of people on the list.

⁶⁵ Article 1, Law 451/1991 Sb. 'which sets some further requirements for the exercise of some functions in state bodies and organizations of the Czech and Slovak Federal Republic, the Czech Republic, and the Slovak Republic'.

⁶⁶ Article 3, Law 451/1991 Sb. Feliks Edmundovich Dzerzhinskiy was the first director of the *Cheka*, one of KGB's precursors, during the Russian Civil War.

The law was adopted following lengthy and heated debate in the Federal Assembly over the course of three days. As had been the case during the discussion over the parliamentary lustrations, half a year prior, the debate pitted three groups of dissidents (conservatives, liberals, and leftists purged from the KSČ) against each other. The conservatives welcomed the law, citing the need for some form of action against the former regime. However, many liberals and leftists were more concerned, questioning how one could reliably establish that anyone had knowingly collaborated on the basis of the StB files, noting the objections of international organizations as well as the potential for violating rule of law norms and applying a principle of collective guilt. The definition of ‘conscious collaboration’ was a subject of lengthy debate, as well as the creation of legal recourse for those affected by the law (David, 2003).

Ultimately, many MPs recognized a need for something to be done, while still acknowledging the imperfections of the bill. One MP noted issues including the possibility of unjust accusations, but also expressed the hope that the law would “create a situation of calm, which will allow us to navigate the exigent circumstances that are threatening us”.⁶⁷ Although the law passed with ease (only 31 members of the Federal Assembly out of 300 voted against the law; Kavan and Bartončík, who had fallen victim to parliamentary lustrations earlier, both abstained, along with many others), support was oftentimes grudging. For instance, speaking on behalf of VPN, Bačinský put it like this: “We don’t consider the lustration law to be a be-all-end-all. We consider it to be inevitable, to be that bridge across a river full of sharks to the fortress that is called democracy. For that reason, we will all support this bill”.⁶⁸ The federal government recognized this, and included a sunset provision: “With a view to the exceptionality of the law, which is to speed up the transition to a democratic society, it is proposed to limit its operation to December 31, 1996”.⁶⁹

⁶⁷ Parliamentary Speech by MP Ivan Fišera, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017060.htm>, accessed July 20, 2015. Fišera was expelled from the KSČ in 1970.

⁶⁸ Parliamentary Speech by MP Stefan Bačinský, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017060.htm>, accessed July 20, 2015.

⁶⁹ ‘Vládní návrh. Zákon kterým se stanoví některé další podmínky pro výkon některých funkcí ve státních orgánech a organizacích České a Slovenské Federativní Republiky, České republiky a Slovenské republiky’ [Government

The text of the lustration law hinges on an interpretation of the communist past that is not broadly supported. To be sure, supporters contend that the law is not punitive in nature, and does not attribute guilt. Instead, they argued, the law was meant to safeguard democratic gains and to prevent the process of liberalization from being jeopardized by the old guard, or by individuals whose former collaboration puts them in a position to be blackmailed. According to Catholic dissident Václav Benda: "... what we are doing is not revenge, but not justice or punishment either. It's expressly a question of the future".⁷⁰ However, other statements by supporters do demonstrate that the law is not just about safeguarding democratic gains, but also about assigning responsibility for human rights abuse. For instance, during the debate, MP Toman noted that "We are of the opinion that members of the Communist Party, State Security, and People's Militia's took part in [violations of human and civil rights] simply by belonging to those organizations".⁷¹

During the debate in the Federal Assembly, critics of the law took exception to this view. Former dissident MP Pavel Dostál addressed the Federal Assembly: "I think that two things keep getting thrown together: StB personnel, and their victims".⁷² This criticism focused primarily on how the law presented collaboration with the secret police, arguing in particular against the inclusion of 'confidants' (*důvěrník*) and 'candidates for secret collaboration' (*kandidát tajné spolupráce*) in the definition of 'conscious collaboration'. People in these categories were not informed by StB that they were confidants or candidates, and often never realized that they had talked to StB agents in the first place.

Proposal. Law that Sets Further Conditions for Certain Functions in the State Bureaucracy of the Czech and Slovak Federal Republic, The Czech Republic, and the Slovak Republic], Print 841, Federal Assembly of Czechoslovakia, Sixth Legislative Period (1990-1992), September 9, 1991, available at: http://www.psp.cz/eknih/1990fs/tisky/t0841_00.htm, accessed July 20, 2015.

⁷⁰ Parliamentary Speech by MP Václav Benda, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017061.htm>, accessed July 20, 2015.

⁷¹ Parliamentary Speech by MP Petr Toman, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017061.htm>, accessed July 20, 2015.

⁷² Parliamentary Speech by MP Pavel Dostál, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017064.htm>, accessed July 20, 2015.

Critics further argue that even in cases where individuals knowingly collaborated, the law fails to take into account possible extenuating circumstances, such as coercion on the part of the secret police. In the eyes of people uncomfortable with this law, this is made worse by the inability of the new regime to target higher-ups for their responsibility in perpetuating communist rule. This sentiment was also reflected in several of the interviews I did. According to former Havel advisor Miloš Žiak, the law goes after the puppets, not the puppet masters.⁷³ Milan Žitný, a journalist who served on the ‘independent commission’ that ruled in appeal cases brought by recipients of positive lustration results, similarly argued that many collaborators were like victims more than they were like perpetrators.⁷⁴

Lastly, the dissidents with a communist background took issue with the way in which the law equated communist party membership with repression. Zdeněk Jičínský, an MP who joined the dissident movement after being removed from the KSČ in the wake of the Prague Spring, noted that many communists had themselves contributed to the collapse of the repressive system. Citing Gorbachev as an example, he argued that “the people that supported and propagated the Prague Spring, those reform forces inside KSČ, are one of the sources of what led to November 17, 1989”.⁷⁵

Although some dissidents (like Benda, cited above) welcomed the lustration law, most dissidents were skeptical, and the key objections to the law came from dissidents, just as had been the case with the parliamentary lustrations. Notably, President Havel opposed the law, arguing that it relied on the principle of collective guilt and anticipating that it would be rejected by the constitutional court in due course. Havel, who could not veto the law under the Czechoslovakian constitution, sent a number of recommendations on how to improve the law, which the Federal Assembly chose

⁷³ Interview with Miloš Žiak, May 3, 2013, Bratislava.

⁷⁴ Interview with Milan Žitný, May 6, 2013, Bratislava.

⁷⁵ Parliamentary Speech by MP Zdeněk Jičínský, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017063.htm>, accessed July 20, 2015.

to ignore.⁷⁶ Though still skeptical, Havel had dropped some of his earlier resistance to retribution when, in August 1990, he told a Civic Forum gathering that ‘our revolution is unfinished’ and called for a ‘second revolution’ (Suk, 2011:38; David, 2003:398)

Nonetheless, the law passed with a clear majority. A few months later, Czech legislators expanded the law for the Czech Republic (i.e., this was not a federal law and did not apply in Slovakia).⁷⁷ The lustration was received with less enthusiasm in Slovakia, and the Slovakian government did not implement it. When the law was passed, Ján Čarnogurský, who viewed lustration as ‘hysteria’, was the Slovakian Prime Minister. Čarnogurský had come to power as VPN tried to curb the rising influence of Vladimír Mečiar, but VPN did not see lustration as a tool in that process, even though Mečiar had made illicit use of the StB files to get rid of VPN leader Ján Budaj earlier. Mečiar himself, who returned to power after the elections in June, 1992, was even less inclined to implement the law.

The federal ministry established an independent commission which citizens could turn to in order to appeal lustration decisions. The commission granted the vast majority of all appeals. In response to the implementation of lustration, a group of 99 assembly members asked the newly created Czechoslovakian Constitutional Court to rule on the law. In its 26 November 1992 ruling, the Constitutional Court removed ‘candidate for secret collaboration’ as a category subject to lustration, but upheld the law as a whole. This ruling did not satisfy the law’s opponents, who continued to reject the central premise of the law.

⁷⁶ As Czech President, Havel would later have veto power, a right that he would use (in vain) in both instances when the lustration law was renewed. The Czechoslovakian constitution, however, did not provide for a presidential veto, forcing Havel to either sign the law (noting reservations) or resign as President.

⁷⁷ Zákon o některých dalších předpokladech pro výkon některých funkcí obsazovaných ustanovením nebo jmenováním příslušníků Policie České republiky a příslušníků Sboru nápravné výchovy České republiky [Law on Some Further Conditions For Executing Certain Functions Occupied through Institution or Appointment by Officers of the Police of the Czech Republic and Officers of the Corps of Correctional Training of the Czech Republic], 279/1992 Sb., passed into law on 28 April.

3.3 Analytical Perspective

The central argument of this dissertation is that transitional justice laws reinforce contestation over the communist past, because the laws are produced in the absence of a consensus over that past. Moreover, the key advocates of transitional justice are policy entrepreneurs, who see these laws as symbols, codifying their views of the communist past. The impact of the symbolic content of the law in turn provokes a backlash, perpetuating the debate that preceded the law. To what extent does the 1991 Czechoslovakian lustration law fit this pattern? Secondly, keeping in mind that Czechoslovakia ceased to exist a year after the lustration law came into effect, and that after independence, Slovakia would no longer implement the law, what are the implications of transitional justice during the 1990-1992 period for subsequent developments in the two republics as of 1993?

Political Context

The lustration law came in the wake of wild lustrations in parliament and the state bureaucracy, scandals that exposed prominent politicians as StB collaborators. The issue divided the post-communist political elites. In particular, it pitted different groups of dissidents against each other, leading to the breakup of both Civic Forum (OF) and Public against Violence (VPN).⁷⁸ There was no consensus on basic questions regarding lustration – which positions should be subject to it, which types of involvement with the communist regime should be subject to it, and which consequences should there be for those who were thus involved. There was an agreement that ‘something needed to be done’, which led to grudging support for the law. But for many backers, the law was simply a way to curb the existing, distasteful practice of wild lustrations by providing a legal framework, and they supported it to make the best of a bad situation. As a result, the law, though it passed, was regarded as deeply flawed even by many of its backers.

⁷⁸ Nalepa (2009:68) dismisses this debate as a ‘common characteristic of young and underinstitutionalized party systems’ and argues that there existed, within the Civic Forum, a ‘consensus around the idea that lustration, in one form or another, must be implemented’. In fact, the Civic Forum no longer existed by the time the lustration law came about, and the debate over lustrations form part of the reason that the Civic Forum disintegrated. Oddly, Nalepa notes this in a footnote on the preceding page – she is drawing a fine distinction between a consensus over the need for lustration, but disagreement over what constitutes collaboration. In reality however, there was little common ground among the dissidents.

The debate over lustration took place in a tumultuous context, against the backdrop of sweeping economic and social reforms, growing intra-republic tensions, and broader debate about how to address the communist past. Although the issue of secret service personnel and files attracted great attention, a number of additional forms of transitional justice were debated and sometimes implemented. For instance, people who had been purged or politically convicted under communism were rehabilitated (119/1990 Sb.); in addition, nationalized and otherwise confiscated possessions were returned (403/1990 Sb).⁷⁹ Moreover, there was a lengthy debate about what to do with property belonging to the communist party and whether or not to ban this organization. And that is just the legacy of communism: other issues on the ‘dealing with the past’ agenda include the Holocaust, the Nazi occupation, and the displacement of the Sudeten Germans after the Second World War.

To be sure, the context prior to October, 1991 was very different in the two republics. In the Czech Republic, early lustrations were the purview of interested individuals, motivated by personal reasons. There is no evidence of Czech politicians using the files to undermine others in a bid for power, nor are there conspiracy theories that make this suggestion. Slovakia, though, showed a very different pattern – one in which the files were approached with far greater instrumentality. By all accounts, Vladimír Mečiar took advantage of his position as Slovakian Minister of the Interior, until June 1990, and Slovakian PM afterwards, to gain access to StB files. He used these files to end the careers of some of his opponents, or to blackmail them. As a result, the Slovakian debate over the lustration law had a pragmatic component that was absent from the Czech debate.

Political Actors

The organizational disarray that is typical of transitional countries compounded this chaotic situation. First of all, the federal set-up of Czechoslovakia made the bureaucracy inside the Federal Ministry of the Interior all the more complicated. It also led to separate party systems for each republic. These party systems, moreover, were in constant flux. Of the parties elected in June 1990, most collapsed within a year, and the parliaments re-organized themselves into new factions. Most

⁷⁹ Cf. Žantovský (2014:396); Smídová- Matoušová (2013).

of those factions either did not compete in the June, 1992 elections, or did compete, but failed to pass the electoral threshold. Several of the parliamentary factions that voted on the lustration law in 1991 did not exist in 1990, and would be gone in 1992.

The chaotic and disorganized nature of many of the parties makes a consolidated understanding of strategic interests in relation to the StB files as pertaining to the party membership on the part of those parties unlikely, and it rules out an explanation of transitional justice that stresses the strategic interests of political parties. This explanation is further undermined by the fact that both the federal and the Czech government played a mostly reactive role in shaping lustration. An exception here is the first Mečiar government – June 1990 to April 1991. Mečiar played an active role in wild lustrations, taking advantage of access to the files, but he did not see a formal lustration law as a useful tool in his activities, and opposed the bill. Thus, the only example of active partisan-strategic use of the files in Czechoslovakia occurred *in spite of* lustration, and led the strategic actor concerned (Mečiar) to *oppose* lustration. Aside from Mečiar's role, incumbent governments were reluctant or unable to interfere, leaving the initiative to parliament. The first lustrations occurred in a context in which (1) The federal government had little oversight over the work of Sacher, the Minister of the Interior; (2) Sacher had limited control over the goings-on in his own ministry. Similarly, the lustrations carried out by the November 17 Commission were a parliamentary initiative that was not overseen by anyone in the federal government, and that had no legal basis. Finally, although the federal government prepared the lustration bill and introduced it to the floor of the federal assembly, it did this at the request of parliament, which thoroughly amended the bill before adopting it.⁸⁰

This finding, along with the fact that most dissidents opposed rather than supported forms of lustration, also undermines explanations for early and far-reaching lustration law in Czechoslovakia that stress the nature of the transition from communism. These explanations stress the fact that the dissidents were not bound by any commitments made during round table talk – during the Velvet Revolution, the communist regime collapsed and had nothing to offer in

⁸⁰ Parliamentary Speech by MP Petr Toman, Federal Assembly of Czechoslovakia, October 2, 1991, available at: <http://www.psp.cz/eknih/1990fs/slsn/stenprot/017schuz/s017061.htm>, accessed July 20, 2015.

negotiations; as a result, round table talks were brief and did not have the character of an exchange. Alternately, early lustration is explained by the fact that the Czechoslovakian dissident movement had fewer skeletons in the closet, and was less vulnerable to lustration back-firing by exposing those. However, both of those explanations require that dissidents be the driving force pushing lustration. In reality, not only was lustration primarily the product of people who had not been dissidents, *it was opposed by a great number of those who had been dissidents*. Moreover, dissidents like Budaj and Kavan did fall victim to the lustration laws that were passed.⁸¹ The lustrations in the run-up to the 1990 elections, the lustrations carried out after those elections by the Commission on November 17, and finally the 1991 lustration law: All three of those initiatives drew primarily criticism from the dissidents, and all three of those initiatives were primarily the product of people from outside the dissident movement.

Clearly, there is little evidence to support the idea that parties and governments, especially with dissident backing, were the motor behind the lustration law. Does this mean that policy entrepreneurs played a key role instead? It is difficult to tell. The fluid nature of post-communist Czechoslovakian politics makes it difficult to definitively categorize political actors as policy entrepreneurs (or to reject such a classification). In a transitional setting, actors have extraordinary motivations for entering into politics. It is not probably not helpful to apply standard political science assumptions – for instance, a desire to be re-elected – to the agency of someone like Ján Čarnogurský, who became Czechoslovakia’s Deputy Prime Minister less than two weeks after being released from prison. Under such circumstances, motivations of political actors are likely to be highly idiosyncratic. In addition, remember that a policy entrepreneur is defined as an actor who devotes his or her political career to achieving a narrow set of policy goals. In the context of post-communist Czechoslovakia, all relevant political careers started in late 1989. It is, of course, possible to look back at the activities of individuals who, over time, one would come to

⁸¹ Nalepa (2009:68) acknowledges that lustration did implicate dissidents, but blames “insufficiently particularized criteria for classifying targets of the lustration procedure”. This argument seems to suggest that dissidents were only listed as confidants or candidates, and were no longer accused once those categories were removed from the definition of ‘conscious collaboration’. However, StB had managed to infiltrate the Czechoslovakian dissident movement and dissidents were listed as regular collaborators too, and thus continued to be affected by the lustration law. Moreover, Nalepa’s argument appears to overlook the reputation damage that even unfounded accusations can produce.

characterize as a policy entrepreneur, and to retroactively mark those early activities as entrepreneurial. Indeed, some of the policy entrepreneurs that shaped Czech and Slovak transitional justice over the past decades did get their start during those early transitional years. But it is unwarranted to classify those early activities as policy entrepreneurship, just because those individuals' political careers would over time develop those characteristics. However, an analysis of the political process that led to the lustration law does show political behaviour of individuals that, if demonstrated over a longer period of time, would be consistent with what we would expect from a policy entrepreneur. For instance, the decision of Deputy Minister of the Interior, Jan Ruml to denounce ČSL-leader Bartončík days before the June, 1990 election appears to reflect the tenacity and rigidity that are characteristic of the policy entrepreneur.

The Law and its Impact

The way in which the lustration law interprets the communist past also suggest that its backers display a pattern of behaviour consistent with political entrepreneurialism. By defining collaboration broadly, extending it to the category of secret service informers (and even those who were seen by StB as candidates for becoming secret informers), the law represents a rigid conception of responsibility and complicity. And although proponents claimed that the law was forward-looking and preventative in nature, rather than a form of vengeance, the law clearly identifies those targeted by lustration as responsible for human rights violations. This understanding of the lustration law lines up with David's (2011) discussion, in which he maintains that different lustration laws convey different 'perceptions of the tainted'. While, for instance, the Polish law is redemptive and public in nature, the Czechoslovakian law is retributive and secret. This suggests that the Czechoslovakian law sees StB collaboration as a disqualification and as a reason to place someone outside of public life. This normative component grew stronger over time, as Czech parliament decided to prolong the law even though it had explicitly been designed as a temporary law with a limited validity beyond the transitional period.

After the lustration law came into effect, the wild lustrations ceased. As the evidence presented in Chapter 2 shows, attention paid to the communist past abated afterwards. However, this might have occurred in the absence of a lustration law as well, given that once the lustration law was in effect, politics in Czechoslovakia turned towards the issue of the federation. Moreover, although

wild lustrations were no longer taking place, the broader debate about the communist past and the StB legacy was not yet over; indeed, it was important enough that a group of parliamentarians challenged the lustration law in front of the constitutional court. In addition, the debate over lustration also created a demand for file access, as people wanted to verify the evidence by themselves. This demand intensified when lists of secret collaborators were published by Cibulka in the summer of 1992. The parliamentarians' case in front of the constitutional judge as well as the debate over the law in the federal assembly show that their main quarrel was with the ideological message conveyed by the law.

As Chapter 4 will show, this debate continued to resurface in the Czech Republic over the decades to come. In this debate, the central issue is the ideological import of the law, rather than the regulatory provisions. The Czechoslovakian lustration law is designed to function in secret (David, 2011:95) and its implementation therefore does not attract a great deal of attention. Moreover, as Czech democracy consolidated, the significance of the legal effects of the law declined, while the ideological importance increased. In the long run, then, it seems as though the lustration law fits the pattern described in Chapter 1 increasingly well as time goes by.

Further implications

The events of 1990-92 modified the conditions under which subsequent forms of transitional justice would be debated and implemented. First of all, it contributed to Czech and Slovak divergence. Although lustration was a federal law, the political context that produced these laws were quite different in the two republics. In the Czech Republic, dissidents dominated the debate over the StB and the files. They treated the question primarily from a moral point of view. In Slovakia, the issue was approached more pragmatically by Vladimír Mečiar. His leadership, combined with legacies of milder communism and smaller opposition, created a situation in which there was neither great demand for lustration, nor great moral outcry at the notion. After the split, Slovaks and Czechs have treated their shared history of communism in a very different way, continuing a trend set in motion as soon as communism ended. Different attitudes and behaviours can be observed in public opinion (more dismissive of communism in the Czech Republic than in Slovakia), elite replacement (former communist functionaries are far more common in Slovakian than in Czech politics) and transitional justice (where the Czechs are pioneers and the Slovaks

are laggards). Some of this divergence can be attributed to differences in post-communist leadership in the two countries, both before and after January 1, 1993. Some of it can be attributed to differences within Czechoslovakian communism: there were differences in both the level of repression (higher in the Czech Republic than in Slovakia) and in the level of opposition (ditto).

Secondly, the destruction and/or disappearance, in late 1989 and early 1990, of a large quantity of StB files, undermined the future effectiveness that transitional justice could have as an arbiter of truth. The availability of these lists of names, combined with the disappearance (through destruction or theft) of many actual files, created fundamental uncertainty about the way in which large numbers of people had been involved with StB prior to the Velvet Revolution. As an example, Václav Klaus – Czech Prime Minister during the 1990s and President between 2003 and 2013 – was the subject of StB interest at two times during the 1980s, first under the code name ‘Kluk’ (Boy), until January 1986, and later (as of 1988, under the code name ‘Rek’ (Warrior). The Rek file was destroyed on 9 December 1989. In his political portrait of Klaus, Pehe (2010:16) simply notes that Klaus attended meetings at Western embassies and gave interviews to Western media as of 1988, and traveled to non-communist countries. These unusual privileges suggest that Rek may have been a collaborator, but Pehe (whose portrait is nothing if not critical) does not say that. There is no evidence that shows collaboration, but there is also no evidence that shows no collaboration.⁸² Arguably, the brief inclusion of ‘candidates for collaboration’ as a category subject to lustration, when this StB classification did not imply that a subject conscious collaboration, similarly undermined trust in subsequent pronouncements coming out of transitional justice. Today, ‘I did not know that it was StB that I was talking to’ is the go-to excuse of those who are accused of collaboration.

⁸²Vaca, Jan, ‘StB se o Klause zajímala opakovaně, svazek Rek však zničila’ [StB Was Interested in Klaus More Than Once, But Destroyed the ‘Rek’ file], *MF Dnes*, January 21, 2008, available at: http://zpravy.idnes.cz/stb-se-o-klause-zajimala-opakovane-svazek-rek-vsak-znicila-p3h-/domaci.aspx?c=A080120_212424_domaci_dp, accessed on July 20, 2015.

3.4 Conclusion

The key elements of the argument forwarded in this dissertation hold up when applied to post-communist Czechoslovakia, and the 1991 lustration law in particular. The political context that led up to the passage of the transitional justice law was one in which there was no consensus view regarding the communist past. Instead, this period was dominated by sharp and divisive debate about lustration, which split up the opposition movements that had forced the Velvet Revolution.

Moreover, the analysis confirms that transitional justice is not primarily the purview of incumbents. In post-communist Czechoslovakia, parties were too unstable and governments too reluctant to support this explanation. Mečiar, the one actor who did use the secret service files for strategic political purposes, opposed transitional justice. This finding undermines Nalepa's argument that lustration laws serve as a partisan tool, while offering tentative support for the policy entrepreneur hypothesis, even though it is not possible to classify anyone in that way in the transitional setting that this chapter looks at.

Thirdly, the lustration law does not reflect consensus about anything except the most basic agreement that something needed to be done. In addition, embedded in the law is an anti-communist perspective that is not universally shared even among those who otherwise welcomed the end of the communist regime. This, too, is in line with the theoretical expectations presented in Chapter 1.

As for the effects of lustration, this is difficult to gauge. For the short term, the law put an end to the wild lustrations that had attracted so much attention and that had provoked such contestation. However, it is possible that this situation would have faded without a lustration law as well. Over time, politics stabilized and became less transitional, and the fear that StB agents were playing a large role in politics would have diminished. In addition, the earlier lustrations might have exhausted much of the potential for scandal in higher. Finally, other political issues would have pushed the StB off the political agenda. In particular, the split of Czechoslovakia was the dominant issue during the period immediately following the passage of the lustration law, and that would have been the case in the absence of a law as well.

In the long term, the law stayed on the political agenda in the Czech Republic. In part, this was due to problems with implementation – as it turned out, Czechs found ways to circumvent the law. In addition, StB agents did not suffer greatly by being excluded from the state apparatus, since they could lead far more lucrative existences in the private sector. Moreover, as Chapter 4 will discuss, policy entrepreneurs on both sides of the political spectrum continued to debate the communist past and the lustration law became a symbol in this debate, a touchstone to which people on both sides of the issue kept returning. For supporters of the law, lustration was such a powerful symbol that they worked to renew the law in spite of the fact that, with democracy consolidated, the law's practical significance was sharply reduced. For opponents, this confirmed that the law was about revenge after all. This ideological component, rather than the legal provisions, strengthened their resolve in battling the law.

In addition to providing corroboration for this dissertation's argument, the 1990-1992 period is also important because it shaped the conditions for subsequent debates over transitional justice. For one thing, the destruction of a considerable portion of the archives, along with the release of incomplete lists of collaborators in 1992, undermined the potential for transitional justice to clear up confusion. If anything, lustration added to the confusion, as is clear from the fact that many recipients of positive lustration certificates managed to successfully appeal this decision. Moreover, over the years, Czechs have found ways of circumventing lustration, further undermining the effectiveness of the law as a legal norm. For another, it placed file access on the political agenda.

Secondly, the 1990-1992 period reinforced some of the different ways in which Czechs and Slovaks view the communist legacy generally. To be sure, however, some of this divergence is due to leadership factors, and as Chapter 5 will show, transitional justice returned to the political agenda once Mečiar's regime ended in 1998. When it did, the politics of dealing with the StB legacy shows remarkably similar patterns. In both countries, the politics of transitional justice are dominated by policy entrepreneurs, and under the influence of those actors, transitional justice laws reflect non-consensus interpretations of the communist past. In both countries, these ideological elements contribute to greater contestation over the communist past. This similarity reflects the fact that, regardless of other differences, both countries share a dual secret service

CHAPTER THREE

legacy: (1) a large volume of private information on large numbers of citizens; and (2) a large number of citizens who contributed to collecting that information in secret.

CHAPTER FOUR – The Czech Republic, a Puppy Chasing its Tail?

“Like a puppy that chases its tail, the Czechs need more lustration in order to deal with the tainted elements re-created by the lustration law” – David, 2011:161

Introduction

This chapter examines transitional justice in the Czech Republic (1993-present) to offer a detailed qualitative test of the hypotheses formulated in Chapter 1. The present chapter builds on the preceding chapters analytically and logically. Chapter 2 already offered quantitative support for two of these hypotheses, analyzing media coverage to link transitional justice to increased contestation over the communist past. Chapter 3 gave the historical background of both the communist period and the immediate post-communist years, finding some behaviour that fits the predicted policy entrepreneur pattern even in the chaotic early 1990s and offering no support for alternative explanations. Building on this analysis, I turn to the Czech Republic. Transitional justice in the Czech Republic up to the present day offers strong support for the hypotheses in this dissertation. The analysis also demonstrates that other approaches do not offer an adequate account of the hows and whys of Czech transitional justice.

Methodologically, the chapter relies on process tracing – reconstructing key events and analyzing the impact of laws on the basis of elite interviews and analysis of parliamentary debates, media coverage, legal texts, party manifestos, and public opinion reports. The interview respondents are primarily politicians but also include a number of civil society activists, journalists, as well as former and current employees in the bureaucracies that implement Czech transitional justice legislation (ÚSTR and ÚDV). Their comments help me understand the process leading to transitional justice legislation, but also allow me to interpret the way these laws affect the debate over the communist past.

Structurally, this fourth chapter follows the logic of the central hypotheses in this dissertation. I hypothesize first that policy entrepreneurs are the driving force behind transitional justice, and second that, as devised by policy entrepreneurs, transitional justice laws reinforce existing levels of political contestation over the communist past. The primary reason that transitional justice laws have this impact is because of the ideological components of the legislation – the implicit and explicit interpretations of the communist past embedded in the law. Regulatory components of transitional justice (such as creating a memory institute or opening up StB files) may also contribute to contestation over the communist past, but only in interaction with strong ideological elements. This intuition is captured in the third hypothesis.

Following the logic of the argument, presented in Table 4.1 below, the first section introduces the context for this chapter. Section 4.1 offers an overview of the transitional justice laws that the Czech Republic has adopted with particular regard to the legacy of the StB. In addition, it demonstrates that the political context in which transitional justice laws in the Czech Republic are implemented corresponds to the description offered in Chapter 1. In particular, the section shows that the communist past is deeply contested among political elites throughout the post-communist period, and that the legacy of the secret service produces an ongoing stream of scandalous revelations regarding public figures. Moreover, the section presents evidence to show that a partisan perspective on transitional justice cannot account for the Czech legislation. This raises the puzzling question as to what the source of transitional justice is, if not partisan strategy.

To solve this puzzle, Section 4.2 introduces the policy entrepreneur, finding strong evidence for my first hypothesis, which is that policy entrepreneurs are the primary force behind adopting transitional justice laws. This section shows the role that policy entrepreneurs have played in drafting bills, guiding them through the parliamentary process, and implementing the laws once they have been adopted. It lays out the anti-communist ideology that these policy entrepreneurs share and goes on to pin-point the elements of this ideology in transitional justice legislation.

Table 4.1 Dissertation Argument for the Czech Republic (1993-2013)

The communist past and transitional justice ...	
... are the subject of elite-level debate.	✓ How to interpret the Czech communist period is a matter of dispute involving different groups of dissidents and others across political parties, including communist successor party KSČM.
... remain visible due to scandals.	✓ Post-communist Czech politics is punctuated by on-going scandals regarding complicity with the communist regime (including StB collaboration) on the part of public figures.
... but are not politically salient to voters or to how parties appeal to voters.	✓ Czech public opinion appears mostly ambivalent regarding both the communist past and transitional justice. Political parties can be sympathetic but do not take the initiative or promise transitional justice legislation to voters. Governments are permissive but indifferent to the issue.
Instead, policy entrepreneurs ...	
... draft and design transitional justice legislation.	✓ Policy entrepreneurs like Jiří Liška and Pavel Žáček play a central role. Examples include the 2002 File Access Law , the 2007 ÚSTR Law , and other transitional justice legislation such as the 1993 Communist Immorality Law and the 2011 Anti-communist Resistance Law .
... take the initiative to introduce legislation in parliament.	✓ Virtually all transitional justice legislation is the product of parliamentary initiative by policy entrepreneurs like Liška and Žáček, as well as the Benda's and Štětina. The 1996 File Access Law (introduced by the government) is an exception.
... remain involved in the implementation.	✓ After championing ÚDV, Václav Benda became the office's first director in 1995. Pavel Žáček became the first director of ÚSTR which he had pushed for.
The legislation that they produce ...	
... has explicit ideological components reflecting the policy entrepreneurs' anti-communism.	✓ Ideological elements characterize all transitional justice passed under the influence of policy entrepreneurs. Explicit examples include the 2002 File Access Law and the 2007 ÚSTR Law , as well as and other transitional justice legislation such as the 1993 Communist Immorality Law and the 2011 Anti-communist Resistance Law .
... reinforces contestation primarily because of the ideological language.	✓ Ideology is the primary concern for opponents such as Zdeněk Jičínský . As an example, use of the word 'totalitarian' in transitional justice legislation is a key source of contestation.
... includes limited regulatory components, which by themselves do not reinforce contestation.	✓ Practical provisions in transitional justice legislation: limited to non-existent. The Lustration Law has low visibility and does not apply to political office. Prosecution and conviction rates in cases brought by ÚDV are low. Very few citizens take advantage of the right to access StB files .
In this ideological context, political contestation is further reinforced when policy entrepreneurs ...	
... implement laws that release information from the secret service archives	✓ Exposure of regime complicity (including StB collaboration) attracts greater attention and contestation given the anti-communist content of legislation and the role of ÚDV and ÚSTR in further broadcasting anti-communism and exposing regime complicity.
... lead the formal organizations (memory institutes) that implement transitional justice	✓ Led by Benda and Žáček , both ÚDV and ÚSTR have served as platform for the anti-communist agenda of the policy entrepreneurs. As a result, these institutes and the implementation of transitional justice attracted greater contestation.
... encounter an explicit and sophisticated rejection of their anti-communism.	✓ Individuals with a strong commitment to the politics of transitional justice are located across the political spectrum. This group includes numerous leftist dissidents such as Jičínský , in addition to the anti-communists on the right.

Section 4.3 tests and confirms the second hypothesis, which predicts greater contestation as a result of transitional justice laws as devised by policy entrepreneurs. I give an overview of the political debate produced by these laws and argue that this is due to the influence of policy entrepreneurs. I emphasize the importance of ideological elements in legislation over regulatory components (rules that empower or constrain citizens' behaviour), showing evidence that ideology in the laws directly leads to contestation over the communist past. Moreover, the law discusses two indirect mechanisms by which ideology affects contestation, namely through the creation of memory institutes and through the implementation of StB file access. This confirms the third hypothesis. Section 4.4, finally, summarizes the findings in this chapter and offers speculation on some broader ways in which this legislation impacts Czech society.

4.1 Transitional Justice in the Czech Republic

The political conditions under which transitional justice in the Czech Republic has come about share the key characteristics noted in the first chapter. Among elites in particular, there is no consensus about anything related to the communist past or related to whether and how it can be addressed through transitional justice. An ongoing debate about this broad issue is reinforced by repeated scandals and *causes célèbres* in which StB collaboration or other forms of support for the communist regime on the part of political figures or celebrities are revealed to the public. In this context, the Czech Republic has produced numerous transitional justice laws. However, although superficially speaking these laws are part of party competition between the right and the left, I will show that partisan strategies are not the primary source for transitional justice legislation. I make this case on the basis of evidence about how political parties approach the issue, how voters perceive the communist past, and how political parties are affected by transitional justice legislation. This evidence, which is not consistent with partisan strategies as a source for transitional justice, raises the puzzle of what *does* motivate transitional justice legislation. To solve that puzzle, I introduce an alternative perspective on transitional justice that stresses the role of policy entrepreneurs.

As of January 1, 1993, the Czech Republic existed as a new country, but the new country did not start from scratch. The Czechs inherited a political and legal framework, including transitional justice legislation discussed in Chapter 3, from federal Czechoslovakia. Apart from the federative

elements that had characterized Czechoslovakia in its last 25 years, the Czechs copied most essential features of the post-communist Czechoslovakian constitution, which in turn borrowed heavily from the inter-war First Republic constitution. Like Czechoslovakia, the Czech Republic became a parliamentary system with a President elected by Parliament.⁸³ There was personal continuity as well, as the Czech National Council (*Česká Národní Rada*), previously part of the Czechoslovakian federal system, was seamlessly and without intervening elections converted into the Czech Chamber of Deputies (*Poslanecká Sněmovna*). On January 26, 1993, these deputies elected Václav Havel as the first Czech President. Havel had stepped down as Czechoslovakian President over the course of 1992 when it became apparent that the country of which he was the President would soon cease to exist.

The party system that had begun to develop during the first legislative periods after 1989 further crystallized, becoming among the most stable in the region. In 1991, Václav Klaus founded ODS and (in a coalition with a small Christian Democratic Party, KDS) this party won the 1992 elections to the National Council and the Czech part of the Federal Assembly. In those same elections, ČSSD made its first post-communist appearance. A revival of a party that existed before the War, the party gained only a small representation in its first post-communist election. However, under the leadership of Miloš Zeman, the party rose to prominence quickly, and in the 1996 elections, finished second in the parliamentary elections, gaining 61 seats (behind ODS, with 68 seats). Together, these two parties have dominated the Czech political scene since, winning more than half the seats and votes in all elections except the most recent.⁸⁴ Every Czech Prime Minister has been a member of either ČSSD or ODS (apart from the three who led caretaker governments). Moreover, Zeman and Klaus, the leaders that brought the two parties to prominence, have both held the Czech presidency (although both leaders have since left their parties, Zeman in 2007 and Klaus in 2008).

⁸³ The constitution was amended in 2012, allowing for the President to be directly elected in a two-round run-off procedure similar to the French electoral system.

⁸⁴ In recent years, both parties have seen their vote share decline, prompting speculation that the Czech party system is realigning. In 2013, the parties held only 66 seats (out of 200) and attracted only 28 per cent of the vote. This decline is due primarily due to ODS's abysmal result in the 2013 elections, in which it attracted only 8 per cent of the vote. See Appendix D.

The Communist Party of Bohemia and Moravia (*Komunistická Strana Čech a Moravy*, KSČM) is a third constant factor in post-communist Czech politics. The party is commonly described as ‘unreformed’ and it is mostly unapologetic about the past to which it is heir, especially when compared to other post-communist successor parties (Grzymała-Busse, 2002). Although it acknowledges mistakes and ‘deformations’, it remains fundamentally committed to the legacy of KSČ rule. Although the party has attracted between 10 and 20 percent of the vote in every election since the end of communism, it has been consistently excluded from national politics. Its most likely coalition partner, ČSSD, has adopted a resolution that rejects the possibility of collaboration with ‘extremist’ parties including KSČM. This resolution has been the subject of intense intraparty debate but was reaffirmed during the 2013 ČSSD congress.⁸⁵ Speculation on the potential for KSČM-ČSSD collaboration has been a persistent feature of Czech politics in spite of ČSSD’s protestations, and this ongoing discussion serves to reinforce the salience of the communist past as a political issue more generally.

A steady stream of revelations of the involvement of public figures with the communist regime have a similar effect. The case of Babiš, with which this dissertation opens, is only one in a long line of controversies. Just one other example is the case of Pavol Mihál, the Czech director of Interpol whose name turned up in the list of StB collaborators, but who was issued a clean lustration bill under the name ‘Pavel Mihál’. These affairs typically follow a pattern of accusation, denial, arguing over files in a context where a lot of evidence is no longer available, and finally a court case that drags on and ultimately answers very few substantive questions. And these controversies are not restricted to StB collaboration. They can also involve individual instances of regime collaboration, such as signing the ‘anti-charter’ denouncing *Charta 77* (as was the case for singer Helena Vondráčková, who was listed as a signatory but denied having signed) or informing on a fellow citizen (as was the case for author Milan Kundera, who in 2008 was accused of having

⁸⁵ ‘ČSSD opakuje své “NE” komunistům. Bohumínské usnesení nezruší’ [ČSSD Repeats Its ‘No’ to the Communists, Does Not Repeal the Bohumín Resolution], *Česká Televize*, March 16, 2013, available at: <http://www.ceskatelevize.cz/ct24/domaci/219143-cssd-opakuje-sve-ne-komunistum-bohuminske-usneseni-nezrusi/>, accessed on May 16, 2015.

done this in 1950).⁸⁶ The debate may involve simple rank-and-file membership in the KSČ, as was the case for Josef Tošovský, central banker and briefly caretaker Prime Minister in 1998, who neglected to list his 14 years in the party on his official resume, and for the director of public broadcaster ČT, Petr Dvořák, about whom it was revealed on the day of his appointment that, contrary to his earlier statements, he had joined the Communist Party in September 1989. Even when someone's communist party membership is public knowledge, it can still become the subject of intense debate, as was the case for Jan Fischer, whose presidential campaign in 2013 was hamstrung by his handling of questions about his normalization-era KSČ membership.⁸⁷

This is the context in which transitional justice in the Czech Republic is introduced and debated. Compared to its post-communist neighbors, the Czech Republic adopted transitional justice sooner, it has adopted transitional justice more frequently, and the legislation that is on the book reaches further. With regard to the specific legacy of the secret service alone, multiple laws are on the books, and two government institutes were founded to carry out a range of transitional justice policies. Roughly ten other laws address other aspects of the communist past, including the rehabilitations of political convictions to restitution of confiscated property. This legislation is almost exclusively initiated by the Czech right.

As noted, the Czechs continued to implement lustration (unlike Slovakia) and in 1995, the Czech parliament voted to extend the law, which was set to expire in 1996, for an additional 4 years. When the law was again about to expire in 2000, parliament again voted to renew the law. In both cases, these renewals were initiated primarily though not exclusively by ODS politicians. This time, no expiration date was specified, and as a result, the law is still on the books. Moreover, on January 1, 1995, a dedicated division of the Czech police was founded to address the communist past: the Office for the Documentation and Investigation of the Crimes of Communism (*Úřad*

⁸⁶ 'Helena Vondráčková prohrála soudní při s hudebním kritikem Janem Rejžkem' [Helena Vondráčková Loses Court Battle with Music Critic Jan Rejžek], *Český Rozhlas*, January 15, 2001, available at: <http://www.radio.cz/cz/rubrika/udalosti/helena-vondrackova-prohrala-soudni-pri-s-hudebnim-kritikem-janem-rejzkem>, accessed May 17, 2015; 'Udání Milana Kundery' [Milan Kundera's Denunciation], *Respekt*, October 12, 2008, available at: <http://respekt.ihned.cz/c1-36370990-udani-milana-kundery>, accessed May 17, 2015

⁸⁷ Interview with Peter Just, February 19, 2013, Prague.

Dokumentace a Vyšetřování Zločinů Komunismu, ÚDV).⁸⁸ The office was a merger of two taskforces: The Office for the Documentation and Investigation of StB Activity (part of the interior ministry) and the Centre for Documentation of the Illegality of the Communist Regime (part of the General Procuracy). ÚDV was tasked with preparing prosecutions against individuals for involvement in communist repression, something made possible by a 1993 law that lifted the statute of limitations for crimes committed between 1948 and 1989.

In addition, in 1996, the StB files were declassified. Although the Czechoslovakian federal government had balked at the ramifications of providing access to the StB archives (see Chapter 3), the publication of the Cibulka lists forced the government's hand. As one of the first in the region (apart from Germany where the process was initiated by the West during reunification), Czech citizens had access to their own StB files. Their access was restricted beyond that: Under the 1996 law, Czechs could not access the files of other individuals (except for close relatives). Also, privacy concerns required that personal information would be blacked out before members of the public could see photocopies of their own file.⁸⁹ A final limitation was that accessing the files was costly. Many of these limitations were lifted when, in 2002, a new file access law was passed that allowed, in essence, complete access. This law, another initiative from primarily ODS politicians, also made it possible to publish lists of collaborators on the internet, facilitating the process of doing research in the archives and establishing the availability of documents that are of interest.

The most recent step in the process of legislating the StB legacy was the creation, in 2007, of the Institute for the Study of Totalitarian Regimes (ÚSTR, *Ústav pro Studium Totalitních Režimů*). This institute was modeled on the example of Institutes of National Memory in Poland (IPN,

⁸⁸ 'Úřad dokumentace a vyšetřování zločinů komunismu' [Office for the Documentation and Investigation of the Crimes of Communism], available at: <http://www.policie.cz/clanek/urad-dokumentace-a-vysetrovani-zlocinu-komunismu-679905.aspx>, accessed July 20, 2015.

⁸⁹ In his interview, Pavel Žáček illustrated the restrictiveness of this 1996 law with an anecdote. Apparently, one file contained a postcard from the French pilgrims' destination of Lourdes. Before releasing this file, an official sought to prevent identification of Mary and Baby Jesus, depicted on the postcard, by blacking out their eyes. Source: Interview with Pavel Žáček, March 5, 2013, Prague.

Instytut Pamięci Narodowej) and Slovakia (*ÚPN, Ústav Pamäti Národa*). It is tasked with hosting and curating the files of the StB, brought together in the new Archive of Security Branches (ABS, *Archiv Bezpečnostních Složek*). It also plays a role in implementing other transitional justice legislation, such as the 2011 ‘third resistance’ law, which provides moral and financial recognition for participants in opposition to and armed resistance against the communist regime. In addition, the institute employs historians who carry out research into the workings of the StB and the communist system more broadly, and to educate the general public about human rights violations carried out during the communist regime and the German occupation.

Thus far, we have seen that Czech transitional justice addressing the communist past comes primarily from the right, in an environment in which that communist past is already contested. This political context mirrors the key elements of the overview offered in Chapter 1. This appears to suggest that transitional justice is a tool that is employed by parties on the right (ODS in particular) to improve their chances against the left (ČSSD in particular). However, further investigation shows that this perspective is misleading. In this perspective, the central assumption is that transitional justice measures are designed in such a way as to improve a party’s own electoral position or to undermine the electoral chances of its opponents. This implies that the issue is salient enough among voters for transitional justice to make an impact, and that the provisions in the law actually affect parties’ electoral prospects. However, parties, voters, and the legislation itself do not play the role that this perspective requires of them.

Partisan Perspective: Legislative Behavior

First of all, party organizations do not initiate the legislation and do not shape the details of the law’s texts. Party leaderships are not necessarily hostile to transitional justice policies, and may even approve, but they do not lead the way. The majority of legislation is introduced by individual parliamentarians – sometimes even members of the opposition – and not by the incumbent government, as is the case in the vast majority of all cases (Kopecký, 2004; 2008). In interviews, none of these individual parliamentarians describe their contributions – whether initiating legislation, or speaking on it, or voting on it – as a result of party discipline. None describe their involvement as the result of a division of labor inside parliamentary factions, either.

Parties do not use the powers of incumbency to achieve transitional justice policy goals, which one would expect in a situation in which legislation is a zero-sum game. Nor do they use those powers to prevent legislation. Although governments do not take the initiative, this does not mean that they are hostile. Addressing parliament regarding the 2002 file access law, which had been introduced by rightist senators, ČSSD Interior Minister Stanislav Gross put it like this:

“... my speech proceeds from the reality that this there is majority desire in the Chamber of Deputies and in the Senate that this law be adopted. I respect that majority political will, but I think that it would then be in our common interest that what will be published in the Collection of Laws would be viable and would meet the expectations of those, who propose this law, something that does not incite reactions that the proposers themselves did not expect”.⁹⁰

Although the government at the time counseled against passing this bill, the government’s contribution in the debate was to focus on the regulatory aspects rather than on the ideology. The same attitude was adopted in other legislation.

Meanwhile, the ODS, the primary home for anti-communist politicians, has often adopted a far more pragmatic attitude towards the communist past than the rhetoric of the anti-communists would suggest. As noted in Chapter 3, ODS founder and long-time leader Václav Klaus long attached little importance to dealing with the communist past. Indeed, Klaus’s election to the presidency in 2003 was made possible by the votes from the KSČM faction in parliament (Szczerbiak and Hanley, 2006) and the 2002 ODS election platform notes that when ‘communists threaten that we will – once they make it to power – again experience socialism, we laugh at them’.⁹¹ Under the leadership of Mirek Topolánek, Czech Prime Minister between 2006 and 2009, the ODS has become more anti-communist, and Klaus, who left the party during this time, has even criticized the ODS for its anti-communism, which he calls ‘simplistic’ and ‘empty’.⁹²

⁹⁰ Parliamentary Speech by Interior Minister Stanislav Gross, Chamber of Deputies of the Czech Republic, January 31, 2002, available at: <http://www.psp.cz/eknih/1998ps/stenprot/046schuz/s046102.htm#r2>, accessed May 15, 2002.

⁹¹ ‘Vstříc Novému Osudu’ [Towards a New Fate], ODS Election Platform, 2002, available at: https://manifesto-project.wzb.eu//down/originals/82413_2002.pdf, accessed July 20, 2015.

⁹² ‘Klaus: Za debaklem ODS je prázdný antikomunismus a ideologie „havlismu“’ [Empty Anti-Communism and an Ideology of ‘Havel-ism’ Are Behind the ODS Debacle], *MF Dnes*, October 28, 2013, <http://zpravy.idnes.cz/klaus->

The fact that parties mostly ignore the issue of transitional justice in their manifestos is another reason to be wary of party-centric explanations. If transitional justice were introduced as a part of a premeditated party-level strategy, these policies would show up as campaign promises. However, parties almost never promise transitional justice to voters. Analysis of 25 manifestos for elections to the Chamber of Deputies between 1996 and 2010 reveals that the ODS never promised anti-communist transitional justice, even though it is the party that is most associated with policies of this type.⁹³ Although three ODS manifestos take credit for creating lustration and founding ÚSTR after the fact,⁹⁴ the closest that the ODS came to announcing more transitional justice was in 1996 when, in reference to cleansing the state apparatus in ways that include lustration, the party stated that “we are aware that this is a long-term task and therefore we will continue this effort”. Although the ODS was the largest party in the government after the 1996 elections, no new transitional justice legislation was introduced during that legislative period. The only transitional justice policy promised to voters beforehand is the creation of a memory institute alongside or instead of ÚDV, but this was not promised by the ODS, whose senator introduced the bill. Instead, the US-DEU/KDU-ČSL coalition in 2002 and the Christian Democrats as well as the Green Party (both in 2006) pledged support to such a policy.⁹⁵ In 2010, the ODS did promise to fight any attempts to

kritizuje-ods-0q4-/domaci.aspx?c=A131028_163447_domaci_zt, accessed May 15, 2015. In the same article, Klaus also criticizes ODS, without apparent irony, for adopting ‘a Havel-ist ideology’.

⁹³ For each of the five elections to the Czech Chamber of Deputies that were held between 1996 and 2010, this analysis includes the manifestos for every party that was elected in that election.

⁹⁴ ‘Svoboda a Prosperita’ [Freedom and Prosperity] ODS Election Platform, 1996, available at:

<http://www.polidoc.net/>, accessed July 20, 2015; ‘Hlava Vzhůru’ [Head Up] ODS Election Platform, 1998, available at: https://manifesto-project.wzb.eu//down/originals/82413_1998.pdf, accessed July 20, 2015; ‘Vstříc Novému Osudu’ [Towards a New Fate], ODS Election Platform, 2002, available at: https://manifesto-project.wzb.eu//down/originals/82413_2002.pdf, accessed July 20, 2015.

⁹⁵ ‘Dáme věci do pořádku’ [We’ll Put Things in Order], KDU-ČSL/US-DEU Joint Election Platform, 2002, available at: <http://www.polidoc.net/>, accessed July 20, 2015; ‘Klidná Síla’ [Calm Strength], KDU- ČSL Election Platform, 2006, available at: https://manifesto-project.wzb.eu//down/originals/82523_2006.pdf, accessed July 21, 2015; ‘Kvalita Života’, [Quality of Life], SZ Election Platform, 2006, available at: https://manifesto-project.wzb.eu//down/originals/82110_2006.pdf, accessed July 21, 2015. In their 2010 manifesto, the Greens also commit to restitution of confiscated church property, but the party did not clear the 5% electoral threshold in the

repeal lustration, but no such attempts were undertaken. The Social Democratic manifestos never mention transitional justice in any way, and the closest the Communists come to discussing the issue is in 1998, when they pledged to ‘repeal discriminatory laws and governmental regulations that oppress civic rights and are the subject of criticism by international organizations’.⁹⁶

Partisan Perspective: Voters

Some partisan perspectives presuppose that actors take public opinion into account when deciding whether to support or oppose transitional justice. Although voter demand for transitional justice policies may not be strong, as Nalepa (2009) (shows, presenting transitional justice as an intra-elite game still assumes that at some point, the vote choice of a sufficiently large group of voters is going to be affected by the outcome of transitional justice: voters can either abandon parties whose candidates are exposed for StB collaboration, or they can flock to parties who have championed the cause of transitional justice.

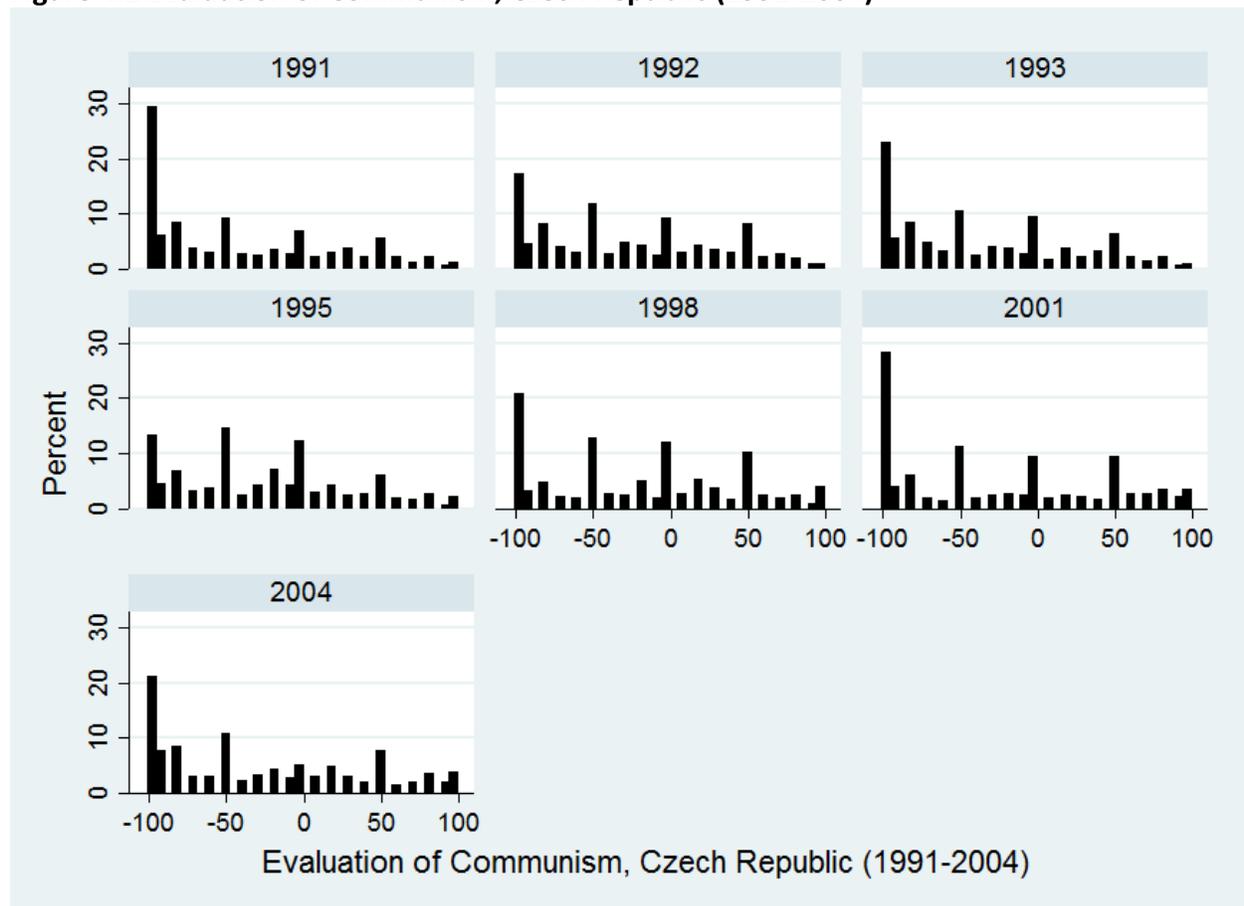
However, evidence about voter views as well as about how politicians approach transitional justice legislation both suggest caution when it comes to making this assumption. The preponderance of what we know about Czechs’ views regarding the communist past shows that Czech voters are mostly ambivalent about the communist past and do not share the wholesale rejection that characterizes anti-communism. This undermines theories that present transitional justice as partisan strategy, since those typically hinge on the assumption that voters are swayed by arguments involving views on the communist past. A cursory glance at Czech public opinion suggests that for parties, there may not be much to gain electorally by implementing transitional justice legislation. Before I present those numbers, it ought to be pointed out that the available data only offer a limited range for speculation because survey questionnaires have primarily focused

parliamentary elections of that year. ‘Volební Program Strany Zelených’, [Election Platform of the Party of the Greens], SZ Election Platform, 2010, available at: https://manifesto-project.wzb.eu/download/originals/82110_2010.pdf, accessed July 21, 2015.

⁹⁶ ‘Volební program KSČM’ [KSČM Election Platform], KSČM Election Platform, 1998, available at: https://manifesto-project.wzb.eu/download/originals/82220_1998.pdf, accessed July 21, 2015. The 1996 KSČM manifesto has similar language but after 2000, the KSČM manifestos do not mention transitional justice even obliquely.

on respondents' views with regard to the communist system generally. Although a greater rejection of the communist system is presumably linked to support for harsher transitional justice legislation, we should avoid over-interpreting these results. Unfortunately, systematic public opinion data on demand for particular forms of transitional justice is not available (although I do present some numbers below which demonstrate that Czechs have divergent beliefs regarding *the impact* of lustration in particular).

Figure 4.1 Evaluation of Communism, Czech Republic (1991-2004)



Source: New Europe Barometer, 1991-2004, item A1. N between 600 and 1,250. Answers collapsed into 10-point intervals. Data available at: <http://www.ukdataservice.ac.uk>, accessed July 26, 2015.

That said, survey data from the *New Europe Barometer* project, collected between 1991 and 2004, can shed some light on how Czechs view the communist regime. This survey, carried out during seven waves, asked respondents to indicate on a so-called 'heaven-hell' scale (-100 to 100) their views on how well the communist system 'worked'. These numbers suggest that although Czechs, on aggregate, evaluate the communist regime negatively, a majority of respondents eschews the

extreme end of the scale. Instead, although the -100 response is the mode in all years except for 1995, attracting roughly 25 per cent of the respondents, a negative response somewhere between 0 and -100 is more common (roughly 40 per cent of the respondents). Moreover, a neutral or positive response is also more common (30 to 45 per cent of all respondents). In other words, although Czechs are typically skeptical of the communist past, they stop shy of embracing a full rejection of communism.

This conclusion is confirmed by data from a 2009 poll which asked respondents to rate parts of the 20th century on a scale from -100 to 100. Predictably, respondents rated the 1950s at -68 and the normalization period after the Prague Spring at -42. However, they rated the late 1960s at -10, higher than the post-2000 period (at -12). Comparing the post-communist period and the normalization period with regard to twelve social issues, these respondents rated the normalization period higher on most factors, including education, social security, safety, and ‘interpersonal relations’. The post-communist period was ranked higher for culture, environment, and foreign politics. Czechs maintain a nuanced view of the four decades of communist rule, identifying important changes in conditions at different times and appreciating improved opportunities after 1989 in many respects while acknowledging deterioration in other areas (Hampl et al., 2011). Kunštát (2010) characterizes Czech public opinion regarding the communist past as ‘plurality of memory’.

The upshot of this discussion is that, if transitional justice measures are to be crowd-pleasers, they have a very diverse crowd to please. Given that (as Nalepa, 2009, has shown) there is no consistent *public demand* for transitional justice, and that there is no public consensus on the communist regime either, it is plausible that public opinion does not play a significant role in the formulation of Czech transitional justice. That public opinion plays a limited role is confirmed by my interviews. In fact, policy makers may not have specific information about public opinion at their disposal that would allow them to make such a determination. As an example, former Czech Prime Minister Špidla noted that (in 2000 at the time of renewal of the lustration law) the Czech government did not have evidence whether supporting that law was a good thing or a bad thing

from the point of view of the Czech electorate.⁹⁷ On the right, people involved in transitional justice legislation make it clear that rather than following public opinion, they want to guide it – they express their concern that the public is not sufficiently familiar with the past, and even criticize it for that.⁹⁸

Partisan Perspective: The Laws Themselves

A final reason for skepticism regarding the partisan perspective is that Czech transitional justice does not do what this approach would require of it. For partisan-oriented transitional justice to be successful, it would have to lead to reputation costs for political rivals, for instance by exposing them as StB collaborators. In practice, however, transitional justice legislation does not have that potential. In addition, the implementation of laws frequently take place in secret, outside of the public eye.

The lustration law, for instance, does not extend to political actors, as only positions in the civil service require applicants to submit a negative lustration certificate. As such, this law does little to affect political parties. The lustration process is strictly between applicants and the ministry of the interior, and unless applicants choose to divulge that they have been 'positively lustrated' (i.e., they have been found to have collaborated with the secret service), there is no reason this information would become public. Publication of positive lustrations occur when the *lustratus* in question takes the decision to court, alleging that they were falsely listed and requesting that their positive lustration be voided.

The fact that the lustration process by itself does not release information and moreover, does not target politicians, means that the law can hardly serve as a tool for damaging opponents' reputations. As a result, there is no example of a Czech politician whose career faced obstruction because of transitional justice. To be sure, an alleged StB past has hampered politicians, but not fatally, and not through the implementation of the lustration law. Examples include:

⁹⁷ Interview with Vladimír Špidla, April 27, 2013, Prague.

⁹⁸ Interviews with Pavel Žáček, March 5, 2013, and Pavel Hořava, March 6, 2013, both in Prague.

- **Andrej Babiš**, who became Deputy Prime Minister in 2014 in spite of President Zeman's earlier threats not to appoint him.
- **Jan Kavan**, who was identified as an StB collaborator by pre-law parliamentary lustrations, battled the allegations in court, and served as Foreign Minister in the government of the very Miloš Zeman who later tried to block Babiš's access to the cabinet.
- **Petra Buzková**, who faced unsubstantiated allegations of StB collaboration (among other things) in what became known as 'operation Olovo', an attempt on the part of Zeman's administration to compromise her popularity.⁹⁹ Buzková served as Education Minister in subsequent ČSSD cabinets after Zeman left office.

None of these cases were the direct or even the indirect result of implementing the lustration law, even though they all concerned allegations of StB collaboration. Also, none of these cases ended the political career of those involved. To find an example of a Czech politician whose career ended prematurely over StB allegations, we need to go back to 1990 when ČSL leader Josef Bartončík faced accusations that he had collaborated just prior to the June elections.¹⁰⁰ Bartončík was elected and served his term but was not re-elected to his party's leadership and left politics after 1992. This, however, was before the lustration law was adopted. Moreover, Bartončík was not a left-wing politician; his party, which later merged with KDU, had been solidly on the right and had consistently supported transitional justice. It does not speak persuasively in favor of the partisan perspective that the party that has arguably been affected the most by revelations of StB collaboration is a political ally of those who promote the transitional justice agenda.

In sum, partisan perspectives on transitional justice fall short in accounting for the process that underlies transitional justice as well as for the final shape that transitional justice laws take. This perspective has parties promote transitional justice at the expense of opponents, under the

⁹⁹ *Olovo* is the Czech word for the chemical element lead, whose symbol Pb is the same as Petra Buzková's initials. 'Operace Olovo měla znemožnit Buzkovou' [Operation 'Lead' Was to Incapacitate Buzková], *MF Dnes*, May 16, 2000, available at: http://zpravy.idnes.cz/operace-olovo-mela-znemoznit-buzkovou-dy6-/domaci.aspx?c=A000515230137domaci_ond, accessed May 20, 2015.

¹⁰⁰ See discussion in Chapter 3.

assumption that this may result in electoral gain. However, the issue seems to be of limited importance to the relation between voters and parties, with voters by and large holding ambivalent views regarding the past and parties not campaigning on the promise new transitional justice. Moreover, parties and incumbent governments do not initiate the legislation, and the legislation, once enacted, does not perform in the ways that a partisan account of transitional justice would require.

If transitional justice is not the product of the strategic behaviour of political parties, this raises the question what purpose this legislation *does* serve. Laws continue to be introduced more than two decades after the Velvet Revolution and democratization is no longer on the agenda (and besides, it is not clear that transitional justice serves democratization in the first place). To address this puzzle and explain what motivates transitional justice, I introduce the concept of the policy entrepreneur.

4.2 Policy Entrepreneurs and Czech Transitional Justice

Between 10 and 20 individuals involved in transitional justice policy making, both inside and outside parliament, fit the bill of the policy entrepreneur: they are strongly principled individuals who dedicate their professional life to achieving a specific set of policy goals. In the case of the transitional justice agenda, they are inspired by a strong ideology of anti-communism. An early example of a policy entrepreneur is *Charta 77* signatory Václav Benda. An exponent of the conservative, Catholic wing of the dissident movement, Benda co-founded the Committee for the Defense of the Unjustly Prosecuted (*Výbor na obranu nespravedlivě stíhaných*, VONS), which advocated for victims of political persecution; Benda himself spent several years in prison. Benda's chief accomplishment in terms of anti-communist transitional justice was the creation, in 1995, of the Office for the Documentation and Investigation of the Crimes of Communism (*Úřad pro Dokumentaci a Vyšetřování Zločinů Komunistu*, ÚDV). This office was created by order of the Minister of the Interior, Jan Ruml, merging two former federal divisions that had been created in February, 1992, when Czechoslovakia still existed. Those divisions, one part of the prosecution, another part of the police, were created by federal Minister of the Interior Ján Langoš, after Václav Benda had lobbied intensively to allocate resources for the prosecution of 'crimes of communism'.

The consolidation of ÚDV in 1995 and the continued effort to both map the workings of communist repression and prosecute those involved in human rights abuse were again primarily the result of the tireless work of Benda. Indeed, ÚDV is commonly referred to as the ‘Benda Office’, and Benda not only worked to create this office but also became the office’s first director, serving until closely before his death in 1999, in addition to holding political office (first in the Chamber of Deputies, then in the Senate). Benda’s work was continued by his son Marek, a longtime ODS MP (1990-present) who was similarly involved in a number of transitional justice laws. For instance, Václav Benda proposed the 1993 law ‘On the Illegality of the Communist Regime and on Resistance against it’. Later, Marek Benda was involved in drafting the 2007 ÚSTR law and he initiated the 2011 law on the third resistance.

As the work of Marek Benda shows, one striking aspect of this legislative agenda is that it is almost always the product of parliamentary activism, with bills being introduced by groups of MPs or senators. In a parliamentary system in which the government initiates well over 90 per cent of all legislation, this is a remarkable pattern. Even more remarkable is that several successful transitional justice bills were introduced by opposition parliamentarians. As an example, the successful 2000 bill renewing lustration was introduced by opposition MPs (mostly from ODS). During that 1998-2002 legislative period, opposition MPs and senators also introduced a number of proposals to extend public access to the StB files. Unconvinced by the limited access provided under the 1996 File Access Law, policy entrepreneurs sought to open up the archives to a greater extent, and also hoped to create a memory institute to implement this new law.

A policy entrepreneur named Jiří Liška was a central figure in promoting this agenda during his time as an ODS senator (1996-2010). On August 31, 1999, he and others introduced a bill to the floor of the Senate that would create greater file access and an organization called ‘Memorial to the Era of Non-Freedom’ (*Památník Doby Nesvobody*).¹⁰¹ A year after this bill was rejected, Liška

¹⁰¹ ‘Senátní návrh na vydání zákona o Památníku doby nesvobody 1939-1989’ [Senate Proposal to Issue a Law about a Memorial to the Period of Non-Freedom 1939-1989], Print 450, Chamber of Deputies of the Parliament of the Czech Republic, Third Legislative Period (1998-2002), November 22, 1999, available at: <http://www.psp.cz/sqw/historie.sqw?o=3&t=450>, accessed on May 20, 2015.

and a number of others proposed a new bill, which only declassified StB files but did not create an institute. This bill was voted into law and signed by President Havel on March 15, 2002.¹⁰² Three years after that, Liška revived the idea of creating an institute dedicated to dealing with the StB legacy, and proposed the creation of the Institute for the Study of Totalitarian Regimes (ÚSTR). Maintaining a strong connection with other policy entrepreneurs, Liška worked with Marek Benda to prepare the law, while another Benda son, Patrik, served as one of his staffers. Patrik Benda later joined ÚSTR's advisory board. Liška was also involved in formulating the law on the third resistance, which was introduced in the Chamber of Deputies, and once that law had been adopted, he served on the 'Ethical Commission' that evaluates claims for resistance fighter status.

Policy entrepreneurs who do not hold elected office are equally involved in the process of advocating for transitional justice and preparing pieces of legislation. Journalist and historian Pavel Žáček is the best example of a policy entrepreneur who is not a politician in the traditional sense.¹⁰³ In his interview, Liška describes Žáček's lobbying effort as central to the process that created the institute for the study of totalitarian regimes.

Pavel Žáček began his career during the Velvet Revolution as editor of *Studentské Listy*, a student publication that focused on exposing the workings of the communist system of repression. A prolific author, he continued to explore the functioning of the StB, worked for Benda at ÚDV later but leaving after Benda died.¹⁰⁴ When Slovakia created its Institute for National Memory (ÚPN) in 2002, Žáček became editor of ÚPN's quarterly *Pamät' národa* (Memory of the Nation). In Bratislava, Žáček worked closely with Ján Langoš, the policy entrepreneur whose drive and tenacity were responsible for the creation of ÚPN (see Section 5.2). After Langoš died in 2006 and the political climate in Slovakia became less supportive for ÚPN's work, Žáček returned to work in the Czech Republic. There, ODS had returned to government after 8 years of social democratic

¹⁰² 'Senátní návrh zákona o zpřístupnění svazků StB' [Senate Proposal for a Law About Access to the StB Files], Print 1021, Chamber of Deputies of the Parliament of the Czech Republic, Third Legislative Period (1998-2002), September 4, 2001, available at: <http://www.psp.cz/sqw/historie.sqw?o=3&T=1021>, accessed on May 20, 2015.

¹⁰³ This may be changing as he ran, unsuccessfully, for a Prague Senate seat in the elections of 2014.

¹⁰⁴ See his recollections of the period in Žáček (2000).

rule. Žáček joined forces with ODS Senator Jiří Liška and drafted the ÚSTR bill. After the bill was voted into law in October 2007, Žáček was appointed as the institute's first director.

Anti-communism

These policy entrepreneurs are motivated by a shared ideology of anti-communism. This anti-communism goes beyond the notion that it is a good thing that the communist regime ended in 1989. It involves a rigid rejection of the communist past in all its facets. A refusal to see the Prague Spring as a period that promised change and liberalization is one concrete way in which this position manifests itself. As we have seen, many Czechs see this episode very positively (indeed, more so than the post-communist period). Anti-communists stress that the liberalization process of the late 1960s prior to the Warsaw Pact invasion was led by the Communist Party in the first place. If anything, they resent the period for its false (in their view) promise of 'socialism with a human face', which they see as a contradiction in terms. The dashed hopes of reform allow people to hold on to their belief that communism might have worked, if only Dubček had remained in power. In his interview, Liška says that 1968 caused 'the greatest moral damage' to the Czech Republic, because it created a group of dissidents who prided themselves in their communist credentials, and who thus gained credibility to later, after 1989, say 'we suffered, we were dissidents, we helped bring down communism', and return to power.¹⁰⁵ To be sure, Liška himself was not part of the dissident movement before 1989; instead, he is in what Šiklová (1990) has dubbed 'the grey zone'.¹⁰⁶ However, many people with a dissident background (directly or through relatives) do support the anti-communist agenda. Examples include MPs such as Marek Benda, Dagmar Lastovecká (in 1953, her father was sentenced to 17 years in prison for high treason), and Svatopluk Karásek, who was forced into exile in the early 1980s.

¹⁰⁵ Interview with Jiří Liška, April 15, 2013, Jičín.

¹⁰⁶ The 'grey zone' refers to those who were neither communists nor dissidents before 1989. According to David, dissidents have earned their stripes resisting communists while they were still in power, and have nothing left to prove; members of the grey zone, on the other hand, never resisted the regime and have more to prove in the post-communist period. This propels them towards a more robust rejection of communism than is commonly found among dissidents. (David, 2011:100-102)

Table 4.2 Tenets of Anti-Communism

- Wholesale, uncompromising rejection of the communist period.
- Equivalence of communist regimes and the Third Reich.
- Emphasis on continuity of human rights abuse throughout communist period (rather than primarily during 1950s).
- Skeptical regarding the Prague Spring's promise of 'socialism with a human face'.
- Stark moral take on implications for Czech nation; cultural pessimism.

Another element of anti-communism is the position that there is a moral equivalence of the communist and Nazi ideologies, in theory and in practice. This comparison, which often relies on the assertion in the *Black Book of Communism* (Courtois, 1999) that 100 million people died at the hand of communist regimes worldwide, leads anti-communists to find any form of communist ideology completely unacceptable. They decry the discrepancy between the taboo status of Nazism and its symbology, on the one hand, and the wider acceptance of communist ideology (ranging from Che Guevara T-shirts to hammer-and-sickles to the ongoing existence of the communist party). For instance, Ivan Langer, who was Interior Minister for ODS when ÚSTR was first created, commented:

“...if you went in the street with a portrait of Hitler or Himmler, I'd dare to maintain that after a while, you would face justified repression from the side of law enforcement. And if you wore a shirt with Stalin or Che Guevara, nothing would happen to you”.¹⁰⁷

A strong common thread of morality runs through anti-communism, and commits the policy entrepreneurs to pursue their transitional justice agenda. They see communism and its effects in stark moral terms that implicate Czech society as a whole. A comment by KDU-ČSL party official Pavel Hořava illustrates this:

“Fascism was terrible but in terms of how it affected the people, communism was even worse. In terms of the immigration, how many intelligentsia left. All nations have three per cent intelligentsia that pull them forward, and here that three per cent was rooted out. That's the great problem. Those national elites are failing us.”¹⁰⁸

¹⁰⁷ Interview with Ivan Langer, April 25, 2013, Prague

¹⁰⁸ Interview with Pavel Hořava, March 6, 2013, Prague

The essence of this analysis is that forty years of communism pervasively affected the values and mentality of the Czech nation in a way that anti-communist policy entrepreneurs describe in stark moral terms: failure, collapse, decay. They offer sharp criticism of their fellow Czechs, whom they describe as cynical and complacent, with an insufficient awareness of their own historical *hinterland*. These views produce strong skepticism about the durability of democracy, a final element of anti-communism. In interviews, numerous policy entrepreneurs expressed a real belief in the possibility that communism might return. This is linked to concerns that the communist party continues to attract electoral support, has been included in regional governments, and might eventually be a part of a national government in a coalition with ČSSD. Continued success of the communist party in particular is a thorn in the policy entrepreneurs' sides, compelling them to carry on with their work. As one KDU-ČSL official (Pavel Hořava) commented: "I'll leave the party as soon as the communists have less than five per cent of the vote. Unfortunately, we have not reached that point and the opposite is true, they are getting stronger".¹⁰⁹

For policy entrepreneurs, a lot is at stake when it comes to transitional justice, and as a result, they take a dim view towards criticism of their agenda. Using the same strong moral language, Liška describes those who take issue with his legislation as 'enemies', rather than opponents.¹¹⁰ As a result, in engineering majority support for legislation, these policy entrepreneurs do not strive for broad backing. In particular, seeking common ground with social democrats (who have controlled 25-35 per cent of the seats in the Chamber of Deputies throughout the post-communist period) is not part of the *modus operandi* of the anti-communist policy entrepreneurs. Although a law that counts on broad support across the political spectrum might be a more resounding collective statement on a shared past, anti-communists do not see this as a priority.

Jan Ruml agrees. A former dissident (he and his father Jiří both spent much of the early 1980s in jail), he was involved in the earliest lustrations, exposing Josef Bartončík in June, 1990 (see Chapter 3). Between 1992 and 1997, he was Minister of the Interior for ODS and then served in

¹⁰⁹ Interview with Pavel Hořava, March 6, 2013, Prague.

¹¹⁰ Interview with Jiří Liška, April 15, 2013, Jičín.

the Senate for the Freedom Union (*Unie Svobody*, US), leaving politics in 2004. When Ruml compared the initial proposals for file access, which did not succeed, and the subsequent 2007 ÚSTR law, he noted that the first proposal “was a version of the law that was acceptable for everyone ... we worked on it in the Senate, US, ODS, ČSSD even”, but when parliament rejected it, “the later version which created ÚSTR in 2007 came mostly out of the ODS. They did not take into account different opinions that existed at the time and so this law was sort of forced through, and that first ÚSTR council was elected mostly by the right as well”.¹¹¹

Further Examples

The description, so far, of policy entrepreneurs and their work has been far from exhaustive. For instance, one more example of an anti-communist policy entrepreneur is Jaromír Štětina. Štětina, an independent senator between 2004 and 2014, has primarily focused on parts of the communist legacy other than the StB. Štětina’s political career has been dedicated almost exclusively to addressing the communist past – ČSSD MP Křeček criticizes him for this, saying that for him, “the fight against communism is the only issue”.¹¹² In 2007, Štětina proposed a bill (along with former dissident Martin Mejstřík – another avowed anti-communist, and cosponsor of the ÚSTR bill) that would add provisions to the Penal Code to make it easier to convict those who promote a communist ideology. For instance, the bill proposed to remove the word ‘demonstrably’ from Article 260 (which makes it illegal to strive for violent suppression of human rights), lowering the burden of proof (by no longer requiring that violent attitudes are demonstrated), and further proposed to make specific symbols including the five-pointed star and the hammer-and-sickle illegal.¹¹³ Štětina has further been working towards a ban on the KSČM, which he views as an

¹¹¹ Interview with Jan Ruml, April 29, 2013, Prague. The initial bill that had broader support survived a vote in the Senate but, following the government expressing its disagreement and noting numerous procedural flaws in the law, it was rejected by the Chamber of Deputies on April 5, 2000. See: ‘Parliamentary Debate’, Chamber of Deputies of the Czech Republic, April 5, 2000, available at: <http://www.psp.cz/eknih/1998ps/stenprot/024schuz/s024055.htm#r2>, accessed July 21, 2015.

¹¹² Interview with Stanislav Křeček, February 13, 2013, Prague.

¹¹³ The bill further proposed to replace the phrase ‘Nazist and communist’ in Article 261 with the phrase ‘communist and Nazist’, to further emphasize the notion that communism is as bad as, if not worse than, national socialism. See: ‘Senátní návrh zákona, kterým se mění zákon č. 140/1960 Sb., trestní zákon, ve znění pozdějších právních předpisů’

inherently violent and undemocratic organization due to its continued adherence to Marxist-Leninist ideology. Štětina has thus far been unsuccessful, with his bill to further criminalize support for communism failing in the Senate, and his campaign for a communist party ban falling on deaf ears. Arguably, his lack of success is because he sets the bar higher and aims for laws that would actually make an impact on the political system, which contrasts with the predominantly symbolic nature of transitional justice legislation that *has* been successful.

Moreover, the policy entrepreneurs maintain important relations with a broader civil society network of stakeholders that are invested in the issue. Indeed, the policy entrepreneurs do not orient themselves very strongly towards any party. A number of them, like Štětina and Benda, are independents who run on a party ticket, rather than formal members. Others are party members, but rather than a strict principal-agent relation between the party leadership and the policy entrepreneur, the interaction is more symbiotic: the party has a representative that gives voice to an anti-communist sentiment, and the policy entrepreneur benefits by being elected on the party ticket. Rather than fall in line with the party, they focus on maintaining connections with a broader constituency.

This broader constituency, in turn, is actively involved with this policy agenda and uses access to the aforementioned senators and MPs to advocate for transitional justice policies. For instance, former political prisoners are united in an interest organization (Confederation of Political Prisoners - Czech Republic, KPV-ČR). The KPV-ČR membership predominantly includes people incarcerated during the 1950s, as opposed to normalization-era dissidents. The leader of the confederation (Naděžda Kavalírová) has been an ÚSTR

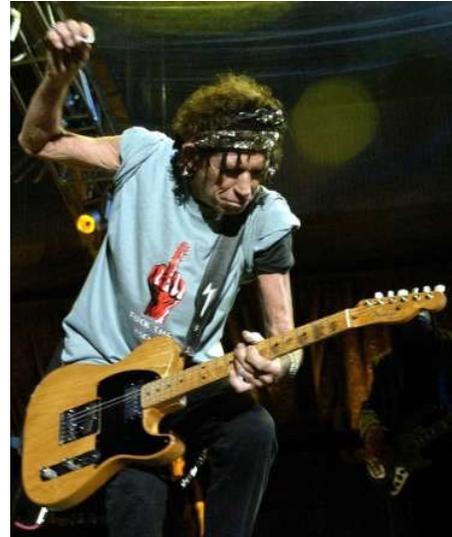


Figure 4.1 Keith Richards (Rolling Stones) Sporting Explicit Anti-Communist Garb

[Senate Proposal for a Law to Change Law 140/1960 Sb., (Penal Code), as per later legal provisions], Print 100, Senate of the Parliament of the Czech Republic, Sixth Legislative Period (2006-2008), July 27, 2007, available at: <http://www.senat.cz/xqw/xervlet/pssenat/historie?action=detail&value=2118>, accessed on 20 May 20, 2015.

board member since the institute's inception. The confederation organizes *Mene Tekel*, an annual festival commemorating resistance against the communist regime, working with other organizations in the field. Also, the 'Stories of Injustice' project, run for public radio broadcaster *Český Rozhlas* by journalist Adam Drda, has organized a number of public exhibitions showcasing noted cases of communist-era human rights abuse.

This lively civil society network further includes the humanitarian/philanthropic organization *Člověk v tísni* (Human in Need), which combines aid to the developing world with anti-communist advocacy. This network has focused in particular on the continuing existence of the KSČM and has sought to ban the party or at least convince other parties to shun the communists. The long-standing 'One Does Not Talk to Communists' campaign preemptively protests collaboration with the communist party. Probably the greatest success of these campaigners was when they convinced Rolling Stones singer Mick Jagger and guitarist Keith Richards to wear T-shirts saying 'Fuck the KSČM' during a 2003 Prague show.¹¹⁴ Several artists protest the communist party through their work, most notably well-known artist and *enfant terrible* David Černý. Several of his art projects implicitly or explicitly criticize the communists, including his painting pink a Soviet tank that served as a monument honoring the Red Army. Černý's winning design for a memorial honoring the World War Two resistance, which included many communist fighters, was later rejected after he commented that "the only good communist is a dead communist".¹¹⁵

Transitional Justice Laws: The Spirit over the Letter

The transitional justice laws that come out of the legislative process dominated by these policy entrepreneurs are written to explicitly express anti-communist views regarding four decades of Czech communism. These are not consensus views, as seeking broad multi-partisan support for transitional justice policies is not a priority for these legislators. The fact that the policy

¹¹⁴ Interview with Petr Placák, February 26, 2013, cf. 'Rolling Stones a jejich česká dostaveníčka' [The Rolling Stones and Their Czech Dates], *MF Dnes*, July 22, 2007, available at: http://kultura.idnes.cz/rolling-stones-a-jejich-ceska-dostavenicka-fjy-/hudba.aspx?c=A070719_224927_hudba_off, accessed May 15, 2015.

¹¹⁵ 'Sochař urazil komunisty, nesmí stavět pomník' [Sculptor Offends Communists, Not Allowed To Erect Memorial], *MF Dnes*, October 5, 2004, available at: http://zpravy.idnes.cz/sochar-urazil-komunisty-nesmi-stavet-pomnik-fnm-/domaci.aspx?c=A041005_151653_praha_ton, accessed July 21, 2015.

entrepreneurs have, over time, succeeded in finding windows of opportunity for their legislation, managing to cobble together a parliamentary majority for their legislation, belies the fact that their views are not broadly shared. That anti-communist policy entrepreneurs write anti-communist laws is not surprising, but it is important because it is exactly this ideological component of transitional justice that has prolonged contestation over the laws and over the communist past in general. At the same time, the regulatory component of transitional justice legislation – new rules and regulations that empower or constrain citizens – is actually quite limited and (as a result) is not a main source of reinforced contestation.

The law that is the most explicit in expressing anti-communist ideology is the 2007 law that sets up ÚSTR. It contains all of the elements of anti-communism noted above. Article 2^a formally identifies the entire 1948-1989 era as the ‘period of communist totalitarian power’, and the term ‘totalitarian’ is explicitly included in the institute that it creates.¹¹⁶ This institute is tasked with investigating the period of Nazi occupation as well, as the law places the two ideologies and regimes alongside each other, describing both as totalitarian and criminal. The law justifies itself in terms of stark moral imperative. It starts out with a motto: ‘He, who does not know his past, is doomed to repeat it’, and expresses the belief that “Educating citizens about these issues contributes to strengthening democratic traditions and the development of civil society, while also helping to fulfill the ideals of justice, the description of crimes, and the identification of their organizers and executors”.¹¹⁷

As a result, the law diverges significantly from standard legal jargon, reflecting the role of policy entrepreneurs in generating this legislation. On the whole, the law combines legislative language (stipulating a legal framework of new rules and regulations to be implemented) with political punditry and social commentary, in a way that is unusual for formal legislative texts. Indeed, it is striking that a great portion of the law is dedicated to justifying the need for such a law, when

¹¹⁶ The preamble does use the term ‘authoritarian regime’ (without making clear which period that refers to), but it neglects this distinction for the remainder of the text of the law.

¹¹⁷ Preamble, Zákon o Ústavu pro studium totalitních režimů a o Archivu bezpečnostních složek a o změně některých zákonů [Law on the Institute for the Study of Totalitarian Regimes and on the Archive of the Security Branches and on Changes to Some Laws], 181/2007 Sb.

normally a successful vote after parliamentary debate is sufficient. In their interviews, those involved in the legislative process confirm the atypical nature of this legislation. Ivan Langer, then Minister of the Interior, suggests that “... this bill was very bad from a judicial point of view and could never have passed through parliament if we had not completely re-written it”, and acknowledges that opening the law with a motto is unusual, even if he does describe the motto as ‘a deep wisdom and truth’.¹¹⁸

Nonetheless, the explicit ideological stance that the introductory sections of the law embraces serves to undermine the work that this law then tasks the new institute with. Article 4^a states that the Institute will ‘research and objectively evaluate’ these periods, but in the same sentence, the lawmakers restate the anticipated conclusions of this research and objective evaluation by specifically stating that the research matter is ‘totalitarian rule’, and ‘anti-democratic and criminal activities’.¹¹⁹ Given the explicit ideological language in the preamble, the objectivity of the institute is undermined from the start.

Other transitional justice measures follow a similar pattern. First, the 2002 law that extended file access also uses the term ‘totalitarian’.¹²⁰ It is less explicit than the ÚSTR law, but anti-communist elements do characterize the law, primarily because of its stated purpose: to ‘make public information about those who carried out persecution’.¹²¹ This law privileges the right of citizens to access information over the right that citizens have to the protection of their privacy. The law does not simply declassify, but actively publishes information – Article 7 compels the ministries

¹¹⁸ Interview with Ivan Langer, April 25, 2013, Prague.

¹¹⁹ To be sure, the purpose of this analysis is not to question the validity of those historical conclusions, and to present an argument that communist rule between 1948 and 1989 was not criminal, anti-democratic, and totalitarian. Whether the regime can be labeled in that way or not is a separate discussion that this dissertation does not seek to address. Instead, my purpose here is to point out that the law *does* address this debate by eschewing more value-neutral, objective formulations.

¹²⁰ Law 107/2002 Sb., Article 1.

¹²¹ *Ibid.*

of the interior and of defense to publish lists of collaborators and officers on the internet.¹²² To be sure, these lists are *evidenční záznamy*, evidentiary registers. Search results indicate whether files were kept on certain individuals, but does not provide online access to those files. Indeed, it is possible that those files no longer exist. Offering those registers is a helpful tool for those interested in accessing the archives, but at the same time lists thousands of individuals as collaborators, without providing details of that collaboration. An additional issue here is that it is not clear that the StB personnel keeping the files were perfectly truthful in their documentation. During the parliamentary debate regarding this law, veteran ČSSD MP Zdeněk Jičínský (himself a dissident who was expelled from the Communist Party after the 1968 invasion) cited Polish dissident Adam Michnik to make this point:

“The files (...) were not created with the purpose of gathering truthful evidence, but in order so that the secret police would have compromising materials against people that the regime was uncomfortable with. The reliability of those materials is zero (...).”¹²³

Under these circumstances, the law, whose goal is “the broadest possible revelation of the functioning of the communist regime in suppressing political rights and freedoms, as carried out by means of the secret repressive branches of the totalitarian state” can be seen as an exercise in the public shaming of people.

Second, non-consensus language is equally found in transitional justice legislation that addresses aspects of the communist past other than the StB. A number of ‘declaratory’ laws are on the book, which serve no other purpose than to state these views for the record. For instance, the 1991 law ‘On the period of non-freedom’ states simply that ‘during the years from 1948 and 1989 the

¹²² The Archive for Security Branches (ABS) made these lists searchable at <http://www.abscr.cz/cs/vyhledavani-evidencni-zaznamy>, accessed May 15, 2015. The lists include the categories of confidant (*důvěrník*) and candidate (*kandidát tajné spolupráce*), which, the ABS website notes, do not indicate ‘conscious collaboration’, according to the Czechoslovakian Constitutional Court ruling from 1992.

¹²³ Parliamentary Speech by MP Zdeněk Jičínský, Chamber of Deputies of the Czech Republic, January 31, 2002, available at: <http://www.psp.cz/eknih/1998ps/stenprot/046schuz/s046101.htm>, accessed May 15, 2015.

communist regime violated human rights and its own laws'.¹²⁴ This conclusion is reiterated in the 1993 law 'On the illegality of the communist regime and on resistance against it'.¹²⁵ The juridical purpose of the law is to lift the statute of limitations on crimes committed between 1948 and 1989, but not prosecuted for political reasons (Article 5) but the vast majority of the law's text is a discussion of communist crimes leading to the conclusion that this regime was 'criminal, illegitimate, and worthy of condemnation', and that the KSČ was a 'criminal organization, worthy of condemnation' (Article 2). In addition, Articles 3 and 4 acknowledge the resistance against this regime, calling it 'legitimate, just, morally justified, and worthy of honor', and saying those who engaged in any such resistance 'deserve respect and moral satisfaction'.

A third example of anti-communist ideology embedded in a law is the most recent effort at transitional justice, the 2011 law 'on participants in the resistance and opposition against communism'.¹²⁶ This law takes an anti-communist stance by broadly defining resistance to include armed resistance. During the 1950s, a number of Czechs and Slovaks resorted to violence in their battle against the communist regime. Collectively, these fighters are referred to as 'the Third Resistance' (after the first resistance, against the Habsburgs, and the second resistance, against the Germans). As of 2012, 31 individuals have been recognized (posthumously in some instances) as 'participants in resistance to or opposition against the communist regime'.¹²⁷ The most well-known

¹²⁴ Zákon o době nesvobody [Law on the Period of Un-Freedom], 480/1991 Sb.

¹²⁵ Zákon o protiprávnosti komunistického režimu a o odporu proti němu [Law on the Immorality of the Communist Regime and on Opposition against It], 198/1993 Sb.

¹²⁶ Zákon o účastnících odboje a odporu proti komunismu [Law on Participants in Resistance and Opposition against Communism], 262/2011 Sb.

¹²⁷ Výroční zpráva Etické komise České republiky pro ocenění účastníků odboje a odporu proti komunismu za rok 2014 [Annual Report of the Ethical Commission of the Czech Republic for Awarding Participants in the Resistance against and Opposition to Communism for the Year 2014], *Etická Komise*, available at <http://www.etickakomisecr.cz/data/pdf/vz2015.pdf>, accessed October 17, 2015. To be sure, the Mašín brothers, feeling slighted and ignored by the Czech state, have not applied for recognition, although they have received non-official, newly instituted decorations from ODS Prime Minister Topolánek and ODS Defense Minister Alexandr Vondra. 'Vondra: Jsem hrdý, že letím, Mašíni byli hrdinové' [Vondra: I Am Proud to Be Flying out, the Mašíns Were Heroes], *Lidové Noviny*, August 24, 2011, available at: http://www.lidovky.cz/vondra-jsem-hrdy-ze-letim-masini-byli-hrdinove-fqg-/zpravy-domov.aspx?c=A110824_104921_ln_domov_OGO, accessed October 17, 2015.

example is that of the Mašín brothers, who (with others) assassinated a number of police officers and civilians, and proceeded to flee the country. Exiting through East Germany, the fighters became the object of a manhunt, during which the brothers shot and killed a number of East German *Volkspolizei*. Nonetheless, they evaded capture and joined the US Army. The Czech public is divided over the status of these individuals and their acts of resistance, with some hailing them as freedom fighters while others decry their use of violence against civilians during peace time. Predictably, the anti-communist right endorses the brothers' resistance, agreeing on the interpretation that armed resistance against the communists was warranted, much like resistance against the German occupiers. The 2011 law codifies this view, explicitly including 'armed struggle' under the definition of resistance (Article 3.1). Moreover, the law excludes (Article 4) anyone who was ever a member of the communist party from recognition as a member of the opposition (and from monetary satisfaction for that opposition). Given the prominence of reform communists in the dissident movement, this concerns a significant group, and once again demonstrates the anti-communist notion that 'once a communist, always a communist'.

Reflecting the same authorship as the 2007 ÚSTR law, the 2011 'Third Resistance' law at times reads more like a pamphlet than a legal document. For instance, a long preamble notes the 'ideals of patriotism, honor, courage, and self-sacrifice' of those who 'waged their own lives, personal freedom, and property to actively defend the values of freedom and democracy'. Like the ÚSTR law, which plays fast and loose with the concepts of totalitarianism and authoritarianism, the law has legal-conceptual issues. For instance, it includes broad character traits as 'courage' in the definition of resistance (Article 3.1 recognizes 'comparable other courageous acts or courageous public stances...'). In addition, although the ÚSTR law identifies the Nazi occupation as the 'period of non-freedom' (following the 1945 law that re-established the legal order after the end of the Second World War)¹²⁸, the Third Resistance Law designates the period of communist rule as such (following the 1991 Law 'on the period of non-freedom').¹²⁹ These inconsistencies reflect

¹²⁸ 'Vládní nařízení, jímž se stanoví konec doby nesvobody pro obor předpisů o obnovení právního pořádku' [Government Decree Which Establishes the End of the Period of Un-Freedom for the Domain of Regulations and About the Renewal of the Legal Order], 31/1945 Sb.

¹²⁹ Zákon o době nesvobody [Law on the Period of Un-Freedom], 480/1991 Sb.

the fact that policy entrepreneurs prioritize the ideological statement they are making with a law over creating a viable legal framework.

Finally, the lustration law also fits the bill even though there is no new legal text, as the renewals only change or remove the end date.¹³⁰ Given, however, the sharp changes in context between 1991 and 1995 or 2000, renewing the law without changing it actually reflects the anti-communist agenda even more than when it was first passed. Lustration was explicitly designated by the original drafter (the Czechoslovakian federal government) as appropriate only for a transitional period. Renewing this law in the context of consolidated democracy reflects the anti-communist belief that democracy is fragile, that communists and secret service personnel still hold power, and that the communist regime might return. Moreover, StB collaboration is equated with participation in human rights abuse, and that participation is being punished – even though supporters present lustration as a necessary prophylactic that may cause some unfortunate but inevitable collateral damage, their defense of the law demonstrates that lustration does have a punitive aspect. For instance, MP Václav Krása, one of the initiators of the 2000 renewal bill, argued that the law targets “people who actively participated in persecutions during the communist regime”.¹³¹ In his interview, ODS politician Langer similarly states that lustration “created a line, saying ‘okay, up until here we understand [compliance with the regime], even if we don’t agree with it, but from here it really is a crime what you did, and it needs to be punished’”.¹³²

At the same time, underlining how important this ideological component of the legislation really is, in practical terms the lustration law is of little significance. Above, it was already noted that the lustration law does not actually do what is suggested by the partisan perspective (e.g., sideline political rivals). But interviewees – even those who support the law – do not believe that it has a practical impact at all. They are skeptical that lustration contributed to democratization, that it battled corruption, or that it built trust. They identify the primary purpose of the law as ‘drawing a line’ under the past, creating a clear demarcation – but venture little in the way of speculation as

¹³⁰ The 2000 renewal also excluded citizens born after December 1, 1971 from being subject to lustration.

¹³¹ ‘Lustrace nekončí’ [Lustrations not ending], *MF DNES*, September 22, 2000, p. 4.

¹³² Interview with Ivan Langer, April 25, 2013, Prague.

to how that demarcation affected the political system. ČSSD MP Křeček, who voted in favor of the law in 1991, says: “The law was unavoidable even if it violated a number of theoretical human rights and did not mean that people that were affected by it were actually guilty of anything. It was important to generate some sort of discontinuity with what had been in the past and what was now starting”.¹³³

Like Křeček, many others continue to support the lustration law, simply because of the symbolic impact. Jan Ruml, who was involved in parliamentary lustrations before the law was passed, commented in a 2013 interview: “Today, the lustration law is just a symbol. All the same, I would not repeal it”.¹³⁴ Others use similar language: commenting on the law’s twentieth anniversary in 2011, Justice Minister Jiří Pospíšil (ODS) described the law as a ‘visible symbol of post-November changes’; Foreign Minister Schwarzenberg (TOP09) argued that the law “Really was not perfect, but it did help”, without specifying what exactly the law accomplished.¹³⁵ Public opinion agrees: Polling evidence from 1991 through 2014 shows that the percentage of Czechs who believe lustration contributed to democracy is about forty per cent; a similar percentage either believes that lustrations had no influence, or that it had a negative influence on democracy, with another twenty percent saying they do not know. The fact that there is no consensus on the *effects* of lustration suggests that there are no readily observable effects to begin with. Instead, respondents probably base their views regarding lustration effects on their own opinion about the lustration laws’ desirability.¹³⁶

¹³³ Interview with Stanislav Křeček, February 14, 2013, Prague.

¹³⁴ ‘Ruml: Lustrační zákon je dnes už jen symbol, přesto bych ho nerušil’ [Lustration Law Is Just a Symbol Today, But I Would Not Repeal It: Ruml], *MF Dnes*, December 3, 2013, available at: http://zpravy.idnes.cz/rozhovor-s-janem-rumlem-o-lustracnim-zakone-fm2-/domaci.aspx?c=A131203_161404_domaci_jav, accessed on May 20, 2015.

¹³⁵ ‘Lustrační zákon už funguje dvě desítky let. Pomohl, tvrdí Schwarzenberg’ [Lustration Law In Effect For Two Decades. It Helped, Schwarzenberg Maintains], *Hospodářské Noviny*, October 2, 2011, available at: <http://domaci.ihned.cz/politika/c1-53077900-lustracni-zakon-uz-funguje-dve-desitky-let-pomohl-tvrdi-schwarzenberg>, accessed May 20, 2015.

¹³⁶ ‘Postoje veřejnosti k lustracím’ [Positions of the Public towards Lustrations], *CVVM*, November 11, 2014, available at: http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a7289/f3/po141111.pdf, accessed May 9, 2015. In

In addition to the low visibility (lustration is implemented outside of the public eye), the impression of lustration as ineffective is based on the broadly shared view that – even if lustration is justified in targeting individuals for StB collaboration – the real culprits are not punished. Opponents and supporters alike agree that former StB officers and agents are not marginalized, but instead among those who profited most from the transition. By putting their network and connections to good use, they made a lot of money. In addition, there is a consensus that transitional justice has been unable to prosecute and convict the party elites and others directly responsible for repression and human rights violations. Even ODS MP Marek Benda, whose father Václav worked tirelessly during the 1990s to create and then run ÚDV, the special prosecutorial office for ‘communist crimes’ argues that: “Realistically, we did not succeed in getting any of the real representatives of the system in front of a judge. We did not succeed there. There is a minimum of convictions, mostly from the early 1990s (...) but most of them are on the border of the statute of limitations”.¹³⁷ Indeed, according to a current overview, ÚDV investigations led to 115 prosecutions and 47 convictions between January 1, 1995 and April 30, 2014.¹³⁸ Interviewees view both the prosecution rate and the conviction rate with scepticism. They agree that ÚDV did not accomplish much; and that in that light (i.e., given that many of those more actively and voluntarily engaging in enabling or perpetuating communist rule remain unprosecuted and continue to enjoy larger-than-average pensions on account of their employment in the service of the state's bureaucracy), the lustration law is particularly unjust. Public opinion data shows that Czechs share this view: In three surveys from 1991, 2009, and 2014, a majority agreed that lustration laws affected people who did not deserve it.¹³⁹

October 2014, only 25 per cent of the respondents claimed the laws were useful and continued to be necessary; 40 per cent viewed the laws as no longer necessary, and 14 per cent said the laws had never been necessary.

¹³⁷ Interview with Marek Benda, April 2, 2013, Prague.

¹³⁸ ‘Přehled případů vyšetřovaných na ÚDV’ [Overview of Cases Investigated at ÚDV], *ÚDV*, May 2015, available from <http://www.policie.cz/clanek/prcehled-pripadu-vysetrovany-udv.aspx>, accessed on May 20, 2015.

¹³⁹ ‘Postoje veřejnosti k lustracím’ [Positions of the Public towards Lustrations], *CVVM*, November 11, 2014, available at: http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a7289/f3/po141111.pdf, accessed May 9, 2015.

This excludes respondents who answered ‘don’t know’.

These comments regarding the practical impact of the lustration law illustrate the broader point about the influence that policy entrepreneurs have. The ideological statement that transitional justice can make is the central priority for policy entrepreneurs, and the text of the law itself serves as a platform for making that statement. The emphasis that policy entrepreneurs place on these ideological elements when they are legislating further drives home the message from Section 4.1, that the partisan perspective does not adequately account for the hows and whys of Czech transitional justice laws. The importance of ideology is further underscored by the fact that it is exactly these elements of transitional justice legislation that reinforce contestation over the past.

4.3 Transitional Justice Impact: Contestation about Ideology

The ideological elements of Czech transitional justice laws contribute to contestation directly – provoking debate over the content of the laws – and indirectly – by affecting perceptions of how certain elements of the legislation are implemented. In the Czech Republic, this impact is increased by the fact that the left-wing opponents of transitional justice measures are also highly committed to the issue, sharing a number of characteristics with the anti-communist policy entrepreneurs discussed above. This contestation involves attempts to change how or by whom legislation is implemented, attempts to repeal legislation, and attempts to appeal the legislation through the judiciary.

Direct Impact

The most prominent opponents of the anti-communist policy entrepreneurs are best described as ‘anti-anti-communists’: although they oppose the anti-communist rhetoric that underlies transitional justice legislation, this does not mean they therefore endorse the period of communist rule in Czechoslovakia. Indeed, politicians with a dissident background are among the most vocal opposition to anti-communist transitional justice. Most of them are Social Democrats, often with a reform-communist background. That is to say, many of them were ousted from the communist party after the Prague Spring and joined the dissident movement during the normalization period. In addition, KSČM also opposes most of the transitional justice that is on the books today, but its

efforts at repealing or amending some of this legislation have been fruitless and mostly ignored even by the others who reject anti-communism.¹⁴⁰

Among these opponents, Zdeněk Jičínský stands out as an interesting example of an anti-anti-communist policy entrepreneur. Jičínský is a communist-turned-dissident who was a parliamentarian for about two decades after 1989. An active KSČ member during the Prague Spring, Jičínský was expelled from the party after the invasion and joined the dissident movement. He was one of the first wave of signatories of *Charta 77*. After the Velvet Revolution, Jičínský entered the Federal Assembly, and, after the Czech-Slovak split, served as an MP for ČSSD between 1996 and 2010 (with a brief interruption in 2002-2003). Starting with the lustration law in 1991, Jičínský has inveighed tirelessly against all the pieces of transitional justice legislation discussed in this chapter – even though none of his efforts were ever successful. Some of his critical comments regarding the 2002 file access law were already noted above, but Jičínský addressed the issue in parliament on numerous other occasions, and attempted to pass bills to amend existing transitional justice legislation. In 1998, he proposed amendments to the lustration law providing better protection for those listed in the secret service files.¹⁴¹ In addition, he has fought the laws outside of parliament by petitioning the Czech Constitutional Court on several occasions to overturn part or all of certain laws. Along with a number of other MPs, Jičínský asked to the Constitutional Court of the Czech Republic to consider the constitutionality of the lustration law; in 2001, the Court upheld the law and rejected Jičínský's arguments, citing its earlier decision from 1992.¹⁴²

¹⁴⁰ The Communist Party sought to end the lustration law on two occasions, starting in 1996 and again in 1999. In both cases, those attempts were dismissed after a short plenary debate.

¹⁴¹ 'Návrh na vydání zákona, kterým se doplňují zákony stanovící některé další předpoklady pro výkon některých funkcí ve státních orgánech a organizacích' [Proposal to issue a law to supplement the laws setting some further requirements for the execution of certain functions in state bodies and organizations], Print 387, Chamber of Deputies of the Parliament of the Czech Republic, Second Legislative Period (1996-1998), January 28, 1998, available at: <http://www.psp.cz/eknih/1996ps/tisky/t038700.htm>, accessed May 20, 2015.

¹⁴² Czech Constitutional Court decision, 35/2002 Sb., December 5, 2001.

Central to Jičínský's complaint is a principled rejection of the anti-communism embodied in transitional justice. As an example, when Jičínský appealed to the Czech constitutional court to rule on the constitutionality of the ÚSTR law, his argument centred on the use of the word 'totalitarian' in the law.¹⁴³ This argument was rejected by the court, although a number of judges wrote dissenting opinions.

Jičínský is not alone in his opposition to the anti-communist transitional justice agenda. For instance, consistent opposition to the lustration law has been offered by Václav Havel (whose arguments were discussed in the Czechoslovakia chapter). As Czech President, Havel was typically reluctant to use the veto power that came with the office (more so, at any rate, than his successors Klaus and Zeman) but did veto both renewals of the lustration law. In both cases, parliament overturned those vetoes (in the Czech Republic, a simple majority suffices for that). Havel also expressed himself skeptically with regard to other policies including file access, signing a petition in 2009 that criticized the institute and its director, Pavel Žáček.¹⁴⁴ Žáček was dismissed as director in 2010, but stayed on as a researcher and advisor.

Jičínský and Havel were joined by numerous others who opposed ÚSTR. The institute has attracted the greatest deal of opposition of all the transitional justice implemented in the Czech Republic. During its first years, the institute drew sharp criticism for its perceived anti-communist agenda. In addition, a range of conflicts among the historians inside the institute drew media attention.¹⁴⁵

¹⁴³ Czech Constitutional Court decision, 160/2008 Sb., March 3, 2008.

¹⁴⁴ 'Havel nepožaduje Žáčkovu demisi, pod podpis připsal poznámku' [Havel Not Demanding Žáček's Resignation. Below His Signature, He Added a Note], *Lidové Noviny*, December 2, 2009, available at: http://www.lidovky.cz/havel-nepozaduje-zackovu-demisi-pod-podpis-pripsal-poznamku-p5r-/zpravy-domov.aspx?c=A091202_175016_ln_domov_mpr, accessed on May 20, 2015.

¹⁴⁵ See Vilém Prečan's open letter to Pavel Žáček for a detailed, extensive criticism of the institute: 'Historik Prečan píše otevřený dopis řediteli ÚSTR Pavlu Žáčkovi a ptá se: Čeho se bojíte?' [Historian Prečan Writes Open Letter to ÚSTR Director Pavel Žáček and Asks, 'What Are You Afraid Of?'] *MF Dnes*, March 23, 2010, available at: http://zpravy.idnes.cz/dokument-historik-precan-pise-otevreny-dopis-rediteli-ustr-pavlu-zackovi-a-pta-se-ceho-se-bojite-iew-/zpr_archiv.aspx?c=A100322_215535_kavarna_chu, accessed on May 20, 2015. Prečan was a KSČ member who was expelled from the party after the 1968 invasion and went into exile. After the revolution, Prečan

Then, in 2012, the Social Democrats won the Senate elections and gained a majority in the upper house of parliament. They took advantage of their majority to change the composition of ÚSTR's council, appointing people who shared their concerns with the anti-communism that had hitherto been prevalent in ÚSTR's work. In 2013, the conflict came to a head when the new council fired the institute's director, Daniel Herman.

The effort to change the composition of the institute's council and shift the institute's direction was led by people with a background in the dissident movement. In the Senate, there was Social Democrat Jiří Dienstbier jr., whose father was a well-known reform-communist dissident before 1989. Both Dienstbiers have been critical of anti-communist rhetoric. In his interview, Dienstbier jr. criticized "attempts of the right wing parties to ideologize the past by painting that period as a totalitarian monolith that did not go through any real change and was equally perverse from start to finish". He continued: "Of course, the communist regime was bad throughout because it suppressed democratic principles and human rights, but you can really only say about the 1950s that it was totalitarian".¹⁴⁶ Among the new appointees to the council was Michal Uhl. Like Dienstbier, Michal Uhl is the son of prominent dissidents, Petr Uhl and Anna Šabatová. Born in 1985, he is the youngest member of the council, but although he was only four when the wall came down, he is outspoken on the issue of the communist past and transitional justice, calling anti-communism 'one of the biggest problems of today's political scene'.¹⁴⁷

The left's involvement in ÚSTR (the first successful attempt of the left to affect transitional justice in the Czech Republic) created a lot of bad blood as both sides make utterly pessimistic assumptions about the other side's motivations. Supporters of the director feared that the interference in the work of the institute was an overture for eventually shutting down or paralyzing the institute completely and limiting or ending public access to the files of the StB. Although the right's fears that the institute would be shut down did not materialize, the approach of those who

returned to the Czech Republic to play a prominent role in collecting historical sources and writing the history of the communist period. One particular contribution was his founding of the Institute for Contemporary History.

¹⁴⁶ Interview with Jiří Dienstbier jr., February 26, 2013, Prague.

¹⁴⁷ Interview with Michal Uhl, March 7, 2013, Prague.

oppose the institute has eschewed consensus in the same way that the anti-communist policy entrepreneurs did. Herman's dismissal (which he has challenged in the courts), was clearly the product of a desire to change the institute's ideological course, even if it was ostensibly motivated by minor issues in the management of the institute.

Using embittered rhetoric, both sides point to the political involvement of their opponents before 1989, even though none of those in the debate were actually active KSC members during the two decades preceding the Velvet Revolution. Dissident credentials of those on the left are often disregarded as rightists emphasize the communist background that many leftist dissidents have in common. One rightist commentator described the Senate's move as reminiscent of the normalization period.¹⁴⁸ Striking back, Jiří Dienstbier has called the anti-communist position 'right-wing bolshevism'.¹⁴⁹ This echoes the language used by those on the right to describe Dienstbier and consorts. In my interview with him, Ivan Langer called Dienstbier a 'crypto-bolshevist', while Monika Pajerová (advisor to Daniel Herman) described Michal Uhl as a 'fanatical spirit in a nice, smiling body'.¹⁵⁰ Ironically, about eight months after Herman's dismissal, Herman and Dienstbier were both appointed as cabinet ministers in the Sobotka administration, an event that underlines the limited impact of transitional justice and the communist past on governmental politics.

¹⁴⁸ Bohumil Doležal, 'Normalizace Ústavu pro studium totalitních režimů' [Normalization of the Institute for the Study of Totalitarian Regimes], *Reflex*, April 11, 2013, available at: <http://www.reflex.cz/clanek/komentare/50136/bohumil-dolezal-normalizace-ustavu-pro-studium-totalitnich-rezimu.html>, accessed May 20, 2015. The new chair of the ÚSTR advisory board, dissident Petruška Šustrová, has been called a Trotskyite and a Maoist. See: "V ÚSTR vládne chaos a nezdravá atmosféra," říká Petruška Šustrová' [Chaos and an Unhealthy Climate Dominate ÚSTR: Petruška Šustrová], *ČT*, April 5, 2013, available at: <http://www.ceskatelevize.cz/ct24/exkluzivne-na-ct24/osobnosti-na-ct24/221678-v-ustr-vladne-chaos-a-nezdrava-atmosfera-rika-petruska-sustrova/>, accessed June 22, 2015.

¹⁴⁹ 'Dienstbier: Kritika ODS kvůli ÚSTR je pravicový bolševismus', [ODS Criticism over ÚSTR is Right-Wing Bolshevism: Dienstbier], *Deník*, April 11, 2013, available at: http://www.denik.cz/z_domova/dienstbier-kritika-ods-kuvli-ustr-je-pravicovy-bolsevismus-20130411.html, accessed on May 20, 2015.

¹⁵⁰ Interviews with Ivan Langer April 25, 2013 and Monika Pajerová, April 18, 2013, both in Prague.

Indirect Impact: Memory Institutes

The second way in which some transitional justice legislation contributes to contestation over the communist past is by creating dedicated organizations such as ÚDV or ÚSTR for implementing the legislation. Coming on the basis of a legal text that already serves as a platform for explicit anti-communist ideology, these ‘memory institutes’ continue in the same vein. That is to say, the ideological thread woven into the fabric of the law persists in the day-to-day functioning of these bureaucratic organizations, which become platforms for anti-communism much like the laws on which they are based. In other words, this organizational effect is not inherent in the creation of memory institutes, but contingent on the operationalization of the ideological agenda that the underlying legislation serves.

An early example is ÚDV, the office for investigating communist crimes. This office came about primarily as the result of policy entrepreneur Václav Benda, and reflected his anti-communist approach in its day-to-day functioning, especially while Benda himself still served as director. With a politician in charge – Benda was a prominent member of the Federal Assembly between 1989 and 1992, and a member of the Senate from 1996 until his death in 1999 – the work of the institute became more politicized than one would expect from a branch of the national police service dedicated to investigating a particular type of crimes. That is to say, the work of the institute became a political action as opposed to a value-neutral bureaucratic implementation of rules and regulations. Of course, the decision to create such a taskforce in the first place was already political, but the politicization did not stop there. This is reinforced by the fact that the office does not just investigate, but is also tasked with informing the public about the workings of communist repression. It publishes an annual journal called *Securitas Imperii*, which, in its first issue, promised that it ‘would not avoid discussion or polemics’, something that must be uncommon for police branch periodicals.¹⁵¹

In documenting human rights abuse, ÚDV covers many activities that are not crimes in a strict legal sense, and thus not necessarily the purview of a police department. One example of the office

¹⁵¹ ‘Publikace - Securitas Imperii (01 - 14)’ [Publications: *Securitas Imperii Vol. 1-14*], ÚDV, available at: <http://www.policie.cz/clanek/publikace-securitas-imperii-01-14.aspx>, accessed July 21, 2015.

fulfilling its mission by going beyond a strict prosecutorial framework and exposing alleged complicity with the StB is the Zilk affair.

Helmut Zilk was an Austrian politician (mayor of Vienna during the 1980s) who had worked with the Czechoslovakian dissident movement in exile. In 1998, he was to be decorated by President Havel, but ÚDV (at the behest of Havel's chief of staff, and according to Benda, with the knowledge of Havel himself) screened Zilk and other recipients for StB collaboration. The probe revealed evidence that Zilk collaborated with StB (although later reports that he also worked for the American CIA call this into question). This information was then leaked from ÚDV and published in the *Süddeutsche Zeitung*, forcing Havel's hand in withdrawing Zilk's decoration. This episode shows that the office makes it possible to expose complicity, even in a manner that conflicts with the legal framework that governs StB files. In its wake, Benda had to step down as director and the ministry of the interior limited the access of ÚDV officials to StB files.

ÚSTR follows this same pattern. Two principal factors work to reinforce the perception that the institute has a political agenda, serving as a platform for the anti-communism embedded in the ÚSTR law: (1) The institute's leadership and its interaction with the broader political environment; (2) The institute's organizational setup.

First, Žáček's leadership played a major role in undermining the credibility of ÚSTR as a source of information and the potential ÚSTR had for contributing to educating the Czech public on the communist past. Žáček, who stood at the helm of the institute during its first years, was ultimately dismissed by the institute's board. His leadership style contributed to numerous conflicts inside the institute, and the first years of the institute saw a number of ÚSTR staff leave in anger.¹⁵² Fights among historians, and not the institute's historiographical output, made headlines during the first years. Interview respondents disagree as to the nature of these conflicts: some suggest that

¹⁵² 'Historik Prečan píše otevřený dopis řediteli ÚSTR Pavlu Žáčkovi a ptá se: Čeho se bojíte' [Historian Prečan Writes Open Letter to ÚSTR Director Pavel Žáček and Asks, 'What Are You Afraid Of?'] *MF Dnes*, March 23, 2010, available at: http://zpravy.idnes.cz/dokument-historik-precan-pise-otevreny-dopis-rediteli-ustr-pavlu-zackovi-a-ptase-ceho-se-bojite-iew-/zpr_archiv.aspx?c=A100322_215535_kavarna_chu, accessed on May 20, 2015.

differences of historical opinion play a role, while others report no interference by the institute leadership in their academic work.¹⁵³ Nonetheless, even if the conflicts within the institute appear to mostly be personal and not necessarily about the correct interpretation of the communist past, they reinforce the impression that the institute leaves no space for different historical perspectives and serves to promote a political agenda.

The notion that that agenda would be anti-communist is reinforced by the tendency on the part of institute staff to engage in political advocacy and the inability of the institute to avoid being used as a political prop. ÚSTR officials have often spoken out on issues in a distinctly partisan way and the institute has been involved in strongly politicized memorialization efforts that are not broadly supported. The institute's presence in news and social media frequently appears partisan. In part, this is because ODS politicians have in the past used ÚSTR as a venue for announcements (for instance when Prime Minister Mirek Topolánek controversially decorated the Mašín brothers, the 'third resistance fighters' from the 1950s who killed a number of people as they made their way to the West). But it is also because those in charge of public relations at the institute conceive of their job and the institute's public image in this way. On its official Facebook page, ÚSTR has shared news stories of politicians and activists calling for stronger measures against former communists, or stories about court cases and so on against former communist officials.¹⁵⁴ The neutrality of the institute is further compromised when its employees comment in the media on politicians (frequently those from the communist party). For instance, when KSČM MP Miroslav Grebeníček expressed his view that Jan Palach's self-immolation had not been an act of anti-communism, an ÚSTR employee opined that such assertions should be made illegal. And in 2014, when parliament again discussed ending the lustration law, Pavel Žáček asked "If we repealed lustration, who would have won the Velvet Revolution?"¹⁵⁵

¹⁵³ Interviews with Kateřina Volná, February 13, 2013; Adam Hradilek, February 27, 2013; Vojtěch Ripka, March 25, 2013; Juraj Kalina, April 27, 2013, all in Prague.

¹⁵⁴ ÚSTR Facebook Page, available at: <http://www.facebook.com/UstavProStudiumTotalitnichRezimu/>, accessed July 21, 2015.

¹⁵⁵ 'Historik Žáček: Zrušit lustrační zákon? Kdo by pak vyhrál revoluci?' [Historian Žáček: Repealing Lustration Law? Who Would Then Have Won the Revolution?], ČT, February 11, 2014, available at:

Second, institutional factors play a role in creating incentives for the institute and its staff to behave in this activist way and in undermining the potential for the institute to be seen as neutral. The uncomfortable combination of advocacy and the provision of information undermine the potential for neutrality; even the separation of the archive and the institute do little to avoid this. The key factor here is not the mere declassification of information but rather the creation of bureaucratic organizations with an interest in making such information more broadly available. ÚDV, for instance, was tasked with documenting secret service crimes and, as part of the Czech police, preparing cases for prosecution. ÚSTR, similarly, is meant to educate the public on communist crimes. Given the political backing of these institutes and their integration with the network of policy entrepreneurs discussed above, it seems reasonable to anticipate a certain institutional interest in revealing information about individuals' pre-1989 covert activities.

The extent of political control over the institute is another element of the institutional setup of ÚSTR that reinforces the impression of political leanings and that colors the perception of the institute. According to the 2007 law, the Senate appoints the institute's council, which in turn hires a director. Giving politicians (as opposed to, for instance, the Academy of Sciences or another academic body) control over the leadership of the institute meant that any appointment could be seen as political.¹⁵⁶ Even if the Senate appointed only the most impeccably capable and knowledgeable people, they would still have to contend with concerns that they owe their position (and the money that comes with it) to their connections, not their expertise and skills.

It should be noted that these organizational aspects of the institutes create contestation because of the perception that is created and not as much because of what actually happens. The historical work at ÚSTR or ÚDV, the expertise of the people that work there, or even the content of the

<http://www.ceskatelevize.cz/ct24/domaci/262022-historik-zacek-zrusit-lustracni-zakon-kdo-by-pak-vyhral-revoluci/>, accessed July 21, 2015.

¹⁵⁶ The fact that the institute's director is not *directly* appointed is actually an explicit attempt to forestall this very issue, but the level of political insulation it offered proved insufficient. Those involved in the legislation acknowledged that they did not anticipate that this construction would be used against them. Interviews with Pavel Žáček, March 5, 2013, Prague; Ivan Langer, April 25, 2013, Prague; and Jiří Liška, April 15, 2013, Jičín.

conflicts among each other – all of these are not nearly as important as *perception* that the work is biased, that the staff are hacks, and that the conflicts are about repressing a pluralist approach towards the communist past. Factors like leadership and institutional setup certainly contributed, but by eschewing consensus, the lawmakers ensured that the institute could not play anything but a divisive role. The potential for ÚSTR to function as a neutral arbiter, using historical expertise to interpret sensitive archival data – a tall order in the best of situations – was a non-starter from the get-go in this case.¹⁵⁷

Indirect Impact: StB File Access

The third way in which transitional justice contributes to contestation over the communist past is by providing access to StB files. Again, however, this effect hinges on the broader ideological context in which this particular policy is implemented. By itself, file access need not be the cause of contestation. However, when it is the result of legislation that is a part of an explicitly anti-communist agenda, the same policy, seen in a more political light, can lead to contestation. This will be the case especially when it is implemented by an organization that serves to perpetuate that explicit agenda embedded in the law that forms the basis for this legislation. As a result, access to StB files leads to contestation primarily due to the anti-communist overtones of underlying legislation and, as of 2007, due to perceptions of the political role played by ÚSTR, which (through ABS, the Archive for Security Branches) now oversees the files.

Exposure and revelation leading to allegations of StB collaboration are essentially the mechanism through which file access legislation leads to contestation. We see here that the impact on contestation of two transitional justice policies (file access and memory institute, both based on explicitly ideological legislation) intersect. Memory institutes and journalists play a crucial role in making information broadly available, and detractors of both ÚDV and ÚSTR argue that these institutes, in cahoots with their political masters, have worked to pull defamatory materials on

¹⁵⁷ The institute faced an uphill battle in any case: As a result of the destruction of large numbers of files in December 1989, the chaos of 1990, the clandestine publication of lists (e.g., the Cibulka lists in 1992) of people registered with StB, and the general untrustworthiness of the files and claims about them, it is essentially impossible to legislate this matter cleanly and in such a way that no further debate can arise.

opponents out of the archives. However, as before, the perception of ideological bias and politicization is an important contributor to contestation, and file access leads to contestation even when there is no evidence of ulterior motivation.

Two examples of revelations serve to illustrate this point. Both happened after ÚSTR started its work and have been the source of political contestation implicating ÚSTR even though the institute's involvement in these particular cases is limited or at least unproven. The first comes from Jiří Dienstbier jr. During his interview, Dienstbier recounted how ÚSTR employees purposefully sought out information about the purported involvement of his father (well-known dissident and ČSSD politician Jiří Dienstbier sr.) with the communist Military Counter-Intelligence service, and worked to publish this information in the media.¹⁵⁸ According to Dienstbier jr, who admitted that he could not prove his allegations, this information was false and meant to discredit his father. The affair goes a long way towards showing why Dienstbier jr., who fought ÚSTR tooth and nail in 2013, has a beef with the institute.

Another example offered by several interviewees¹⁵⁹ as an example of bias on the part of ÚSTR is the case of Milan Kundera. Allegations were published in October 2008 that, in 1950, Czech author Milan Kundera informed the police about a suspicious visitor in his Prague student dorm. This individual, a man by the name of Dvořáček, was then arrested for having illegally fled the country, and sentenced to 14 years in prison. These allegations were published in *Respekt* by Adam Hradilek, an ÚSTR historian working together with a *Respekt* journalist, Petr Třešňák, under the title 'Milan Kundera's Denunciation'.¹⁶⁰ The accusations caused furor in the Czech Republic and abroad as Kundera sympathizers decried what they saw as shoddy research underlying the serious charges. For the opponents of ÚSTR, the event confirmed fears that ÚSTR served only to slander and smear the reputations of public figures. However, the discovery of the information that led to

¹⁵⁸ 'Dienstbiera vedla vojenská rozvědka jako spolupracovníka' [Military Counter-intelligence Used Dienstbier as a Collaborator] *Český Rozhlas*, available at: <http://www.rozhlas.cz/zpravy/politika/zprava/724617>, accessed July 26, 2015.

¹⁵⁹ See Ondruš, 2010:278 fn. 51.

¹⁶⁰ 'Udání Milana Kundery' [Milan Kundera's Denunciation], *Respekt*, October 12, 2008, available at: <http://respekt.ihned.cz/c1-36370990-udani-milana-kundery>, accessed July 21, 2015.

the accusation was accidental, and occurred in the process of a private study carried out by Hradilek, who was investigating his family's history. Hradilek was not instructed to find information about Kundera, and when he did, he did not inform the institute's leadership. Instead, he approached *Respekt* and over the course of several months, wrote the article together with Třešňák. Hradilek did not inform Žáček, then director of ÚSTR, until a day before the issue of *Respekt* came out.¹⁶¹

The Kundera affair shows that ÚSTR's *reputation* as an ideological actor with an agenda is key in creating perceptions of media coverage as biased and tendentious. This reputation is well-earned: the institute has not steered away from supporting the anti-communist agenda on which it was founded, and has engaged in political advocacy. But it can also be misleading. Not all revelations that file access makes possible are necessarily part of an anti-communist agenda. In addition, the mere availability of StB files does not by itself lead to a large number of revelations due to media and citizens turning to the files.

Journalistic work dealing with the communist past can best be described as a niche activity. And even though there is room in the Czech media landscape for such niche reporting, and although many journalists report that they do see it as their duty to inform the Czech public about life under communism, the interest in stories dealing with the communist past has its limits. There are broad swaths of Czech news media that are not interested in reporting on this issue, and political reporters typically do not see the issue as very relevant to their work.¹⁶² There is no routine of delving into politicians' pasts or even of verifying basic claims that politicians make about their own pasts. For instance, according to *Respekt* magazine editor Erik Tabery, there is no such habit nor is there a habit of confirming basic details that politicians share about their pre-1989 past:

"To be honest I don't think we've ever done something like actively looking into the communist past. So for instance, we think that Zeman was purged from the party because he did not agree with the invasion, but no one ever checked that out - Zeman told us that. There's no journalist that tried to go into the archives, talk with people who remember. So for instance, to illustrate how problematic that is,

¹⁶¹ Interviews with Adam Hradilek, February 27, 2013, and Petr Třešňák, April 23, 2013, both in Prague.

¹⁶² Interview with Jindřich Šidlo, April 8, 2013, Prague.

in 97/98 when the Klaus government fell and we had the first Czech caretaker government, with Tošovský, the governor of the national bank, no one wrote that he had been a member of KSČ, but he had been, and we did not find out until later. So that raised the question why he kept that a secret, how can they keep that secret? (...) But at Respekt, we never say 'here's a new politician, what did he do before 1989?'. We never did that."¹⁶³

Overall, then, journalists are somewhat indifferent to the issue, but there are exceptions to this rule. A small number of journalists working for Czech news media have devoted their careers almost exclusively to describing the workings of the communist regime and uncovering the involvement of individuals in certain episodes. For these journalists, file access has had an important effect, permitting them to access previously unavailable information to inform their writing. The creation of the Institute has only strengthened this effect, as personal connections between ÚSTR personnel and journalists facilitate the publication of new and newsworthy material from the archives.¹⁶⁴

These journalists – examples include Luděk Navara, Adam Drda, and Petr Placák – mix writing on the communist past with advocacy. Placák, a dissident before 1989 and member of the *Plastic People* is particularly involved in anti-communist activism including the ‘Don’t Talk to Communists’ campaign.¹⁶⁵ In recent years, he has focused his attention on pressing for the prosecution and conviction of three StB agents who assaulted him – they were convicted in 2012. Navara writes for *MF Dnes* but has also published independently on the topic, including a number of books about communist crimes (e.g., Navara, 2009). He has also collaborated on documentaries dealing with the communist past. Adam Drda has worked for Czech Radio, collecting life stories from people who lived under communism. His *Příběhy Bezpráví* (Stories of Injustice) campaign worked to present the accounts of victims of communist repression in media as well as in a traveling exhibition. He has co-authored a book criticizing KSČM, achrostically entitled *Kdo ve stínu čeka na moc*, or *Those Who Wait for Power in the Shadows* (Drda and Dudek, 2006).

¹⁶³ Interview with Erik Tabery, March 19, 2013, Prague.

¹⁶⁴ Interviews with Adam Drda, February 18, 2013, and Luděk Navara, March 28, 2013, both in Prague.

¹⁶⁵ Interview with Petr Placák, February 26, 2013, Prague. Plastic People of the Universe was the name of a normalization-era punk group which played a prominent role in the Czech underground movement.

The link between these journalistic policy entrepreneurs and their editors mirrors the link between policy entrepreneurs in parliament and the parties that they represent. Editors may not initiate coverage of the communist past, but they are often sympathetic to those who do. They see the insistence of some journalists and commentators on framing their coverage through the lens of communist rule as an asset and something that contributes to their identity as a media outlet.¹⁶⁶ In a number of cases, this identity is reinforced when a newspaper or weekly magazine has its roots in the dissident *samizdat* publishing movement. *Lidové Noviny*, for instance, was published clandestinely before the Velvet Revolution; *Respekt* was created by dissidents in the first weeks of 1990. In addition to these institutional roots, many journalists started their careers during the velvet revolution and have a natural affinity with reporting on the communist regime.

The outlets that have interest in reporting on this issue are primarily the more highbrow sources with a more conservative editorial bent. Left-wing *Právo* appears to be less interested in covering the issue (*Právo* journalists declined my request for an interview). The same goes for the Czech tabloid *Blesk* (which has a far greater circulation than the mainstream political broadsheets). When it comes to revelations about StB involvement, this newspaper, whose keywords are 'celebrities, news, sports, and fun', will at the most re-publish news from other outlets, and never original research. There are no examples of tabloid reporters digging up saucy details about celebrities and politicians through engaging in historical research made possible by file access laws. This contradicts the assertion, common among opponents of ÚSTR, that file access is covered with a tabloidized approach. Instead, many of the exposés are balanced and thoughtful, informed by a desire to understand what motivated people to collaborate, rather than to shame them.¹⁶⁷

¹⁶⁶ Interview with Jiří Kubík, April 4, 2013, Prague.

¹⁶⁷ An example is this comment made by *Respekt* journalist Jaroslav Spurný in an interview with singer Jaromír Nohavica in which Nohavica discusses why he collaborated with StB: “Nohavica’s openness, with which he finally is talking about how he got stuck in the StB nets, helps those who are interested to determine, whether he and other StB collaborators were culprits or rather victims of the totalitarian regime, and to understand, what that regime actually did to all of us”. From: ‘Tajemství Jaromíra Nohavici’ [The Secret of Jaromír Nohavica], *Respekt*, May 28, 2006, available at: <http://respekt.ihted.cz/c1-36265420-tajemstvi-jaromira-nohavici>, accessed May 20, 2015.

To sum up: file access has affected the work of a small number of journalists who have ties with the institute and who are part of the broader anti-communist network. However, it has not affected journalistic practice outside of this small group, as most political journalists do not see the issue as salient or worthy of research. In particular, the tabloid press has not played an active role in going through the archives and covering the communist past, in spite of concerns that file access would lead to sensationalist coverage. Yet the impression persists that the file access policy, in tandem with the existence of a memory institute, serves a political agenda. This perception is sometimes misleading as opponents of file access and ÚSTR tend to overestimate the involvement of ÚSTR in bringing out new information. The impact of transitional justice is primarily due to ideology and not due to the day-to-day implementation of the law. In fact, the central purpose of the law, allowing Czech citizens to learn about their past, escapes attention entirely. This may have something to do with the fact that the vast majority of Czechs have still never seen the files that were kept on them or their relatives. Not very many civilians have actually taken advantage of their newly granted right to access the StB archives. Some material (like lists of collaborators) is available on-line, but to consult the actual files Czechs need to travel to the archive in Prague or visit a branch in Brno. Annually, around 1,700 people, most of them academics, take advantage of this opportunity.¹⁶⁸ Given the number of collaborators and officers (around 75,000) as well as the number of people who were followed (700,000), those visitor numbers are not overwhelming. Again, the ideological message has a greater impact than the practical provisions of the law.

4.4 Conclusion

Roman David has described the Czech Republic as a ‘puppy chasing its tail’, a country caught in a cycle of introducing transitional justice only to realize it needs more. This chapter has tested three relevant hypotheses, finding strong evidence for each one. In the Czech Republic, transitional justice does reinforce contestation, which in turn provides fertile ground for more transitional justice.

¹⁶⁸ ‘Výroční zpráva Archivu bezpečnostních složek za rok 2014’ [Annual Report of the Archive for Security Branches for the Year 2014], ABS, available at: <http://www.abser.cz/cs/zprava-o-cinnosti-archivu>, accessed May 15, 2015.

The first hypothesis is that the transitional justice agenda is primarily driven by policy entrepreneurs. In the Czech Republic, there is strong evidence for this hypothesis, as transitional justice is almost exclusively the product of a handful of dedicated individuals – inside and out of parliament - such as Václav Benda, Jiří Liska, and Pavel Žáček, among others. These policy entrepreneurs focus their careers on addressing the legacy of the communist past, drafting legislation, introducing it to parliament, and remaining involved in its implementation afterwards. They share an anti-communist ideology characterized by a wholesale rejection of everything associated with communism. Their priority in creating transitional justice legislation is to embed this ideology in the law. They see the law as a platform for broadcasting their interpretation of the communist past, rather than as a tool to achieve social change through regulation. Interview comments reveal that the practical impact of policies such as the lustration law are of limited concern.

The influence of policy entrepreneurs in creating transitional justice laws with such an explicit ideological message has important consequences. The anti-communist ideology embedded in the law is not broadly shared and, as a niche view, it invites opposition. This confirms the second hypothesis, which is that transitional justice, as written, championed, and implemented by policy entrepreneurs, increases the level of political contestation over the past. In the Czech Republic, the communist past continues to divide political elites and transitional justice reinforces this debate. Once in effect, the laws themselves become the subject of on-going political contestation, and this continuing debate spills over into the broader debate over the communist past.

Transitional justice leads to political contestation in three ways, all of which revolve around the ideological content of the laws. First of all, there is the direct effect of ideology. The laws themselves, and the ideological components in particular, become the subject of contestation, inviting court challenges, continuing parliamentary debate, and attempts to amend or repeal the legislation. Second, if the laws create special agencies such as memory institutes, designed to implement transitional justice policies, these organizations can also become a platform for the anti-communist ideology, causing further contestation. Third, laws that facilitate declassification of and access to StB files can cause contestation as revelations from the files lead to allegations of StB collaboration. These two indirect effects are both contingent on the presence of ideological

components in legislation. In the Czech case, these three complementary ‘paths to contestation’ intersected in the creation of ÚSTR, the Czech memory institute that oversees access to the StB files. By consequence, the debates since the introduction of the ÚSTR law, in 2007, have been some the fiercest since the period immediately following the Velvet Revolution. These events offer strong support for the third hypothesis in this analysis, which is that, given explicit ideological content, transitional justice generates contestation especially if it creates a memory institute and/or if it opens up secret service files.

The discussion so far has focused primarily on contestation over the laws themselves and their implementation. In addition, the analysis has concentrated on laws that address in particular the legacy of the StB, because of the political significance of the secret service files. However, transitional justice in the Czech Republic goes beyond those laws and the impact of transitional justice goes beyond continued political debate after a law has been voted on. This contestation spills over into the broader societal discussion regarding the Czech communist past, permeating the commemorative culture of the country and informing political identities.

The present account, then, offers a sustained counterpoint to the partisan take on transitional justice. This view, which presents transitional justice as the product of strategic party behaviour, falls short in a number of respects. It does not adequately explain why transitional justice is almost never initiated by the government in power, and almost always introduced to parliament by parliamentarians, sometimes even by members of the opposition. It does not explain why the laws have such explicit ideological components in contrast with their relatively inconsequential regulatory components. And it does not explain why the contestation over the communist past that ensues focuses so much on these ideological elements. This perspective further assumes that parties use transitional justice to appeal to voters (or to undermine the potential for rivals to do so) but the evidence suggests that there is not much at stake in terms of electoral support and that parties generally ignore the issue in their party manifestos.

Applied to the Czech Republic, the theory of transitional justice forwarded in this dissertation offers a plausible and coherent explanation for each of those elements of transitional justice. It has found evidence for the role of policy entrepreneurs in pushing this policy agenda, introducing laws

to the floor of parliament, noting their role in entrenching ideological elements in the legislation, and noting how these elements contribute to further contestation over the communist past. The influence of policy entrepreneurs also explains why the regulatory impact of transitional justice in the Czech Republic is both limited and of limited interest to those who are involved in the debate over these transitional justice laws and the communist past more broadly. The support that the Czech case offers for the hypotheses in this dissertation is encouraging. To make an even better case by addressing the concern that the findings may simply reflect Czech idiosyncrasies, the next chapter will apply the dissertation's argument to a case with a different political dynamic: Slovakia.

CHAPTER FIVE – Slovakia: No Saints, No Sinners

Slovakians don't have great saints or great sinners. Russians have both, but we're sort of in the middle, and like that, we don't have strong communists and anti-communists, communism here was not such that the people were fascinated by it.¹⁶⁹

Introduction

Chapter 3 showed divergence between Czechs and Slovaks during the first post-communist years in terms of how to handle the communist past. In Slovakia, Vladimír Mečiar opposed lustration, but not out of normative considerations but rather because he relied on clandestine use of the files to build his power base in Slovakia. Although lustration was a federal law that was formally on the books in Slovakia, it was not implemented there. Meanwhile, communist elites remained more powerful in Slovakia than in the Czech Republic, where a greater number of opposition leaders were available to take over. This pattern of differences between the two republics is the continuation of decades of communist rule.

As a result, following independence, Slovakia adopted fewer transitional justice laws than the Czech Republic. However, the laws that were put in place follow the same pattern that Chapter 4 described for the Czech Republic. This chapter will demonstrate that Slovakian transitional justice supports the hypotheses forwarded in Chapter 1. To elaborate, Section 5.1 shows that the political context in which transitional justice is implemented is one in which there is already some level of contestation. Because of this, transitional justice is not a consensus response to a collectively identified and agreed-upon problem. Section 5.2 argues that policy entrepreneurs are the central actors pushing the transitional justice policy agenda forward; these are political actors that dedicate

¹⁶⁹ Former political prisoner Anton Srholec, chair of the Slovakian Confederation of Political Prisoners (KPV-SR), quoted by former dissident and former KDH MP František Mikloško. Interview with František Mikloško, May 6, 2013, Bratislava.

Table 5.1 Dissertation Argument for Slovakia (1993-2013)

The communist past and transitional justice ...	
... are the subject of elite-level debate.	✓ How to interpret the Slovakian communist period is a matter of dispute involving different groups of dissidents and others across political parties.
... remain visible due to scandals.	✓ On-going scandals regarding regime complicity (including StB collaboration) on the part of public figures are common. This includes revelations about the clandestine use of files under Mečiar, who used StB connections to build power.
... but are not politically salient to voters or to how parties appeal to voters.	✓ Slovakian public opinion : largely ambivalent on the issue, does not demand transitional justice. The strong political party organizations on the left are mostly indifferent, while the weaker and more fragmented right is reluctant regarding transitional justice. Governments are permissive at most, sometimes hostile.
Instead, policy entrepreneurs ...	
... draft and design transitional justice legislation.	✓ Policy entrepreneur Ján Langoš played a central role in drafting the ÚPN Law (2002) and other transitional justice legislation. Other political actors involved in transitional policy, like Tarnóczy, exhibit similar traits.
... take the initiative to introduce legislation in parliament.	✓ All transitional justice legislation is the product of parliamentary initiative by policy entrepreneurs like Langoš, Osuský, and Tarnóczy .
... remain involved in the implementation.	✓ After championing ÚPN, Ján Langoš became the office's first director in 2002, serving until his death in 2006.
The legislation that they produce ...	
... has explicit ideological components reflecting the policy entrepreneurs' anti-communism.	✓ Ideological elements (e.g., nazi-communist equivalence) characterize the 2002 ÚPN Law as well as other transitional justice legislation such as the 1996 Communist Immorality Law and the 2006 Anti-communist Resistance Law .
... reinforces contestation primarily because of the ideological language.	✓ Opponents like Ondruš, Budaj, and Čarnogurský take issue with the law's interpretation of the communist past, but also with practical implications of StB file access. In addition: strong contestation over ÚPN's views on wartime Slovakian state.
... includes limited regulatory components, which by themselves do not reinforce contestation.	✓ After an initial spike in 2003, numbers of citizens accessing StB files following 2002 ÚPN law have declined. Other transitional justice legislation has a declaratory function (1996 Communist Immorality Law) or primarily serves to acknowledge involvement in opposition to communism (2006 Anti-communist Resistance Law).
In this ideological context, political contestation is further reinforced when policy entrepreneurs ...	
... implement laws that release information from the secret service archives	✓ Led by Ján Langoš , ÚPN serves as a platform for the anti-communist agenda of the policy entrepreneurs. It is involved in debates over the communist past and the interpretation of information from StB archives, which it actively and selectively makes available on-line.
... lead the formal organizations (memory institutes) that implement transitional justice	✓ Media attention paid to the communist past spiked as a result of the 2002 ÚPN law . This coverage leads to contestation from opponents concerned about unfair accusations, who see ÚPN as a partisan organization with a political agenda.
... encounter an explicit and sophisticated rejection of their anti-communism.	✓ Contestation is more moderate as a result of the greater political proximity of supporters and opponents of key legislation. Individuals with a strong commitment to the politics of transitional justice are almost exclusively found on the right.

their professional careers to pursuing these policies, and they are little inclined towards consensus and compromise. As a result, the laws they create reflect their particular take on the communist past, which is sharply anti-communist and not broadly shared. Section 5.3 shows that it is precisely these elements that reinforce contestation, finding evidence for the second hypothesis.

In addition, this section analyzes how media have responded to the availability of StB archives in their coverage. Consistent with evidence from Chapter 2, interviews with journalists do show support for a spike in coverage resulting from file access. This has formed an additional source of contestation as opponents of transitional justice treat new information with suspicion. This is reinforced by the continued political involvement of Slovakia's ÚPN, which undermines the impression of impartiality and creates a sense that revelations about StB collaboration are ideologically motivated. As a result, Section 5.3 also provides support for the third hypothesis, which emphasizes the additional potential for increased contestation due to regulatory components of transitional justice, such as file access or a memory institute, in interaction with the ideological elements of transitional justice legislation.

5.1 Context

Slovakian politics is divided over the communist past, with most of the right espousing some form of anti-communism (the far-right SNS is an exception here) while the left is more positive about the communist past (although Slovakia has not seen an outright communist party in parliament with the exception of 2002-06). In Slovakia, the balance in this debate has skewed strongly towards the left, with Slovakian elites and the voting public generally more permissive about the communist period than their neighbors. Historical legacies noted in Chapter 3 help explain this outcome. To reiterate, historical legacies from Slovakia's twentieth century shape the politics of transitional justice in at least two ways. First of all, communism played a strong role in modernizing Slovakia, shifting its industrial base from agriculture towards industry while overseeing a great increase in urbanization. Secondly, especially after the Soviet-led invasion of 1968, the communist regime was not as repressive in Slovakia as it was elsewhere. Paradoxically, while the Czechs were much more eager to welcome communist rule in 1948 than the Slovaks, today, the Slovaks view communism much more positively than the Czechs do. These two aspects of communist rule in their country cause Slovaks to view communism in a positive

light, or at least in a way that acknowledges upsides in addition to shortcomings. Thus, advocates for transitional justice in Slovakia fight an up-hill battle, and they have had limited success, producing only a handful of laws. Slovakia never implemented lustration, and secret service files were not made available until 2002 when the ‘Law on National Memory’ opened up the archives and created a Slovakian National Memory Institute (*Ústav Pamäti Národa*, ÚPN). Another law from 2006 provides formal recognition to those who resisted the communist regime.¹⁷⁰

This somewhat limited scope of transitional justice is not simply the product of the long shadow of history, but also of political conditions after independence. First of all, although Slovakian nationalists will reject communism as un-Slovakian, imposed from the outside by Czechs and Soviets, their nationalist narrative has stressed primarily that the shared Slovakian heritage is stronger than ideological divisions between communists and non-communists. The fact that close to 10 per cent of Slovaks had at one point or another been a member of the Communist Party surely provided a strong impetus for this element of Slovakian nationalism (Grzymała-Busse, 2002: Ch. 1). In particular, the fact that Vladimír Mečiar, the architect of both Slovakian independence and post-independence politics, had been a Communist Party member until 1968 goes a long way towards explaining why Slovakian nationalism often remains ambivalent about the communist period.¹⁷¹

Moreover, as Slovakian Prime Minister, Mečiar (in office between 1990 and 1998 (with brief interruptions in 1991-92 and 1994) took advantage of access to the secret service files to build his power base.¹⁷² First of all, he collected the files collected on political opponents to undermine and blackmail them (in the process, he more than likely removed and destroyed his own file). Secondly, during his tenure in office, he appointed former StB personnel to key positions, building a network of people loyal to him.

¹⁷⁰ ‘Zákon o protikomunistickom odboji’ [Law on Anti-Communist Resistance], 219/2006 Zb.

¹⁷¹ The same can be said for Slovakia’s far-right Slovak National Party (SNS, *Slovenská Národná Strana*). Championing a strongly nationalist and frequently xenophobic agenda, particularly with regard to the Roma and Hungarian minorities in Slovakia, this party has not developed a strong anti-communist rhetoric.

¹⁷² Chapter 3 covers this in detail.

Because it would interfere with his private use of the secret service files, Mečiar refused to implement the lustration law inherited from federal Czechoslovakia. The politics of lustration are discussed in great detail in Chapters 3 and 4, but to quickly reiterate, the 1991 lustration law sets criteria for current and future civil service personnel. Crucially, these criteria exclude high-level communist functionaries as well as those who were worked for the StB, either as employees or as informal secret collaborators. While the law is still in force in the Czech Republic today, it was never implemented in Slovakia. As former dissident and long-time Christian-Democratic MP František Mikloško (KDH, 1990-2010) explains:

After the elections of 1992, and the split, the whole lustration thing was done for in Slovakia. We inherited all the federal laws, so it was not possible to appoint people to higher positions who had a past in the secret service, but the government of Vladimír Mečiar did not create a body that had to verify and control that. So the law was in force but it was not enforced because there was no executive body. It could have been done by the Ministry of the Interior but it was clear that Vladimír Mečiar did not want it to continue.¹⁷³

The Mečiar years saw Slovakia backslide on its democratic gains as a result of considerable ‘encroachments on democratic accountability mechanisms’ – in Deegan-Krause’s words.¹⁷⁴ The most blatant example of Mečiar’s power politics and the role that Slovakia’s Intelligence Service SIS (Slovenská Informačná Služba) played in it is that there are strong indications that SIS officials, supposedly at the behest of Mečiar, kidnapped the son of President Michal Kováč in what is argued to be an attempt to get Kováč to give up his opposition to Mečiar (Baer, 2001).

After the 1998 parliamentary elections, which Mečiar’s Movement for a Democratic Slovakia, (*Hnutie Za Demokratické Slovensko*, HZDS) won, a broad anti-Mečiar coalition managed to successfully keep him out of office and in the opposition. This opened up possibilities for transitional justice legislation, too: towards the end of that legislative period, a new law provided for public access to the secret service files. In the years following, a few more transitional justice

¹⁷³ Interview with František Mikloško, May 6, 2013, Bratislava.

¹⁷⁴ For a detailed discussion of democratic backsliding during the Mečiar years, see: Hacker (2010); Deegan-Krause (2006); Haughton (2005); Baer (2001); Fish (1999).

laws have been passed. Mečiar has been marginalized in Slovakian politics, although he retained a considerable power base. He was runner-up in the 1999 presidential elections, and again in the 2004 presidential elections (after winning the first round), and his party won the 2002 elections (but remained in the opposition). However, advocates for transitional justice still face a mostly indifferent left that has little time for addressing the legacies of communist rule, even though Vladimír Mečiar does not play a major role in Slovakian politics any longer.

As of 2002, the Slovakian left has concentrated around the SMER-SD party of Robert Fico, which has been increasingly successful, leading the government between 2006 and 2010 (in a coalition with SNS) and as of 2012 (in a single-party majority government).¹⁷⁵ Robert Fico (SMER-SD) and his immediate backers are known for their lukewarm attitude towards remembering and re-working the communist past. Fico is famously quoted as ‘not having noticed November, 1989’, while Speaker of Parliament Pavol Paško (SMER-SD) has said that he was “too busy retooling his bathroom at the time”.¹⁷⁶

Many SMER-SD politicians (including Fico and Paško) have a background as members of the Communist Party, and one key backer was a secret service officer. This does not lead SMER-SD to mount any sort of substantive defence of communism, but creates an incentive for the party not to reject the communist past or anyone’s involvement in it. Although the party pays lip service to commemorating human rights abuse, this commitment is razor-thin in practice. In interviews, representatives of the party maintain that they do not appeal to voters’ nostalgia, but at the same time they argue that dealing with the past is not a priority for them, as they find it more important to ‘look to the future’.¹⁷⁷

¹⁷⁵ As of 1999, the party existed under the name SMER (direction). Following a merger with two minor parties on the left around 2004, it added ‘Sociálna Demokracia’ (Social Democracy) to its name, although it is still commonly referred to as SMER.

¹⁷⁶ ‘Fico si ho nevšimol. Vy áno?’ [Fico Did Not Notice. Did You?], *Hospodárske Noviny*, November 17, 2013, available at: <http://komentare.hnonline.sk/komentare-hn-152/fico-si-ho-nevsimol-vy-ano-594698>, accessed July 22, 2015.

¹⁷⁷ Interview with Renáta Zmajkovičová, Bratislava, May 14, 2013.

Politicians with a communist background have dominated Slovakian politics after 1993. Elected in 2014, Andrej Kiska became the first Slovakian President who had not been a Communist Party member. By contrast, Miloš Zeman, elected in 2013, became the first Czech President who *had* been a KSČ member, and his membership ended in 1968 after the Warsaw Pact armies (*sans* Romania) invaded. Similarly, Zeman was the only Czech Prime Minister after 1993 who had been a KSČ member (this does not include Prime Ministers Fischer and Tošovský, who were members during the 1980s and led caretaker governments afterwards). In Slovakia, on the other hand, Prime Ministers with a KSČ past have been much more common, including Mečiar (91-98, member before Prague Spring) and Fico (2006-2010, 2012-present; member during the 1980s). This difference persists in other key positions as well (e.g., within the judiciary).

To sum up, advocates of transitional justice in Slovakia face a number of obstacles. Among them are (1) clandestine use of the secret service files during the 1990s, and the continued threat of such use afterwards, and (2) a strong left, dominated by former communists, that is indifferent towards the issue. Under these conditions, the notion suggests itself that the Slovakian transitional justice laws are designed to combat these obstacles. By targeting former communist officials and regulating access to the secret service files, transitional justice laws could serve a right-wing strategy to take the wind out of other parties' sails. Coming in the wake of Mečiarism, one might expect that transitional justice was part of a broader strategy coming from the anti- Mečiar coalition to undermine Mečiar's powerbase and limit the dangers that he posed to Slovakian democracy. However, this partisan perspective on transitional justice (in particular the 2002 ÚPN law, the centrepiece of Slovakian transitional justice) is not supported by a detailed account of how transitional justice came about in Slovakia.

The purported strategy would be to either improve one's own electoral fortune or undermine the prospects that others have at the ballot box. One mechanism for achieving these goals through transitional justice involves exposing the collaboration of political rivals with the communist regime. A more detailed look at ÚPN, the centrepiece of transitional justice legislation, raises some concerns regarding the validity of the partisan perspective. In particular, doubt is cast upon this perspective when we look at parties' involvement in this legislation, at public opinion regarding this topic, and at what this legislation ends up doing in practice.

First of all, the ÚPN law was not introduced to parliament by the government that was in office at the time. Indeed, the first Dzurinda government was not involved in preparing this legislation and when the initiative came from parliament, the government's reaction was skeptical. This reaction was informed in part by the fact that the coalition included two leftist parties (SOP and SDL) which took issue with the attempt to address the communist legacy. But the largest party in the coalition, the centre-right SDK, did not prioritize the legislation either. In its analysis of Mečiar's legacy and how to overcome it, this party does not view dealing with the communist past generally or addressing the issue of the secret service files in particular as part of the solution. The issue does not come up in the SDK's long election manifesto (the version available through the Manifesto Project is over 100 pages of single-spaced 12-point prose).¹⁷⁸ Indeed, specific proposals for transitional justice legislation are largely absent from election manifestos for parties like the KDH and the SDKÚ-DS, which have traditionally supported forms of transitional justice in parliament. If transitional justice policies form part of a party's longer term electoral strategy, one might expect it being mentioned in manifestos. However, a review of party platforms issued for Slovakian national elections between 1994 and 2010 demonstrates that transitional justice has never been explicitly promised to Slovakian voters by political parties. The story of ÚPN suggests that this may be because those parties are not planning to initiate transitional justice legislation in the first place.¹⁷⁹

Secondly, voter attitudes towards the communist past in Slovakia do not match up with a partisan perspective on transitional justice either. The purported mechanism of tactical transitional justice relies on voters shifting their votes as a result of revelations of StB collaboration or other forms of regime complicity. But there is no evidence that a meaningful proportion of Slovakian voters are deterred by such information. In spite of clear evidence that Vladimír Mečiar manipulated StB files and worked with former StB personnel during the 1990s, his party became the largest in the

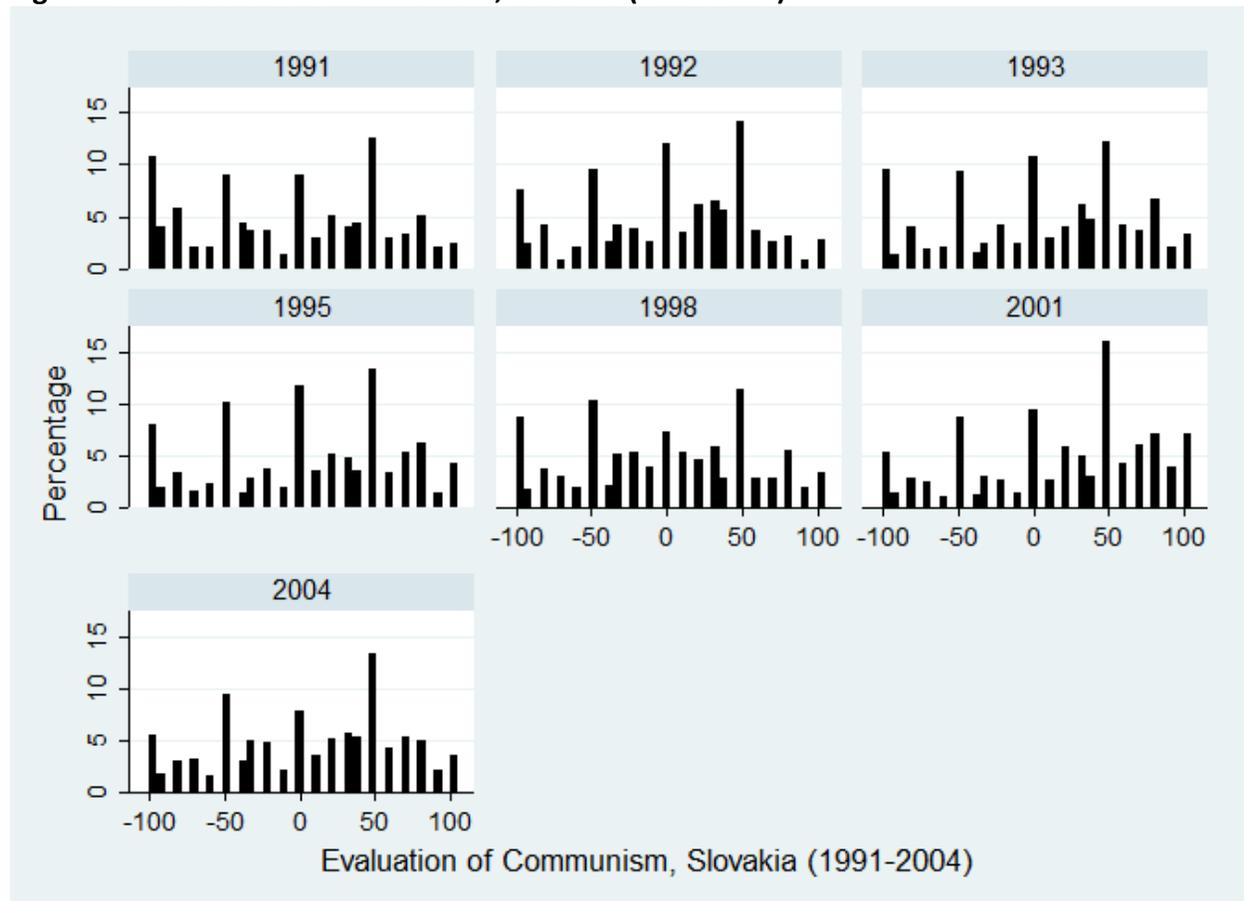
¹⁷⁸ 'Spolu za lepšie Slovensko' [Together for a Better Slovakia], SDK Election Platform, 1998, available at: https://manifesto-project.wzb.eu/download/originals/96522_1998.pdf, accessed July 22, 2015.

¹⁷⁹ Platforms are available at: <https://manifesto-project.wzb.eu>.

1998 elections and again in 2002. Former KSCĽ membership, similarly, does not form an obstacle to a successful political career in Slovakia, as was noted above.

Public opinion data confirm that Slovaks, on aggregate, do not view the communist past negatively. Survey responses collected for the *New Europe Barometer* between 1991 and 2004 demonstrate this: In each wave, the modal response is 50 (on the -100, 100 heaven/hell scale). The proportion of respondents with a negative view of communism does not exceed 50 per cent *in any of the seven waves* carried out for this survey project. Between 30 (in 2001) and 47 per cent (in 1991) offer a response lower than 0. Of that group, only about 10 per cent selects the extreme score of -100, expressing a full rejection of the communist regime.

Figure 5.1 Evaluation of Communism, Slovakia (1991-2004)



Source: New Europe Barometer, 1991-2004, item A1. N between 275 and 1,000. Answers collapsed into 10-point intervals. Data available at: <http://www.ukdataservice.ac.uk>, accessed July 26, 2015.

These results are confirmed by several other surveys. Dinuš (2010:122-123) lists numbers from a 2004 survey, showing that society is divided over the question whether the communist takeover in 1948 was a good thing or a bad thing.¹⁸⁰ According to these numbers, half of the respondents think life got worse after 1989, and the other half sees no deterioration (if no improvement). In other, more recent surveys, similar percentage expressed nostalgia for the communist period.¹⁸¹

The impression that Slovaks are mostly ambivalent with regard to the communist past is shared by many of the politicians that I interviewed. On the left, respondents stress that the past is not a political issue for them and their comments on this period in Slovakian history show that they share their voters' ambivalence. For instance, Igor Choma, SMER-SD MP and Mayor of Žilina, says he does not consider KSC membership as a disqualification for a political career because 'The large majority of former KSC members were and are decent, courageous, and hard-working people'. Choma goes on to note that 'this [the communist past] is not for Slovakian citizens an issue that is essential, or interesting'.¹⁸² His colleague, SMER-SD and deputy speaker Renáta Zmajkovičová, agrees, noting that 'there were good and bad communists, just like every group of people'.¹⁸³ It is this tendency to eschew black-and-white evaluations of communism as a whole that must have inspired former political prisoner Anton Srholec to describe Slovaks as unfazed

¹⁸⁰ 'Vyše 40 %: život po novembri sa zhoršil' [More Than 40 Per Cent Say: Life Got Worse Since November 1989], *SME*, November 14, 2005, available at: <http://www.sme.sk/c/2466136/vyse-40-zivot-po-novembri-sa-zhorsil.html>, accessed July 22, 2015.

¹⁸¹ 'Hodnotenie spoločenskej zmeny po novembri 1989' [Evaluations of Social Change after November 1989], *Focus Research*, November 15, 2007, available at: http://www.focus-research.sk/files/72_Hodnotenie%20spolocenskej%20zmeny%20po%20novembri%201989%20%20okt2007.pdf. Cf. 'Oplatil sa Slovákom a Čechom pád komunizmu? Svoje názory prejavili v prieskume' [Did the Fall of Communism Work out for Czechs and Slovaks? They Offered Their Opinions in a Survey], *Čas*, March 18, 2014, available at: <http://www.cas.sk/clanok/276162/oplatil-sa-slovakom-a-cechom-pad-komunizmu-svoje-nazory-prejavili-v-prieskume.html>, accessed July 22, 2015. 'Prieskum: Východoeurópania vnímajú pád komunizmu s menším nadšením' [East-Europeans View the Fall of Communism with Less Enthusiasm: Survey], *SME*, 3 November 2009, available at: <http://www.sme.sk/c/5093423/prieskum-vychodoeuropania-vnimaju-pad-komunizmu-s-mensim-nadsenim.html>, accessed July 22, 2015.

¹⁸² Interview with Igor Choma, conducted via email, March 12, 2013.

¹⁸³ Interview with Renáta Zmajkovičová, Bratislava, May 14, 2013.

by communism: a people without great saints or great sinners.¹⁸⁴ In this respect, the Slovaks are quite unlike their Czech neighbors. It produces an odd paradoxical historical trend: Czechs were far more supportive of communism before 1948, and far more opposed to it afterwards, whereas Slovakia did not see strong communist support before 1948, but after 1989 had primarily positive views of the intervening period.

On the right, respondents acknowledge that Slovaks, by and large, have a rosy view of the communist period, even if these respondents themselves wish that voters showed a greater awareness of repression and human rights abuse during this time. When asked to comment on the degree to which his anti-communist views are an exception in Slovakia, Peter Osuský notes: 'It's very much in the minority. It's not entirely exceptional, there's a few of us, but maybe, a stupid guess, 4 or 5 percent'. If a voter-based strategy underlies transitional justice, it is not likely to be very successful at all. There is nothing to suggest that a meaningful number of voters is attracted to parties that champion transitional justice and anti-communism, or that a meaningful number of voters would be swayed by revelations about communist party involvement.

A third obstacle for the partisan perspective is that the Slovakian transitional justice laws, as written, do not affect political actors very strongly. Hypothetically, partisan strategies might be served by a strong lustration law that banned former collaborators from political office. But Slovakian transitional justice does not involve lustration at all, let alone lustration that would apply to political actors. What the Slovakian ÚPN law does is to make secret service files available to the public, both by providing access to the archives and by putting selected materials on the internet. This does not directly jeopardize political careers, so as a tool for partisan strategy, transitional justice may not be very effective. Indeed, in those cases where the StB collaboration of a politician has been exposed, the greatest fall-out has been on the right, not on the left. Several politicians, across the political spectrum, have been exposed as StB collaborators. While those on the right (e.g., Ján Hurný, an SDKÚ-DS appointee in the Construction Ministry, or SDKÚ-DS MPs Ferdinand Devinský and Jozef Banáš) have stepped down, the left typically has not seen this

¹⁸⁴ Quote from an interview with František Mikloško, May 6, 2013, Bratislava.

type of involvement as a disqualification for a politician or official.¹⁸⁵ For instance, when it became clear in 2007 that the director of the National Controller's Office, František Blanárik, had worked with StB, government parties SMER-SD and SNS did not move to dismiss Blanárik.¹⁸⁶ Clearly, if transitional justice is a partisan tool, it is not a very effective one, and it seems to have backfired by mostly affecting the parties that were supportive of this legislation.

In sum, transitional justice in Slovakia is mostly supported by the centre-right, with the most important law coming in the wake of the Mečiar period which saw clandestine use of the secret service archives. But this analysis has also shown that it would be wrong to jump to the conclusion that this law, which regulated access to those archives, is part of a conscious partisan strategy. Any evidence that would support this notion is absent: we do not observe the government taking the initiative, political parties making transitional justice an explicit part of their platform, voters who would be susceptible to such promises and to revelations of regime complicity, or transitional justice laws that actually affect political rivals. This raises the question: what is the motivation underlying transitional justice laws, if it is not partisan strategy? To answer that question, the next section introduces policy entrepreneurs such as Ján Langoš and shows the essential role that he and his confederates have played in drafting transitional justice legislation, getting it through parliament, and implementing it.

5.2 The Man and His Law: Ján Langoš and the 2002 'Law on National Memory'

For Slovakian transitional justice, Ján Langoš (1946-2006) was the best example of a policy entrepreneur. A dissident until 1989, Langoš became the avatar of policy entrepreneurs advocating transitional justice in East and Central Europe. He designed the Law of National Memory, which

¹⁸⁵ 'Hurný informoval ŠtB aj o kolegovi agentovi' [Hurný Informed StB about a Fellow Agent As Well], *SME*, December 22, 2014, available at: <http://www.sme.sk/c/1867216/hurny-informoval-stb-aj-o-kolegovi-agentovi.html>, accessed July 22, 2015. 'Devínsky spolupracoval s rozviedkou' [Devínsky Collaborated with Intelligence Service], *SME*, April 17, 2009, available at: <http://www.sme.sk/c/4394510/devinsky-spolupracoval-s-rozviedkou.html>, accessed July 22, 2015. 'ŠtB: Banáš bol Dodo aj Lotos' [Banáš was 'Dodo' and 'Lotos'], *SME*, January 1, 2005, available at: <http://www.sme.sk/c/1883496/stb-banas-bol-dodo-aj-lotos.html>, accessed July 22, 2015.

¹⁸⁶ 'Blanárik udával až do revolúcie' [Blanárik Informed up until the Revolution], *SME*, April 4, 2009, available at: <http://www.sme.sk/c/4549154/blanarik-udaval-az-do-revolucie.html>, accessed July 22, 2015.

is still the flagship of Slovakian transitional justice and, in his parliamentary work, he dedicated himself to getting that law passed. In 2002, he succeeded. Langoš did not return to parliament and was instead appointed by parliament to chair the ‘Institute of National Memory’ that was created by the Law on National Memory. He served in that capacity until his death in 2006.

Many interviewees commented on Langoš’s dedication and commitment to transitional justice:

Jan Langoš was a transparent, crystally clean being. A rebel, a Christian, a fighter, his whole life. He started the institute so that no one would forget that communism and Nazism are beastly ideologies. That's why he started it, so we don't forget.¹⁸⁷

Another added, commenting on the 2002 National Memory Law:

His merit lies, and this is why he's a legend, is that he did it all by himself, he took that Polish law as a model, and drafted a bill, and [Prime Minister] Dzurinda was not against it, but no one in that government would have done it, and Langoš was so stubborn, that he drafted a law by himself and put it on the floor. He was just an MP at that time.¹⁸⁸

Langoš’s dedication derived from a deeply religious world view. Ondruš (2009:286) cites journalist Martin M. Šimečka (a prominent journalist and commentator with a background in the dissident movement):

The purpose of Ján’s life was nothing less than a battle against evil. He understood it biblically – like the devil. One day he said: “This country will not be free as long as we don’t completely disband StB and as long as we don’t know everything about its web”. At the time I did not fully realize the depth of his determination to go into a battle of life and death with the devil, which he knew to be hidden in our past. The absolute majority of people do not want to look evil in the eye, because they fear the devil. And then there’s those who stand up against evil and devote their whole lives to battling it.

¹⁸⁷ Interview with Fedor Gál, April 22, 2013, Prague.

¹⁸⁸ Interview with František Mikloško, May 6, 2013, Bratislava.

In a 2003 newspaper interview, Langoš used these words to describe his anti-communist activism: “... it is my life and I will do everything so that this horrible regime will never return to this country.”¹⁸⁹ It is evident from these statements that Langoš was a tireless crusader for transitional justice.

Before the revolution, Langoš was involved in the Slovakian dissident movement, actively contributing to *samizdat* publications such as *Bratislavské Listy*, which he co-edited with Jan Čarnogurský and František Mikloško. During the revolution, Langoš was a part of VPN – in fact, the name of this organization was coined in his apartment (Krapfl, 2009:170; Ondruš, 2009:22). After the elections in June 1990, Langoš became federal Minister of the Interior in the Čalfa government, serving until 1992. In this capacity, Langoš oversaw the de-communization process inside the federal bureaucracy and the creation of the lustration law. He also encouraged the study of the functioning of communist repression and the StB, setting up the predecessor of the Czech Office for the Documentation and Investigation of Communist Crimes (ÚDV) with Czech policy entrepreneur Václav Benda.

After Slovakian independence, Langoš continued to campaign for addressing communist crimes. In 1993, he founded Centre for the Documentation of Communist Crimes (*Centrum Dokumentácie Zločinov Komunizmu*), an NGO that mirrored the office he had created as Interior Minister and that continued to exist in the Czech Republic, working to study and expose the functioning of StB Dinuš (2010:24). In addition, Langoš helped found the Standing Conference of the Civic Institute (SKOI, *Stála Konferencia Občianskeho Inštitútu*), an organization that sought to promote democratic values in Slovak society in a number of ways, which included addressing the legacy of communist rule. But Langoš did not confine himself to extra-parliamentary organization: In 1994, Langoš entered Slovakia’s parliament on the ticket of Čarnogurský’s Christian Democratic Movement (KDH, *Kresťanskodemokratické Hnutie*). However, his true political allegiance lay

¹⁸⁹ ‘J. Langoš: Každý občan už môže vedieť, kto na neho donášal ŠtB!’ [Every Citizen Can Already Learn, Who Informed StB about Him!: J. Langoš], *SME Košice*, December 9, 2003, available at: <http://kosice.korzar.sme.sk/c/4594886/j-langos-kazdy-obcan-uz-moze-vediet-kto-na-neho-donasal-stb.html>,

accessed July 22, 2015.

with the Democratic Party (*Demokratická Strana*, DS), of which Langoš became the chair in 1995. DS, originally founded during the Second World War and banned under communism, was revived after the revolution and won seven seats in the Slovakia's unicameral parliament, in 1990, but did not clear the electoral threshold in subsequent elections. In 1998, Langoš was re-elected, this time on the ticket of the anti-Mečiar coalition (SDK) which the Democratic Party had joined.

The end of Mečiar's tenure as Prime Minister, in 1998, created a window of opportunity for transitional justice in Slovakia. Langoš took advantage of this window by preparing a number of laws to address the communist legacy. One of them was the Law on National Memory. This centrepiece of Slovakian transitional justice legislation was passed on August 19, 2002 during the last parliamentary session before new elections to the National Council. The Law on National Memory¹⁹⁰ represents transitional justice efforts in two key areas. First of all, it provided for declassifying secret service files collected between 1939 and 1989 and making them available to the Slovakian public. In particular, the law makes it possible to access a broad range of materials collected by the state's security apparatus, including one's personal file as well as files of others listed in the file as secret service agents or officers (i.e., informal, unpaid collaborators and formal employees of the StB). Secondly, the law set up an Institute of National Memory (*ÚPN, Ústav Pamäti Národa*) to curate the secret service archives, carry out research, and educate the public on the crimes carried out by the communist and Nazi regimes.

The bill was not supported by all other coalition partners, with the left-wing SDE refusing to sign on. Langoš had to rely on support from the HZDS to pass the law. The law was also not strongly supported by other parties in the Dzurinda government, including Langoš's own SDK. Ján Čarnogurský, Minister of Justice for the KDĽ at the time and one of Langoš's fellow dissidents during communism, notes in his interview that this legislation was not a priority for the Dzurinda government.¹⁹¹ President Schuster put up a final roadblock, vetoing the law after parliament first

¹⁹⁰ 'Zákon o sprístupnení dokumentov o činnosti bezpečnostných zložiek štátu 1939 - 1989 a o založení Ústavu pamäti národa a o doplnení niektorých zákonov (zákon o pamäti národa)' [Law on Access to Documents about Activities of State Security Branches 1939-1989 and on the Establishment of the Institute of National Memory and on Additions to Some Laws (Law on National Memory)], 533/2002 Zb.

¹⁹¹ Interview with Ján Čarnogurský, May 15, 2013, Bratislava.

approved it in June. Schuster hoped to waylay the law by delaying it until after the upcoming parliamentary elections, anticipating that the new National Council would not be sympathetic to the proposed bill. However, Langoš managed to schedule a new vote on the bill before the elections, and this vote defeated the presidential veto (a simple majority is sufficient to over-ride the President).

Langoš, who did not return to parliament after the 2002 elections, was appointed chair of the institute. As chair, he oversaw the institute's first years and the declassifications of the first files. Under his leadership, ÚPN not only facilitated access to the StB files for Slovaks, but also compiled and published comprehensive lists of people involved with the StB or the KSC in a variety of capacities. Langoš's career move underlines his personal commitment to Slovakia's process of dealing with the past, which went beyond typical commitment of a politician to a cause. It also reflects the strong extent to which implementing the law remained a political affair, as opposed to simply a matter of instrumental bureaucratization. In heading the institute for which he himself instigated the legislation, Langoš followed the example of Czech dissident and policy entrepreneurs Václav Benda and Pavel Žáček.¹⁹²

ÚPN was not Langoš's only initiative. In 2002, the law was part of a larger package of proposed legislation including a bill providing that access to classified intelligence material be subject to lustration, excluding StB collaborators. This bill did not survive a presidential veto.¹⁹³ Remarkably, similar provisions were included in the law on classified material in 2004, without any discussion whatsoever. This time, the change was part of a larger overhaul of existing legislation that was initiated by the second Dzurinda government (2002-2006); no policy

¹⁹² See Chapter 4 for an extended discussion of these policy entrepreneurs and the transitional justice laws with which they were involved.

¹⁹³ 'Rozhodnutie prezidenta Slovenskej republiky z 29. júla 2002 o vrátení zákona' [Decision by the President of the Slovak Republic from July 29, 2000, about Returning a Law], Print 1658/2, National Council of the Slovak Republic, Second Legislative Period (1998-2002), July 30, 2002, available at: http://www.nrsr.sk/dl/Browser/DsDocumentVariant?documentVariantId=32091&fileName=tlac_1658.pdf&ext=pdf, accessed July 22, 2015.

entrepreneurs were involved.¹⁹⁴ Indeed, during the plenary debate before the vote, the issue was not discussed.¹⁹⁵ The bill passed with 132 votes in favor and one against. Crucially, however, the term lustration is not used to refer to this provision, even though it meets the criteria. Indeed, this new rule is not presented in terms of dealing with the past, but simply as a tool for ensuring security when dealing with classified material. This law is not discussed in any of the literature on Slovak transitional justice, and it is not listed by ÚPN in its online overview of pertinent legislation.¹⁹⁶

A second example of policy entrepreneurship in the area of anti-communist transitional justice comes from Peter Osuský. Osuský's family was subject to communist persecutions, and Osuský describes his political activity as motivated by concerns about the persistence of communist elites in post-communist politics:

I entered politics when Czechoslovakia fell apart, because I had a bad feeling about the 'guard' that was rising to power. In Mečiar's first government, out of 19 ministers, 17 had been members of the KSCĽ, 17 out of 19. At the same time, 11 per cent of the population had been communists. Statistically, out of 19, two should have been communists, but there were 17.¹⁹⁷

Osuský is a typical adherent to the anti-communist ideology described in Chapter 4. Throughout his interview, Osuský drew strong parallels between Nazism and communism. He also rejects out of hand the notion that the Prague Spring held any promise of real reform:

¹⁹⁴ The new bill ('Vládny návrh zákona o ochrane utajovaných skutočností a o zmene a doplnení niektorých zákonov' [Government Proposal for a Law on the Protection of Classified Information and On Change and Addition to Some Laws], Print 452, National Council of the Slovak Republic, Third Legislative Period (1998-2002), November 13, 2003), introduced by the government in November, 2003, replaced the existing Law 241/2001 Zb. The bill contained a new definition of personal integrity (Article 14) which includes reference to the StB. Up until its replacement, Articles 13 (on integrity) and 15 (on reliability) in Law 241/2001 Zb. made no reference to StB. The bill as debated in March, 2004 is available at: <http://www.nrsr.sk/dl/Browser/Document?documentId=135862>, accessed July 22, 2015.

¹⁹⁵ Parliamentary Debate, National Council of the Slovak Republic, Third Legislative Period (2002-2006), March 11, 2004, available at: <http://www.nrsr.sk/dl/Browser/Document?documentId=181117>, accessed July 22, 2015.

¹⁹⁶ 'Dokumenty' [Documents], ÚPN, available at: <http://www.upn.gov.sk/sk/dokumenty/>, accessed July 20, 2015.

¹⁹⁷ Interview with Peter Osuský, March 13, 2013, Bratislava.

The Prague Spring was a total utopia, and the arrival of the Russian tanks only (paradoxically, and unfortunately) created for thirty years the impression that communism could be different, and better. That if the Russians hadn't come, we'd have had socialism with a human face – but communism can't have a human face any more than fascism can.¹⁹⁸

Osuský and Langoš have a shared history: together they founded SKOI (which Osuský currently chairs), an NGO dedicated to increasing democratic norms among Slovaks. In addition, Osuský served on the leadership of the Democratic Party (DS) during the late 1990s alongside Ján Langoš.¹⁹⁹ Like Langoš, Osuský promoted his anti-communist agenda as part of various political constellations: in 1998, both Langoš and Osuský entered parliament as part of the anti-Mečiarite Slovak Democratic Coalition (SDK). In 2001, Osuský left SDK and joined the new Civic Conservative Party (OKS, *Občianská Konzervatívna Strana*). This party, which endorses Osuský's anti-communism, has never cleared the five percent electoral threshold.²⁰⁰ Nonetheless, Osuský returned to the National Council by accepting offers to run for other parties, first on the Most-Híd ticket (in 2010) and then on the SaS ticket (in 2012). Osuský's major success in terms of transitional justice is that he made it illegal to deny communist crimes. A bill changing the penal code to this effect was first introduced by Peter Osuský, following his success in May 2001 to make it illegal to deny the Holocaust, but failed to garner majority support after a presidential

¹⁹⁸ Ibid.

¹⁹⁹ 'Aj jáchymovská lož sa bude možno trestať' [Jáchymov Lie To Be Punishable As Well], *SME*, May 25, 2002, available at: <http://www.sme.sk/c/553830/aj-jachymovska-loz-sa-bude-mozno-trestat.html>, accessed July 22, 2015.

²⁰⁰ Reporting on the party's first convention, *SME* noted that the party 'does not accept among its ranks former communist functionaries, members of the People's militia's, and StB personnel', 'Na sneme OKS boli takmer všetci členovia' [Almost All Members Were At the OKS Convention], *SME*, December 10, 2001, available at: <http://www.sme.sk/c/181597/na-sneme-oks-boli-takmer-vsetci-clenovia.html>, accessed July 22, 2015.

veto.²⁰¹ Osuský was more successful in 2011, when he attached an amendment to a bill that proposed various other unrelated changes to the penal code.²⁰²

Other Slovakian transitional justice legislation – laws that target other aspects of the communist past than the StB legacy – follows the same pattern. For instance, the 1996 law ‘on the immorality and illegality of communism’ (125/1996) was also a parliamentary initiative: it was introduced by MPs Arpád Tarnóczy and Peter Brňák. Although both were members of the Mečiar’s HZDS, which was then the largest government party, they received little support from the administration. Instead, after the law was passed by the National Council, the Slovakian government petitioned the President to veto the bill, which he did. Not until after the National Council voted to overrule the veto was the bill finally signed into law. Like Langoš, Tarnóczy was a former dissident; during the 1950s, he was a political prisoner. Indeed, when he introduced the 1996 bill, Tarnóczy was chair of the Union of Anti-Communist Resistance Fighters (ZPKO), an organization of former political prisoners. Speaking to parliament, Tarnóczy explicitly acknowledged that the bill was

²⁰¹ The successful proposal to make Holocaust denial illegal (‘Návrh skupiny poslancov Národnej rady Slovenskej republiky na vydanie zákona, ktorým sa mení a dopĺňa zákon č. 140/1961 Zb. Trestný zákon v znení neskorších predpisov’ [Proposal by a Group of MPs to Issue a Law to Change Law 140/1961 (Penal Code), As per the Most Recent Provisions], Print 1038, National Council of the Slovak Republic, Second Legislative Period (1998-2002), May 24, 2001) is available at: <http://www.nrsr.sk/dl/Browser/Document?documentId=162736>, accessed July 23, 2015.

The unsuccessful proposal to also make it illegal to deny communist crimes (‘Návrh skupiny poslancov Národnej rady Slovenskej republiky na vydanie zákona, ktorým sa mení a dopĺňa zákon č. 140/1961 Zb. Trestný zákon v znení neskorších predpisov’ [Proposal by a Group of MPs to Issue a Law to Change Law 140/1961 (Penal Code), As per the Most Recent Provisions], Print 1550, National Council of the Slovak Republic, Second Legislative Period (1998-2002), April 25, 2002) is available at: <http://www.nrsr.sk/dl/Browser/Document?documentId=163336>, accessed July 23, 2015.

²⁰² Article 422^d of the Penal Code (Law 300/2005 Zb. as amended by Law 262/2011 Zb.) now makes it illegal to deny crimes committed by regimes based on the communist ideology. Osuský ended his parliamentary speech by asking for support: “And therefore I am permitting myself to ask for support for this proposal, not only in the name of the victims but also in the name of the psychological hygiene of our nations, because if we do not learn about where we came from, what we went through and what we did on the way, no kind of good future can await us”. Parliamentary Speech by MP Peter Osuský, National Council of the Slovak Republic, Fifth Legislative Period (2010-2012), July 13, 2011, available at: <http://www.nrsr.sk/dl/Browser/Document?documentId=235629>, accessed July 22, 2015.

prepared in collaboration with the political prisoners.²⁰³ In 2006, Tarnóczy was briefly considered as Langoš's successor but parliament balked at electing him on account of his apparent support for Slovakia's wartime state.²⁰⁴ Three years later, however, he did join ÚPN's administrative council.²⁰⁵

A second example is the 2006 law on the anti-communist resistance.²⁰⁶ This law, which provides official recognition for individuals who opposed communism, was also introduced by an MP – Ivan Šimko (KDH). Following the anti-communist tendency to present their rejection of communism in stark moral terms, Šimko – working with ÚPN – presented the opposition against communism as ‘a fight against evil’.

To summarize, the Slovakian case offers strong support for the first hypothesis in this study, which is that policy entrepreneurs dominate transitional justice policy. We see that transitional justice in Slovakia has followed the same pattern that it does in the Czech Republic: it is almost exclusively the purview of activist policy entrepreneurs, chief among them Ján Langoš. These political actors share a *modus operandi*: they are persistent in promoting their agenda and, as MPs, are active legislators who take the initiative rather than leave it to the executive to introduce legislation. Without exception, all Slovakian transitional justice was the product of parliamentary initiative. Indeed, they often face a government that is at best permissive but reluctant, but sometimes outwardly hostile. Policy entrepreneurs share strong links with civil society while maintaining more tenuous links with their political parties. A number of them call small, extra-parliamentary parties like OKS or DS their political home, but gain representation in the National Council by running on other parties' tickets. Langoš and Osuský are both examples here. Rather than relying on a party apparatus in their work, their primary partners are (trans-national) advocacy networks

²⁰³ Drafting the bill, the political prisoners paid close attention to the Czech ‘Law on the Immorality of the Communist Regime and on Opposition against It’ (1993/198 Sb.), which they translated into Slovakian almost word for word.

²⁰⁴ Interview with Patrik Dubovský, May 7, 2013, Bratislava.

²⁰⁵ ‘ÚPN zhnedol. Tarnóczy tvrdí, že nie je ľudák’ [ÚPN Turns Brown. Tarnóczy Maintains He Is Not A Tiso Supporter] *SME*, April 24, 2009, available at: <http://www.sme.sk/c/4812819/upn-zhnedol-tarnoczy-tvrdi-ze-nie-je-ludak.html>, accessed July 22, 2015.

²⁰⁶ ‘Zákon o protikomunistickom odboji’ [Law on Anti-Communist Resistance], 219/2006 Zb.

including civil society actors, for instance the former political prisoners. A number of them continue their commitment to the transitional justice policies they helped create by becoming involved in implementing the laws. Finally, these policy entrepreneurs share a common ideology of anti-communism. They treat the entire communist period as a monolith with no redeeming features. They present their work in stark moral terms, casting the ideological conflict that they are a part of as a battle between good and evil. They treat communism and Nazism as moral equivalents, and in a number of instances, their motivation for dedicating a substantive part of their professional careers (both as politicians and outside of elected office) can be traced back to a personal history in the dissident movement. This background and the anti-communism that it inspires in these policy entrepreneurs plays an important role in shaping the transitional justice legislation and its impact on political contestation.

Ideology in the Law on National Memory (2002)

The fact that transitional justice policy is primarily the domain of policy entrepreneurs is reflected not only in the legislative process (with individual MPs taking initiative rather than governments, parties, or bureaucrats) but also in the ideology implicit in the legal texts. The policy entrepreneurs use their laws as a forum to entrench their views and not as an instrument to lay down new regulations. Codifying these views with regard to the communist past turns the language of these laws into a symbol in and of itself, representing defiance to communist oppressors. The laws serve as a symbol in addition to its instrumental role of translating policy goals into rules and regulations. Indeed, in some cases, the symbolic role of transitional justice laws takes precedence over the instrumental role of translating policy preferences into legally binding rules. Importantly, these are non-consensus views. The discussion above makes clear that neither the Slovakian public nor mainstream Slovakian parties (with a few exceptions) endorse the outright rejection in all shapes and forms of the communist past that the policy entrepreneurs embrace, and inject into transitional justice legislation.

Given the tendency of policy entrepreneurs in the Czech and Slovak Republics to be inspired by each other's work (and by transitional justice legislation elsewhere), analyzing the ideological components in Slovakia's transitional justice legislation runs the risk of repeating the discussion of Czech legislation. The Law on National Memory reflects the same ideology of anti-communism

as the Czech 2007 law that is based on it. It also has a preamble clearly reflects the ideological agenda underlying the law, stressing commemoration of ‘victims and damages suffered’ as a result of communist and Nazi ‘crimes’ while noting the ‘patriotic tradition of resistance against occupants, fascism, and communism’ and expressing the conviction that ‘who does not know his past, is doomed to repeat it’.²⁰⁷

The law draws on the anti-communist notion that communism and Nazism are equivalents, by covering the communist past alongside the history of the Second World War, lumping the two periods together into a ‘period of un-freedom’ that is defined as 1939-1989.²⁰⁸ The name of the law and the Institute (‘on National Memory’) similarly reflects a single-minded view of the past which precludes a more pluralistic approach, suggesting instead that there is one correct interpretation of the past. A final element of explicit anti-communism is that the law (Article 11) excludes all former Communist Party members from serving in the governing bodies of the Institute of National Memory, expressing the view that support for communism irredeemably deprives individuals of their integrity. This measure excludes dissidents who joined the communist party during the Dubček years, left following the invasion in 1968, and joined the dissident movement afterwards.

There are some differences with the Czech law: the concept of ‘totalitarianism’, a major bone of contention in the Czech case, does not appear in the Law on National Memory at all. But aside from that, the same anti-communist treads are woven throughout the fabric of the law. As a result, the stated mission (Article 8.1) for the Institute of National Memory to carry out a ‘complete and impartial evaluation’ of ‘the period of non-freedom’ is undermined by the law’s explicit ideological language.

²⁰⁷ Preamble of 533/2002 Zb., ‘Zákon o sprístupnení dokumentov o činnosti bezpečnostných zložiek štátu 1939 - 1989 a o založení Ústavu pamäti národa a o doplnení niektorých zákonov (zákon o pamäti národa)’ [Law on Access to Documents about Activities of State Security Branches 1939-1989 and on the Establishment of the Institute of National Memory and on Additions to Some Laws (Law on National Memory)].

²⁰⁸ See Chapter 4, p. 121, for a discussion of the concept of the ‘period of non-freedom’ (*doba neslobody*). Note that this law presents a third definition, further undermining the conceptual continuity of this legislative agenda.

The other transitional justice legislation that is on the books in Slovakia displays similar ideological characteristics, and privileges those over the formal role of legal documents. For example, the legal component of the law on the illegality and immorality of communism can be reduced to Article 4, which makes it possible to prosecute crimes that occurred between 1948 and 1989, and that were not prosecuted properly at the time ‘for political reasons’.²⁰⁹ But the title as well as the lengthy preamble, which bear a striking resemblance to the Czech law with the same title (198/1993 Sb.), demonstrate the anti-communist ideology that underlies the legislation. In this case, if legislators had been less interested in making a symbolic impact, a simple amendment to the parts of the penal code that regulate time limitations on prosecutions would have sufficed. Instead, a new law was proposed, two-thirds of which is devoted to a declaration regarding the illegality of immorality of the communist regime. The preamble lists the ‘crimes’ in some detail. For instance, it notes that the communist regime abused the power of the state for persecuting citizens, and lists a number of different ways in which this happened, e.g., “it violently displaced citizens during ‘Action B’”. Action B (for *byt*, apartment) was one of numerous StB operations – it refers to the events of 1952-3 in which the StB forced Slovaks who were considered ‘enemies’ to move out of Bratislava, and turned their domiciles over to loyal Party members. It is not clear why this particular event is singled out over other horrific instances of human rights violations, such as ‘Action K’ (for *kláštor*, monastery), which saw thousands of nuns and monks evicted from their monasteries in 1950. The law is somewhat inconsistent in other respects as well, in particular by not offering any guidance on how to identify offences that occurred but were not prosecuted for political reasons.

The Law on Anti-Communist Resistance (2006) equally contains explicit ideology in addition to a more subdued legal component that sets conditions for the individual recognition of ‘resistance fighters’.²¹⁰ It frames opposition to communism as an organized resistance movement that formed a continuity with earlier resistance movements, and that was organized around values of liberal

²⁰⁹ Article 4 of *Zákon o nemorálnosti a protiprávnosti komunistického systému* [Law on the Immorality and Illegality of the Communist System], 125/1996 Zb.

²¹⁰ *Zákon o protikomunistickom odboji* [Law on Anti-Communist Resistance], 219/2006 Zb. Like other Slovakian transitional justice, the law has a Czech counterpart, the ‘Law on Participants in Resistance and Opposition against Communism’, 262/2011 Sb., which uses highly similar language.

democracy, among other things. In the preamble, it equates the battle against communism with a battle for ‘values of freedom and democracy’ and ‘ideals of patriotism, honor, and courage’. Article 2 similarly offers a historical interpretation of opposition to communism by stating that ‘anti-communist resistance as a continuation of the national battle for liberation’ (i.e., as a continuation of the 1944 Slovakian uprising against the Nazis). This is reinforced by Article 2.2, which formally places the start of anti-communist resistance in October 1944. As Dinuš (2010:29-30) notes, the law extends resistance fighter status to those who fought the Red Army alongside the Nazis as a result. These anti-communist components thus give pause even to most of those who otherwise think of themselves as opponents of communist rule such as it existed in Eastern Europe during the twentieth century.

5.3 Political Contestation over Slovakian Transitional Justice

Imbued with such strong ideological components, Slovakian transitional justice has reinforced debate over the communist past. The ideological element is primarily responsible for this outcome, as opponents object to the way the communist past is presented in formal legislation. In the case of the Law on National Memory, the anti-communist language in the transitional justice laws also affects how the day-to-day implementation is perceived. This law creates a memory institute (ÚPN) which is responsible for providing access to the StB files, and both of these practical outcomes lead to contestation especially because of the ideological foundation on which the law is built. In other words, ideological language produces contestation directly but also indirectly, by affecting (perceptions of) the functioning of Slovakia’s memory institute ÚPN and (perceptions of) the implementation of StB file access.

Contestation over Ideology

The first and arguably most formidable opposition to the Law on National Memory came right away in 2002, when Slovakian President Rudolf Schuster vetoed the law. Schuster, whose roadblock ultimately failed, was part of the Communist *nomenklatura* and mayor of Košice (Slovakia’s second-largest city) during the 1980s. Complaints about the broad brush with which Langoš paints communist crimes are at the centre of Schuster’s justification for vetoing the law that parliament had passed. Schuster calls the law’s definition of both communist and Nazi crimes ‘absurd’, noting that the law’s definition makes it possible to interpret a very broad range of

activities as such. He also criticizes the definition of integrity used by the law (which excludes communists from serving in the institute). According to Schuster, the definition is so broad that it includes everyone who ever joined any type of organization (including the Czechoslovakian Red Cross, the Slovakian Apiarist Union, and Society of Slovakian Stamp Collectors) before 1989.²¹¹

Schuster's failed veto was the last attempt to actually repeal this law. While the Law on National Memory has remained subject of political contestation, this debate has taken place outside of Slovakia's parliament. This is remarkable, because in the years since the law came into effect, opponents of the institute have been dominant in Slovakian politics, with the social-democratic SMER-SD party winning the 2006 elections and holding an outright majority as of 2012. Clearly, the party has had ample opportunity to repeal the 2002 law and end the institute. Nonetheless, even though the party is not committed to addressing the communist past in anything but the most superficial way, it has not actively opposed ÚPN. Instead, demonstrating its indifference to the issue, SMER-SD key approach to the institute has been to use it as a bargaining chip in negotiations with the far-right SNS party. SNS and SMER-SD were coalition partners between 2006 and 2010, and SNS has taken advantage of its position to co-opt the institute and, through changing the institute's leadership, change its approach to Slovakia's role during the Second World War. The SNS's involvement did not jeopardize the existence of the institute and did not target the anti-communist language in the law, although it was a form of contestation over interpretations of the past.

The most vocal opposition to the anti-communism inherent in Slovakia's Law on National Memory has come from a small group of extra-parliamentary actors who were prominent in VPN during the Gentle Revolution (the Slovakian term for the Velvet Revolution) and in the years afterwards. Most of them are no longer in politics today. One example is Vladimír Ondruš. Ondruš was involved in VPN in 1989 and served as Deputy Prime Minister in the Čič and Mečiar

²¹¹ 'Rozhodnutie prezidenta Slovenskej republiky z 29. júla 2002 o vrátení zákona' [Decision by the President of the Slovak Republic from July 29, 2000, about Returning a Law], Print 1659/2, National Council of the Slovak Republic, Second Legislative Session (1998-2002), July 30, 2002, available at: <http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=2&ID=1659>, accessed July 22, 2015.

governments (1990-1991). In his interview, he described Ján Langoš as ‘obsessed with revenge’, and offered sharp criticism of ÚPN, rejecting for instance the tendency to equate communism and Nazism. Ondruš, who documented his criticism in a book entitled *Attack on the Gentle Revolution* (2009) also takes issue with the way in which file access is handled, underlining a tendency to overstate the extent to which secret service collaborators (whose complicity is exposed by this policy) bear responsibility for communist-era repressions. Ondruš argues that, by singling out these collaborators, about whom there is often little actual information in the files beyond an agreement to cooperate, the law creates a false sense of accountability.

Ján Budaj is another example of a prominent VPN-er who has been skeptical of the Law on National Memory. As discussed in Chapter 3, Budaj was forced out of the VPN leadership in early 1990 by Mečiar, who used clandestine access to the StB archives to brand Budaj a collaborator. Budaj was cleared of the allegations, but not until much later. In 2002, Budaj was an MP and voted in favor of the law, but now he says he is disappointed and accuses the institute of ‘agentomania’, drawing parallels with the way the communist went after Nazi collaborators after World War II.²¹² Like Ondruš, Budaj expresses concern with the unqualified availability of StB files, noting that while being listed as a collaborator has no legal consequences, this also means that alleged collaborators have less paths towards legal recourse unfair accusations, since ÚPN simply reports what is in the files. In his interview, Budaj pointed out the contradiction in transitional justice legislation in Slovakia, which on the one hand formally codifies the notion that communist regime violated its own laws, and on the other hand relies on the documentation created by that regime in the form of StB archives.

A final example of a dissident opposing ÚPN is Ján Čarnogurský. Čarnogurský was one of the most prominent opponents of the communist regime in Slovakia. When the revolution got underway, he was still in prison; he became Czechoslovakia’s Deputy Prime Minister, mere days after being released. Between May 1991 and June 1992, he was Prime Minister of Slovakia, and when the ÚPN law passed, he was Justice Minister in the First Dzurinda Government (1998-2002). He describes his initial response to the institute when it was first proposed as skeptical, suspecting

²¹² Interview with Ján Budaj, January 31, 2013, Bratislava.

that it would lead to baseless accusations. He links ÚPN to the ‘hysteria’ that came with the lustration law in the early 1990s.

ÚPN as a Source for Contestation

A second source of contestation is the day-to-day functioning of the institute, which can provoke debate because it reflects the ideological foundation, laid down in the 2002 law, on which ÚPN is based. Respondents critical of the institute note that ÚPN serves as a platform for anti-communist advocacy. This is reflected, for instance, in the institute’s personnel: Langoš recruited a number of political allies (e.g., Patrik Dubovský, who worked with him in DS) and also a number of anti-communists from the Czech Republic (e.g., Lehký and Žáček, who had both worked at ÚDV under Václav Benda). Under this leadership, the institute interpreted its mandate in a highly political way, in spite of its task – as per Article 8 of the 2002 law – to be impartial.

For example, ÚPN engaged in political advocacy through its involvement in the 2006 Anti-Communist Resistance Law, which was introduced by Ivan Šimko at the behest of ÚPN (Dinuš, 2010:29). In its quarterly *Pamät’ Národa*, the institute printed the speech that Šimko made in parliament during the debate about the law.²¹³ This law not only fits in well with the ideology of anti-communism that permeates the institute, it also further entrenched the institute, creating an additional role for it by tasking it with executing the law. In other instances, too, ÚPN has been unable to create an impression of political impartiality. As an example, in September 2013, ÚPN released a proposal to increase taxation for people listed as collaborators of the secret service.²¹⁴ This proposal acknowledged that pensions, based on lifetime earnings, are higher for StB staff who earned well under communism than they are for StB victims whose menial jobs paid poorly even under communism.

²¹³ In: *Pamät’ Národa*, 3:1 (2006) 4-5, available at: http://www.upn.gov.sk/publikacie_web/pamat-naroda/pamat-naroda-01-2006.pdf, accessed July 22, 2015.

²¹⁴ ‘ÚPN chce zdanit’ penzie eštabákov, peniaze by išli politickým väzňom’ [ÚPN wants to Tax the Pensions of StB agents. Money Would Go to Political Prisoners], *SME*, September 22, 2013, available at: <http://www.sme.sk/c/6943972/upn-chce-zdanit-penzie-estebakov-peniaze-by-isli-politickym-vaznom.html>, accessed July 22, 2015.

The extent to which ÚPN has served as an anti-communist platform has been limited, however, due to a combination of factors. First of all, in June 2006, Ján Langoš died in a car crash, depriving the institute of a charismatic leader who clearly focused on carrying out an anti-communist agenda. Secondly, Langoš's successors have not been invested in his anti-communist agenda, concentrating the institute's energy on offering a positive interpretation of Slovakia's wartime history.

Langoš's death presented the far-right, who had just entered into a government coalition with SMER-SD, with an opportunity to interfere with ÚPN's agenda of exposing human rights abuse under the wartime 'Slovak State'. To succeed Langoš, the coalition parties (SNS and SMER-SD) selected a young historian (Ivan Petranský) who had previously worked with the nationalist *Slovenska Matica* organization (of which SNS-leader Slota's father had been a co-founder before the war). SNS, which has no strong agenda with regard to the communist past, has been able to exert considerable influence over appointments in the institute, introducing numerous historians and board members with favorable views of the wartime Tiso regime. For instance, Arpád Tarnóczy (the MP who introduced the 1996 Law on the Immorality and Illegality of the Communist System, and who has been accused of being a Tiso sympathizer) served on the Advisory Board.²¹⁵ Other appointments (such as Ján Bobák, former KSČ member and former lecturer at the Institute for Marxism-Leninism) have been seen as a shift away from the original anti-communist mission.²¹⁶ Petranský's appointments caused many staff to leave in protest as the institute produced research that equivocated on the matter of the Slovak State. Others, like Patrik Dubovský, were dismissed.

When Petranský's six year term was up in 2012, new controversy arose as nationalists inside SMER-SD rejected their own initial candidate, a young historian called Juraj Kalina, after Kalina

²¹⁵ 'ÚPN zhnedol. Tarnóczy tvrdí, že nie je ľudák' [ÚPN Turns Brown. Tarnóczy Maintains He Is Not A Tiso Supporter], *SME*, April 24, 2009, available at: <http://www.sme.sk/c/4812819/upn-zhnedol-tarnoczy-tvrdi-ze-nie-je-ludak.html>, accessed July 22, 2015.

²¹⁶ 'Komunistickú neslobodu skúma v ÚPN aj marxista Ján Bobák' [At ÚPN, Communist Un-Freedom Researched Also by Marxist Ján Bobák], *SME*, February 16, 2014, available at: <http://www.sme.sk/c/7105399/komunisticku-neslobodu-skuma-v-upn-aj-marxista-jan-bobak.html>, accessed July 22, 2015.

had questioned the need for putting up a statue of Svätopluk in a central place in Bratislava, outside the Castle. Svätopluk, a ninth-century Great Moravian ruler, is a nationalist symbol representing greater Slav geographic and political dominance in the region, especially over Hungarians. Championed by politicians both inside SMER-SD and the SNS, Slovaks' views with regard to the statue became a litmus test for their views on Slovakian nationalism more generally, and the statue became controversial. When Kalina (currently employed at Prague's ÚSTR) noted in an interview that he did not see Svätopluk as a controversial figure but that historical figures are commonly misused by extremists, SMER-SD withdrew its support from his candidacy.²¹⁷ Ultimately, Petranský was replaced by Ondrej Krajňák, who had worked for the institute before as a film maker. Although Krajňák is not an outright supporter of the Slovak State in the way his predecessor Petranský was, he is seen by many interview respondents (including both current and former ÚPN employees) as less likely to rock the boat and less likely to bother those in power by stirring up controversy and upsetting the status quo.²¹⁸

File Access as a Source for Contestation

The file access component of Slovakian transitional justice serves as a third path to contestation over the communist past. Contestation results when media, in interaction with ÚPN, take advantage of the new legislation by accessing files to investigating and reporting the StB involvement of public figures. Again, the implementation of this part of the law leads to contestation especially because of the ideological context in which this legislation came about. In particular, it causes revelations from the StB files to be seen as part of an anti-communist narrative that offers a blanket rejection of everyone who is alleged to have collaborated with the StB, sensationalizing a difficult and painful legacy. In addition, the law's ideological foundation may even encourage the impression that political motivations underlie some revelations of StB collaboration.

²¹⁷ 'ÚPN rozhádal Smer. Kalinu obhajoval Čaplovič, proti bol Maďarič' [SMER-SD Fighting over ÚPN. Čaplovič defended Kalina, Maďarič Was Against], *SME*, January 9, 2013, available at: <http://www.sme.sk/c/6684500/upn-rozhadal-smer-kalinu-obhajoval-caplovic-proti-bol-madaric.html>, accessed July 22, 2015.

²¹⁸ Interview with Patrik Dubovský, May 7, 2013, Bratislava.

Before ÚPN, the communist past was not seen as particularly relevant by political journalists. According to journalist Milan Žitný:

“It was a hot theme in the first years after the revolution [but] as soon as the independent Republic [of Slovakia] emerged, there were a number of different issues and the issue of the StB did not come back. And as time went by, it became weaker and weaker. If it weren't for Ján Langoš...”²¹⁹

Slovakia saw little coverage of Mečiar's abuse of StB files as, during Mečiar's time in office, freedom of the press faced strong constraints. This, paired with a tendency towards litigiousness among Slovakian politicians, encouraged self-censorship on the part of journalists. Part of this reluctance may be linked to media ownership; for instance, left-wing outlet *Pravda*, which was typically more supportive of Mečiar during his time in office, is owned by Juraj Široký. Široký, an oligarch of sorts, former President of the Slovakian Ice Hockey Federation, and a prominent backer of SMER-SD, was employed as a StB officer up until 1989.²²⁰

In this environment, media attention for the communist past was limited. As a result, the advent of access to the secret service files caused a spike in attention. Chapter 2 has documented quantitative evidence of this spike, linking it to the introduction of the Law on National Memory. It is also reflected in data on the usage of the archives as reported by ÚPN, which recorded over 4,000 requests for access in 2003 but no more than a few hundred per year after that.²²¹

The establishment of the Institute of National Memory in 2002 has made it possible for those journalists interested in publishing on the communist past to take advantage of the files that are now available. In the years after 2002, especially while Ján Langoš was still alive, this led to a

²¹⁹ Interview with Milan Žitný, May 6, 2013, Bratislava.

²²⁰ ‘Široký chcel byť tajným aj po revolúcii’ [Široký Wanted to Be a Secret Agent Even after the Revolution], *SME*, June 27, 2007, available at: <http://www.sme.sk/c/3367764/siroky-chcel-byt-tajnym-aj-po-revolucii.html>, accessed July 22, 2015. According to this article, which is based on Široký's StB personnel file, Široký even informed on his own mother.

²²¹ ‘Výročná správa o činnosti Ústavu pamäti národa za rok 2013’ [Annual Report about the Activities of ÚPN during 2013], *ÚPN*, April 2014, available at: <http://www.upn.gov.sk/data/upn-vyrocnna-sprava-2013.pdf> / accessed July 22, 2015.

stream of revelations and an uptick in coverage of the communist past. As an example, in May 2009, weekly *Týždeň* published an article entitled ‘Sokol’s Shadow’, exposing collaboration by Slovakian Archbishop Ján Sokol. Earlier publications had investigated Sokol’s collaboration with the secret police during the 1980s but in the 2009 article, it was alleged that in the 1990s, Sokol had transferred large sums of church money to former StB agents.²²² Sokol sued, but in 2012 a Trnava judge found that the article was accurate; this verdict was later upheld in appeal.

Since it concerned a high-ranking clergyman in a predominantly Catholic country, the Sokol revelation gained a high profile and attracted criticism from Sokol backers, who countered that the journalists were motivated by sensationalism rather than thorough fact-finding. However, it is worth noting that, in spite of the many charges of tabloid journalism, *Týždeň* is hardly tabloid; instead, it is more of a highbrow political weekly that publishes long analytical pieces for a small readership. The Sokol piece appears reflects that, as the *Týždeň* journalists cite numerous sources, and printed Sokol’s response to the allegations.²²³

An interview published in *SME* in 2006 by Marek Vagovič displays similar patterns. In the interview, Vagovič confronted former dissident and current chairmen of the Confederation of Political Prisoners, Antonín Srholec, to comment on being listed as an StB collaborator.²²⁴ Srholec responded by explaining that he talked to StB agents but never agreed to collaborate. This discussion is embedded in a broader interview that mostly deals with Srholec’s views on the church. In contrast to the Sokol revelations, it is clear from the interview that the journalist believes that Srholec is speaking the truth, and Vagovič confirms that in his interview with me: “...no one here believes that he informed, he’s a decent person... I could not accept that he would have done that. We talked for a long time, and I ended up believing him”. In the interview, Vagovič, who

²²² ‘Sokolov tien’ [Sokol’s Shadow], *Týždeň*, May 30, 2009, available at: <http://www.tyzden.sk/casopis/4634/sokolov-tien/>, accessed July 22, 2015.

²²³ ‘Tri zdroje, Sokol a .týždeň’ [Three Sources, Sokol, and .týždeň], *Týždeň*, May 31, 2009, available at: <http://www.tyzden.sk/casopis/4673/tri-zdroje-sokol-a-tyzden/>, accessed July 22, 2015.

²²⁴ ‘Srholec: V kostole je niekedy veľa pokrytectva’ [In the Church There Is Sometimes Great Hypocrisy], *SME*, November 14, 2009, available at: <http://www.sme.sk/c/5109165/srholec-v-kostole-je-niekedy-vela-pokrytectva.html>, accessed July 22, 2015.

writes about the communist past frequently, describes his research methods in studying this past (including his preparations for the Srholec interview) as meticulous, but concedes that:

...there is some injustice in that the Slovakian public does not object to top Communists like President Schuster as much as it does to low-level StB collaborators. It was an issue but not so much that he [Schuster] could not become President. There were many KSCĽ members and every family had one, so people don't perceive it as negatively, but an StB-er is a snitch and people see it as very evil. But a party functionary could do much worse.²²⁵

The interview with Vagovič suggests strongly that sensationalism plays at most a minor role. His discussion of the Srholec article illustrates some of the same things that the Sokol revelation brought to the fore: the original research is driven by investigative interests, not tabloid media, and it is done in a way that reflects a nuanced approach to the material. Between the type of outlet, the tone of the article, and the judges' verdicts, there is nothing to suggest that sensationalism or tabloidization played a strong role in the publication of information on people like Sokol and Srholec. However, it is certainly possible that news outlets that report the results of an initial publication are more careless with the details, thus reinforcing the impression of sensationalism.

In practice, in spite of what appears to be limited sensationalism, revelations from the StB archives have formed the focal point of those who criticize the Law on National Memory. In fact, Ján Čarnogurský (who left politics after 2002 to return to practicing law) even represents litigants who dispute their listing on the ÚPN website. For instance, he defended Archbishop Ján Sokol after the 2009 *Týždeň* revelations. Most of the cases end in a defeat for ÚPN.²²⁶ Others also oppose these revelations – Vladimír Ondruš stresses the risk of 'amateur historians' and 'easy journalism'.²²⁷ They are concerned about false accusations and about the notion that StB collaboration (or even being listed as a candidate) is over-interpreted while the willingness and eagerness of those

²²⁵ Interview with Marek Vagovič, May 7, 2013, Bratislava.

²²⁶ Interview with Ján Čarnogurský, May 15, 2013, Bratislava. The verdicts in cases that are brought against ÚPN are listed on the ÚPN website as well. They are available at: <http://www.upn.gov.sk/sk/rozsudky/>, accessed on July 22, 2015.

²²⁷ Interview with Vladimír Ondruš, February 1, 2013, Bratislava.

individuals is exaggerated. A key issue remains the concern that media treat these revelation with insufficient care, reporting carelessly and focusing too much on sensation. Journalists, these skeptics maintain, pay scant attention to the context in which collaboration developed, and often fail to acknowledge the potentially untrustworthy nature of the StB archives as a historical source.

This criticism of the file access policy is compounded by the role that ÚPN is perceived to play in facilitating or even encouraging these revelations. Again, perception may play a more important role than what happens in practice. On the one hand, interviews with journalists do not suggest that ÚPN employees actively feed information to passive journalists. Journalists themselves are active researchers, and seek out material that they are interested in. However, in his interview, journalist Marek Vagovič did note that he had built up a good working relationship with historians in ÚPN – suggesting that ÚPN is interested in increased journalistic attention to the communist past on the basis of its files. Given the pivotal role played by Ján Langoš in designing and then running the institute and hiring like-minded personnel, this is to be expected.

An additional factor that contributes to critics taking a dim view of file access policies is that ÚPN typically stands by the files, claiming that information implicating people in collaboration is accurate. In a judicial setting, this has put ÚPN in a position where it automatically argues against claimants. The institute has little choice in the matter, for if it acceded to claimants demands easily, this would only encourage more people to dispute their listing in the archives. But this role does serve to further reinforce the impression of ÚPN partiality, especially in cases that involve political figures. For instance, in the case regarding Slovak-born Czech political leader Andrej Babiš and his alleged StB collaboration (see Chapter 1), ÚPN prepared the case against Babiš and, when the judge ruled in Babiš's favor, the institute appealed the decision.

In sum, ideological elements in Slovakian transitional justice contribute to contestation directly and through implementation of this legislation. This provides support for the second hypothesis in this analysis, which links transitional justice laws to an increase in political contestation over the communist past. These findings are consistent with the salience numbers presented in Chapter 2. This section also offers support for the third hypothesis, which expects an increase especially in those cases where transitional justice creates a memory institute or when it declassifies the secret

service files. While Slovakia clearly experienced an increase in contestation following the creation of ÚPN, contrasting with the years before when there was very limited attention for the issue, a number of factors serve to depress the overall level of contestation both before and after ÚPN. As a result, although there has been some opposition to ÚPN, this opposition has not jeopardized the existence of the institute, nor is it likely to.

The primary reason for the limited increase in contestation is that the Slovakian left is indifferent to the issue of the communist past. SMER-SD, the Social Democrats led by Robert Fico, are not committed to any form of commemorating the communist past, embracing a mostly ambivalent attitude which the party shares with large swathes of the Slovakian population. However, the party has not allowed itself to be lured into a defence of the communist period in the face of the stark rejection that the anti-communists led by Langoš have had to offer. Instead of playing an active role, wielding its considerable influence to affect ÚPN's course, the social democrats have been passive. Indeed, they demonstrate their indifference by using control over the institute as a bargaining chip in negotiations with the far-right SNS. This party is equally indifferent with regard to the communist past, choosing instead to exercise control over the institute's treatment of the wartime Slovakian State. Although it is not clear that the salience of this other historical period depresses attention for the communist past, the indifference of these two parties concerning the communist past certainly limits contestation over that later period. After all, it takes two to tango, and without a viable 'dance partner' on the left, the National Memory Law increases contestation – but only to a limited extent. With no vocal opposition on the left, the resistance against ÚPN comes from only a small group of centrists. These voices are not very robust in affecting ÚPN in part because their criticism is comparatively mild, by virtue of their centrist position, and in part because they are not actually in active politics.

First, these critics are not exclusively pessimistic about the Law on National Memory and what it has accomplished. For instance, although he fights ÚPN in court, Ján Čarnogurský praises the historiographical output coming out of the institute, calling it “better than what the historical institute at the Slovak Academy of Sciences produces”. In fact, Čarnogurský himself, as Justice Minister in the first Dzurinda government (1998-2002) attempted to create a Slovakian counterpart to the Czech Office for the Documentation and Investigation of Communist Crimes (ÚDV, AKA

Benda's Office). This proposal (which was unsuccessful) did not provide public access to the files but the office it would have created would have fulfilled some of the role that ÚPN ended up playing.²²⁸ Therefore, Čarnogurský may take issue with parts of the Law on National Memory but he is obviously on board with most of it. František Mikloško, another dissident (organizer of the Candle Manifestation, VPN leader, and first post-communist speaker of the Slovakian National Council) shares this ambivalent view regarding ÚPN: he is critical but appreciates Langoš's accomplishments. When asked how he evaluates ÚPN after its first decade, he starts his answer saying "I'm in a permanent public struggle with them", but goes on to acknowledge that the institute "makes mistakes but has a big significance".²²⁹ All of these dissidents are politically centre-right, and none are linked to the contemporary Slovakian left or to the pre-1989 Communist Party.

A second reason why this opposition against ÚPN has not been very effective is that these opponents, while vocal, are limited in numbers and, moreover, are no longer actually in politics. Having played an important role during the revolution and the years afterwards, these individuals and their criticism come with a certain degree of authority. However, their comments have little practical or political impact since they are no longer in a position to marshal their forces and seek

²²⁸ 'Iniciatíva KDH na dokumentáciu zločinov komunizmu naráža v koalícii na odpor ľavice' [KDH Initiative to Document Crimes of Communism Encounters Resistance from the Left in the Coalition], *SME*, August 20, 1999, available at: <http://www.sme.sk/c/2199107/iniciativa-kdh-na-dokumentaciu-zlocinov-komunizmu-naraza-v-koalicii-na-odpor-lavice.html>, accessed July 22, 2015. 'Čarnogurský vytvára na svojom ministerstve oddelenie na dokumentáciu zločinov komunizmu' [Čarnogurský Creating a Department for Documenting Crimes of Communism in His Ministry], *SME*, November 17, 1999, available at: <http://www.sme.sk/c/2207699/carnogursky-vytvara-na-svojom-ministerstve-oddelenie-na-dokumentaciu-zlocinov-komunizmu.html>, accessed July 22, 2015.

²²⁹ Interview with František Mikloško, May 6, 2013, Bratislava. Mikloško and Čarnogurský adopted a mild attitude towards former communists straight away in the early 1990s. They both mention in their interviews that, in 1990, they wrote an open letter to President Havel, asking him to end the prosecution of an StB agent who had been involved in the crack-down of the Candle Manifestation and who had arrested Mikloško. Mikloško: "There existed this whole StB machinery (...) To lock just this one guy up, it seemed absurd to us". In November 1991, when Čarnogurský was Slovakian Prime Minister and Mikloško was Speaker of the Slovakian National Council, both men attended the funeral of former KSČ-leader and President Gustav Husák, who for twenty years had been the face of political repression during the post-1968 normalization era.

to accomplish change through parliament. Ondruš retired from politics after Slovakian independence, and Budaj and Čarnogurský left national politics after 2002. According to Budaj, there is no substantial opposition to the law today, and even though the left has a majority, appealing to the constitutional court (which would require the consent of at least 30 MPs) is not an option.²³⁰ Ondruš concurs, maintaining there was ‘no great struggle’ over ÚPN.²³¹

5.4 Conclusion: Slovaks and the Communist Past

This chapter has considered processes of dealing with the past in Slovakia, looking in particular at attempts to pass legislation regarding the legacy of communist-era spying. Structurally, the chapter has followed the hypotheses formulated in the introductory chapter, and has found evidence to support all three of those hypotheses. First, policy entrepreneurs (especially Ján Langoš) played a decisive role in creating transitional justice. The agency of these dedicated political actors is informed by a pronounced anti-communist ideology and they rely on an extra-parliamentary advocacy network for support, while maintaining a more tenuous relation with the parties they nominally belong to. They are responsible for drafting legislation, introducing it to parliament, and implementing it. Meanwhile, other political actors (e.g., political parties, governments, or the voting public) do not play a meaningful role.

Second, transitional justice as crafted by the policy entrepreneurs produces greater contestation over the shared communist past. The language of the law plays an important role here, containing strong ideological components that overshadow the regulatory components more commonly associated with legal documents. These components – for instance, the Nazi-communist equivalence – entrench a non-consensus, anti-communist interpretation of communism in the law. Opponents of transitional justice in Slovakia single out these elements in their critiques.

Third, the analysis has found evidence for the hypothesis that stresses the importance of two regulatory elements of transitional justice: the creation of a memory institute and the provision of access to the StB files. Built on a foundation of ideological anti-communism, these policy aspects

²³⁰ Interview with Ján Budaj, January 31, 2013, Bratislava.

²³¹ Interview with Vladimír Ondruš, February 1, 2013, Bratislava.

of transitional justice legislation further enhance the effect of the law on political contestation. Opponents are concerned about file access as it makes it possible to falsely expose StB collaboration with limited legal recourse for those implicated. They treat new revelations regarding StB involvement with skepticism, suspecting a political agenda and a tendency to generalize and to falsely accuse. Given the ideological background of the Law on National Memory, opponents anticipate the implementation of the law (through the functioning of ÚPN and through file access) with pessimism, and their perceptions of bias and ulterior motives lead to further contestation.

Although the 2002 Law on National Memory increased contestation over the communist past, a number of factors limit the potential for political debate over this issue. First of all, the left has eschewed this debate, failing to formulate a robust critique of Langoš's anti-communism. This has meant that the key opponents of ÚPN are limited in number, not actually that critical, and also not really politically powerful. Secondly, following Langoš's death, the extent to which ÚPN could serve as a platform for that anti-communism was diminished due to influence from the far right. Nonetheless, the law has had a pronounced impact on the debate over the communist period, causing a distinct up-tick in media coverage as it facilitated the exposure of StB collaboration by several high-profile individuals.

The analysis in this chapter has stressed the inadequacy of the partisan perspective of transitional justice legislation. This view, which presents transitional justice laws as the outcome of strategic behaviour by political parties, falls short when applied to Slovakia. In particular, the Law on National Memory appears to have limited electoral appeal and also has limited potential to adversely affect the political rivals of those who supported the law. Moreover, this piece of legislation was not introduced by the government, nor was it part of the platform of the parties in that government. It was initiated by an individual MP acting without the support of the government. And although the legislation came in the wake of Mečiar's abuse of the secret service files, it was not seen as a tool to undo that legacy by the political forces that opposed Mečiar, nor was it presented as such. In sum, this chapter offers little support for that partisan view. Instead, the account of transitional justice and its impact on Slovakia presented in this chapter underlines again the role of policy entrepreneurs and their anti-communist ideology in shaping transitional justice legislation.

CHAPTER SIX – Discussion and Conclusion

Introduction

The analysis offered in Chapters 2-5 provides strong support for the hypotheses forwarded in Chapter 1. This concluding chapter first reviews the initial hypotheses and evidence. Taken together, they form the basis for a new theoretical perspective on transitional justice focused on policy entrepreneurs that accounts for the key actors that shape it, the motives that drive those actors, and the impact of the legislation that they design. The evidence in this dissertation suggests that transitional justice legislation reinforces contestation over the past in a broad range of settings. This new theoretical perspective has important implications for further research on transitional justice for two reasons. First of all, the theoretical framework may be applied beyond the two cases in this analysis. This dissertation offers strong support for the broader applicability of the concept of policy entrepreneurialism for explaining the politics of transitional justice. Second, the impact of transitional justice goes beyond the strict confines of political contestation over the past, affecting other key aspects of politics. Taken together, this dissertation demonstrates that future research must rest on a comprehensive theory of what transitional justice does, a theory that derives hypotheses and stipulates causal mechanisms by combining analysis of political context, key actors involved in legislation, and the legal texts themselves.

This chapter will first present the findings from this dissertation in Section 6.1. By comparing how transitional justice affects contestation in the Czech and Slovak Republics, I show that the basic argument works even under diverging political conditions. Section 6.2 takes this further by demonstrating the generalizability of the theory using evidence from two additional cases, Ukraine and Romania. Section 6.3 makes the case that increased political contestation over the past has important and lasting political implications which underline the relevance of this dependent variable. On-going debate, in which transitional justice legislation serves as a touchstone, may affect political competition more generally, shaping debates in other areas such as foreign policy. Moreover, recent developments have seen policy entrepreneurs turn to the European Union as a venue for promoting their anti-communist agenda. This suggests that the scope for transitional justice has not been exhausted and that debates over the shared European twentieth century may

increasingly shift to supra-national arenas. Section 6.4 addresses how this dissertation contributes to the literature on transitional justice. Finally, Section 6.5 concludes by discussing how the present analysis may inform new avenues for research.

6.1 Testing Hypotheses

Chapter 1 presented three hypotheses. The first hypothesis underlines the importance of policy entrepreneurs as the key actors driving the transitional justice agenda. There is strong support for this hypothesis. Virtually all transitional justice legislation was the initiative of individual parliamentarians who fit the profile of the policy entrepreneur: driven, passionate individuals who dedicate their professional careers to the narrow policy agenda of transitional justice. These policy entrepreneurs, many of whom were involved in opposition against the communist regime prior to 1989, share an ideology of anti-communism. This ideology involves a wholesale, uncompromising rejection of communism, which it equates with Nazism, emphasizing human rights abuse throughout the period of communist rule (not only during the Stalinist period). Public opinion data suggests that these are not broadly shared views and it is clear that transitional justice is not the product of a general consensus. Instead, this legislation represents niche views promoted by small groups of policy entrepreneurs.

Working inside and outside parliament, these policy entrepreneurs drafted legislation and introduced it to the floor of parliament. In some instances, these policy entrepreneurs remained involved in implementing the legislation. At the same time, governments and political parties played a permissive but reactive role in creating these policies. In some cases, the policy entrepreneurs that successfully introduced legislation were even members of the opposition. On the whole, political support from the incumbent government makes the passage of transitional justice legislation more likely (most was introduced under right-wing governments) but is not a sufficient explanation. Instead, a compelling explanation must take into account the central role played by policy entrepreneurs. These policy entrepreneurs are not primarily partisan actors; some maintain only a tenuous relationship with their political parties, switching allegiances on occasion in a way that suggests they view party membership merely as a means to an end. What drives the policy entrepreneurs is not party interest but rather personal ideology. By consequence, broader trans-national advocacy networks represent a more important source of inspiration for policy

entrepreneurs. The cross-border links among Slovaks, Czechs, and other advocates in the region help ensure that transitional justice policy is highly similar cross-nationally.

Both country cases contribute key evidence for this first hypothesis. In Slovakia, post-independence transitional justice legislation would not have existed without the tireless efforts of Ján Langoš, who drafted Slovakia's Law on National Memory, ushered the law through parliament, and went on to serve as the first director of the National Memory Institute that the law created. Langoš, a dissident before 1989, was a member of parliament but not a cabinet minister when he introduced the Law on National Memory. In the Czech Republic, policy entrepreneurs such as Václav Benda, Jiří Liška, and Pavel Žáček were responsible for drafting, introducing, and implementing key pieces of transitional justice legislation. In the Czech Republic, as in Slovakia, the government played a reactive role, and political parties endorsed the proposed bills but did not initiate them. A survey of political party manifestos demonstrated that although parties will take credit for transitional justice legislation after the fact, they rarely promise it beforehand.

The influence of policy entrepreneurs in both countries is evident in the language of the laws they write. The policy entrepreneurs treat transitional justice legislation as a platform for expressing their anti-communist ideology and codifying their interpretation of the communist past. Because these are niche views, this legislation stirs up discontent among those who view this historical period differently. This dissertation offers two types of evidence for this second hypothesis, which is that transitional justice laws, as written and promoted by policy entrepreneurs, increase the level of political contestation over the past.

First, Chapter 2 demonstrates that the media salience of the communist secret service increased each time that transitional justice legislation was introduced. Concentrating on coverage of the StB in two Czech and two Slovakian newspapers showed that transitional justice legislation has a lasting effect on how frequently the StB shows up on the front pages of those newspapers (the two largest in both countries). I argue that, given the political focus of these outlets, this increase in salience reflects an increase in political contestation over this issue.

Second, the process-tracing analysis from both countries confirms this finding by showing that transitional justice legislation leads to increased political contestation. This contestation involves attempts to repeal or block the legislation, including presidential vetoes, parliamentary proposals to repeal, and constitutional court petitions asking for a ruling that the laws are unconstitutional. It also involves debates over allegations of secret service collaboration on the part of politicians, officials, and other public figures. These allegations, of which both countries have seen hundreds over the decades since the end of communism, are the result, ultimately, of the implementation of transitional justice legislation. Typically, these revelations invite a debate over the veracity and significance of the alleged collaboration. Yet another form of contestation results from the creation of memory institutes (ÚPN, in Slovakia; ÚSTR and ÚDV in the Czech Republic). These are government-funded bodies dedicated to implementing a broad range of transitional justice policies. This can include carrying out historical research, educating the public, instigating criminal proceedings, and facilitating access to the secret service files. The execution of these tasks has similarly attracted political debate.

The red thread running through all this contestation is the ideological content that the policy entrepreneurs add to transitional justice legislation. Embedding an anti-communist message in the laws is the key priority for the policy entrepreneurs, taking precedence over the regulatory elements of legislation. These ideological elements encourage opponents to take issue with the legislation. In spite of their disagreements, both supporters and opponents of this legislation seem in agreement that its importance lies more in the ideological spirit of the law than in the practical letter of the law. This ideological element causes contestation directly, simply by virtue of the anti-communism embedded in the law, and indirectly, by influencing how transitional justice legislation is implemented and how that implementation is perceived. The implementation of two transitional justice policies in particular have caused greater contestation because of their origins in laws featuring explicit ideological wording. First of all, the memory institutes that have proliferated throughout post-communist Europe have served as platforms for the anti-communist agenda embedded in the legislation. Headed by the policy entrepreneurs, these institutes have engaged in political advocacy, promoting an anti-communist agenda and calling for even more transitional justice legislation.

Second, file access legislation provokes contestation as this policy enables the exposure of StB collaboration (or other forms of regime complicity) by public figures. In these cases, the contestation centres on questions of archive reliability (Did the StB record accurate information?), political motivations (Is anyone benefiting from these revelations?) and the seriousness of collaboration (Given that StB used coercion to ensure cooperation, to what extent is it reasonable to hold agreement to collaborate against anyone? And what about those who signed an agreement to collaborate, but never did in practice?). Some see collaboration inherently as a form of moral failure while others argue that it is impossible to judge without information about the context of collaboration. The fact that Memory Institutes are involved in the implementation of file access reinforces the sense that revelations from the StB archives are motivated by the anti-communism of those who drafted the legislation. Memory institutes do maintain connections with journalists and encourage coverage of the communist past, including revelations of collaboration. However, mere perceptions (sometimes unjustified) of ideological bias in the implementation of transitional justice legislation also serve to fuel contestation.

All of this confirms the third hypothesis, namely that transitional justice laws, as written and promoted by policy entrepreneurs, increase contestation especially if they (1) release information and/or (2) create a dedicated bureaucratic agency for implementation. The process-tracing analysis showed that file access and memory institute policies, especially in interaction with each other, generate contestation over the communist past. The quantitative analysis offered further support for this hypothesis. While the regression coefficients for lustration are not significant, the coefficients for file access legislation and memory institutes are significant and positive. In turn, the ideological component of transitional justice legislation causes these particular policies to lead to greater contestation.

In sum, the case study chapters provide support for the central argument in this dissertation. The analyses in these chapters have traced the development of key pieces of legislation in each country over time. The conclusions are supported by the quantitative analysis in Chapter 2. A comparison of the two countries, outlining how the same patterns obtained in different political contexts, offers a final confirmation of the hypotheses.

Two Republics Compared

Comparing Slovakia and the Czech Republic further buttresses the validity of these inferences. In both cases, the process of introducing and implementing transitional justice follows the same pattern: policy entrepreneurs drive legislation, they use this legislation as a forum for their anti-communist ideology, and under their influence, this legislation reinforces contestation over the communist past. The similarities between the two countries are the result of shared history, but also of continued cross-border cooperation among policy entrepreneurs advocating for transitional justice. Thus, the dual secret police legacy (a large volume of files amassed by a large number of secret informers) that both countries share is addressed in a similar fashion. The real difference does not lie in *how* these countries address this legacy, but in *how often*. Divergent political conditions created greater opportunities for policy entrepreneurs in the Czech Republic than in Slovakia.

The dominant forces in Slovakian politics (Mečiar's HZDS during the 1990s and early 2000s, SMER-SD as of the early 2000s) have no interest in dealing with the communist past. These parties have become the political home for former KSČ members, more so than other parties; for Mečiar, a history of clandestine use of the StB files formed an additional reason to be weary of transitional justice. In the Czech Republic, by comparison, former communists are not as prominent as they are in Slovakia. Moreover, Czech political actors with a background in the communist party are often reform communists, who were purged from the party after the Prague Spring and spent the subsequent decades of 'normalization' in the opposition. In Slovakia, these reform communists are comparatively rare.²³² Finally, the Czech social democratic party ČSSD rejects the communist past much more strongly than its Slovakian counterpart SMER-SD. Divergent experiences under communism help account for some of these differences (under communism, Slovakia experienced greater economic growth and less repression than the Czech Republic). However, post-1989 factors (e.g., Mečiar's leadership, and the emergent Slovakian nationalism which did not incorporate an explicitly anti-communist narrative) also play a role.

²³² Indeed, the main example is Mečiar, who left the party after 1968. However, Mečiar's politics are nothing like those of the reform communists.

That the Slovaks pass fewer transitional justice laws than the Czechs affects the contestation that ensues. In both cases, the ideological components of transitional justice legislation reinforce debate over the communist past. In the Czech Republic, however, that increase is greater than in Slovakia. Two factors account for this difference.

First, Czech political entrepreneurs simply introduce more transitional justice than the Slovaks, adding more fuel to the fire, and that translates into greater contestation. Second, the Czech Republic not only offers more fertile ground for creating transitional justice legislation, but also for opposing it. Representatives of the Czech Social Democrats have vocally resisted transitional justice legislation, while the Slovakian left is largely silent on the issue, making the debate on the communist past primarily a dispute among groups on the right. Simply put, it takes two to tango and the Slovakian left does not care to dance.

The pre-1989 political activity of key members of left-wing parties in both countries can help explain why the Czech and Slovakian lefts are so different. First of all, like in the Czech Republic, Slovakian dissidents are among the key opponents of the institute, but the Czech Republic has many more dissidents occupying more prominent positions. Moreover, the Czech dissidents that have worked to oppose transitional justice often have a background in the communist party during the 1960s, whereas the Slovakian dissidents who oppose transitional justice are more conservative, sharing a greater ideological common ground with the anti-communists. Thus, the Czech left has many members who were expelled from the party after 1968, whereas the Slovakian left is dominated by leaders who stayed in the party right until the revolution in 1989. Meanwhile, Slovakian dissidents find themselves concentrated on the right. This limited ideological divergence among Slovakian dissidents is reinforced by the shared sense that the real issue is with the dominant political force on the left, i.e., Mečiar's HZDS in the 1990s and Fico's SMER-SD in the 2000s. With no real dissidents on the left, both Fico and Mečiar have largely stayed out of the debate, where the Czech left (under the influence of former dissidents with a communist background) has eagerly joined the fray.

Because of these different actors involved in contesting the communist past in Slovakia, the focus of contestation is slightly different there as well. The Slovaks that oppose transitional justice have typically offered much milder criticism than their Czech counterparts.

In addition, where the Czech opposition has focused almost exclusively on the ideological components of transitional justice legislation (either in the laws themselves or as manifested in the laws' implementation), the Slovakian opposition has had a more practical bent, challenging the anti-communist assumptions underlying the accusations (e.g., the assumption that any form of collaboration means willing participation in human rights abuse) while also stressing the implications that file access legislation has had in individual cases in which accusations have been made. Although the language of Czech and Slovak laws are similar and the legislative and political processes producing the laws are comparable, the Slovak laws came about in a different context. As a result, the legal impact of enforcing the Slovakian law on contestation over the communist past has been more pronounced. In the Czech Republic, archives had already been open for five years when ÚSTR was created in 2007. Moreover, because there were no StB agents active in high-level politics in the Czech Republic by the time files were declassified in 2002, there were no great revelations even then. In Slovakia, however, the ÚPN law did produce such revelations and accusations of StB collaboration were a central component of the debate over ÚPN. Similarly, while no marked increase of coverage of the communist past was observed in the Czech Republic after StB files were declassified – levels of salience were already high – a wave of interest did come about in Slovakia. At the same time, while indifference towards the communist past is not an option for politicians in the Czech Republic, it remains a viable strategy for Slovakian Social Democrats. So, even though ÚPN produced more revelations about politicians and their StB involvement in Slovakia than ÚSTR did in the Czech Republic, the impact of such revelations remains much more limited in the Slovakian context than in the Czech context, at least on the left.

To sum up, the evidence from qualitative and quantitative analysis confirms the three hypotheses, and the comparison of the two country cases backs up these confirmatory findings. The next section will show that this argument can be applied beyond the Czech Republic and Slovakia.

6.2 Beyond Slovakia and the Czech Republic

Finding these patterns in both the Czech Republic and Slovakia, two cases where transitional justice came about under somewhat dissimilar political conditions, is encouraging. But my argument applies beyond these two countries. For example, policy entrepreneurs also drive transitional justice in Ukraine and Romania, two countries that differ politically from both the Czech Republic and Slovakia. Like in the Czech Republic and Slovakia, the policy entrepreneurs generated ideology-infused laws that fueled contestation. A brief overview of developments in Ukraine and Romania strongly suggests that the theoretical framework in this dissertation is generalizable.

Ukraine

Anti-communism has recently been a resurgent part of Ukrainian politics. Starting during the Euromaidan protests in late 2013, when numerous Lenin statues fell victim to modern-day iconoclasm, the anti-communist agenda has moved from the streets to the floor of parliament. In April, 2015, parliament adopted a set of laws that address Ukraine's twentieth century, denouncing both communism and Nazism as totalitarian while acknowledging a list of 'freedom fighters' including the controversial wartime Ukrainian Insurgence Army (UPA) and the Organization of Ukrainian Nationalists (OUN) led by Stepan Bandera. Another law provides a framework for declassifying Soviet-era secret service archives. This transitional justice legislation is divorced from the initial democratic transition itself, and is instead embedded in post-communist political conflicts. Although the East-West division inside Ukraine has been a part of Ukrainian politics since independence (Shevel, 2011), it has become particularly salient over the last two years and the anti-communist sentiment expressed by the recent laws seems to be reaching new heights.

The adoption process and content of the legislation bears a strong and explicit resemblance to earlier transitional justice legislation in East and Central Europe that targets the communist legacy. As in East and Central Europe, transitional justice legislation in Ukraine has been written by policy entrepreneurs, introduced by parliamentarians, backed by extra-parliamentary advocacy networks, and condoned by permissive executives. Indeed, policy entrepreneurs played a central role in Ukraine's recent legislative processes. Volodymyr Viatrovych, the director of Ukraine's Institute for National Memory, has drafted a number of the laws. Viatrovych, a Yushchenko appointee often

described as Yushchenko's 'memory manager', is not a politician, but rather an activist and historian. Similarly, Yuriy Shukhevych, the Radical Party MP who introduced the law granting resistance fighter status to groups including OUN and UPA, is a former political prisoner and son of a prominent OUN fighter. Both men act as policy entrepreneurs in single-mindedly promoting their interpretations of Ukrainian history. Their importance is further reinforced by the permissive role played by the executive and by the senior coalition partner, Poroshenko's Bloc. The impetus for these laws has come primarily from parliament, especially from smaller, rightist coalition partners.

Promulgated by policy entrepreneurs long after communism itself had collapsed, the process seems to be motivated more by the symbolic impact of the law's adoption rather than by the laws' likely practical effects in empowering or constraining citizens. The laws bear strong resemblance to legislation in neighboring countries, and Vyatrovich has cited legislation from the Czech Republic and Poland while arguing in favor of the Ukrainian transitional justice initiative. Like elsewhere in the region, these laws offer non-consensus interpretations of the past. The anti-communist laws equate communism and Nazism, and identify controversial organizations like OUN and UPN as 'fighting for Ukrainian independence'. These stances provoke debate, and may limit the chances for future *rapprochement* with Russia. Indeed, the recent legislation has received scathing reviews in Kremlin-backed media and has drawn sharp criticism from an international group of Ukraine scholars.²³³

²³³ 'Ukraine Bans Communism and Nazism, Celebrates UPA Nationalists as "Freedom Fighters"', *Russia Today*, April 9, 2015, available at: <http://rt.com/news/248365-ukraine-bans-communism-nazism/>, accessed 4 May 2015. 'Komsomol'skiy znachok zapretili, a kolbasu 'moskovskuyu' na buterbrod mozno?' [They banned the Komsomol emblem, and can you still put 'Moscow' sausage on your bread?], *Komsomol'skaya Pravda*, April 10, 2015, available at: <http://www.kp.ru/daily/26366.7/3247093/>, accessed 4 May 2015. 'Open Letter from Scholars and Experts on Ukraine re. the So-Called "Anti-communist Law"', *Krytyka*, April 2015, available at: <http://krytyka.com/en/articles/open-letter-scholars-and-experts-ukraine-re-so-called-anti-communist-law>, accessed May 4, 2015. Cf. the response by Volodymyr Viatrovyeh, who co-drafted the law: 'Decommunization and Academic Discussion', *Krytyka*, May 2015, available at: <http://krytyka.com/en/solutions/opinions/decommunization-and-academic-discussion>, accessed May 4, 2015.

Romania

In Romania, supporters of anti-communist transitional justice have faced an up-hill battle over the past quarter century, and comparatively little legislation has been successfully adopted. Moreover, several laws have been repealed by Romania's constitutional court (for instance, in 2012 the court declared lustration unconstitutional a month after it was signed into law). However, the paucity of Romanian transitional justice belies the fact that policy entrepreneurs there have constantly attempted to address the communist past through formal legislation.²³⁴

The main champion of transitional justice in Romania is a policy entrepreneur named Constantin 'Ticu' Dumitrescu. Dumitrescu, a Romanian senator between 1992 and 2000, was imprisoned by the communist regime for 15 years.²³⁵ He resembles the policy entrepreneurs from the Czech Republic and Slovakia in many respects. Lavinia Stan calls the 1999 Romanian file access law "the result of the personal crusade of Christian Democrat senator Constantin Ticu Dumitrescu, who faced public apathy toward the subject and considerable opposition from the political class" (Stan and Turcescu, 2005:656). Dumitrescu's efforts included several unsuccessful attempts to pass a lustration law during the 1990s. Dumitrescu was more successful in 1999, when he introduced a law that provided Romanians with access to their Securitate files. This law, known in Romania as 'Ticu's Law', also created a state body to facilitate file access, the National Council for the Study of the Securitate Archives (*Consiliul Național pentru Studierea Arhivelor Securității*, CNSAS), which is similar to ÚSTR and ÚPN. In another parallel, Dumitrescu became this institute's first director. Dumitrescu's personal drive matches that of the Czech and Slovak policy entrepreneurs, and like these policy entrepreneurs, Dumitrescu's agency cannot be described primarily as an extension of party interests. Indeed, Stan notes that Dumitrescu was 'ostracized by

²³⁴ I am grateful to Lavinia Stan for the helpful suggestions she made for this section.

²³⁵ 'A militat pentru libertate. Constantin Ticu Dumitrescu a trecut în neființă' [A Campaigner for Freedom. Constantin Ticu Dumitrescu Has Passed Away], *Jurnalul*, December 6, 2008, available at: <http://jurnalul.ro/stiri/observator/a-militat-pentru-libertate-constantin-ticu-dumitrescu-a-trecut-in-nefiinta-140361.html>, accessed July 23, 2015.

'Ticu Dumitrescu, parintele Legii deconspirării fostei Securități, a încetat din viață' [Ticu Dumitrescu, Father of the Law Exposing Former Securitate, Has Died], *România Libera*, December 6, 2008, available at: <http://www.romanalibera.ro/actualitate/eveniment/ticu-dumitrescu--parintele-legii-deconspirarii-fostei-securitati--a-incetat-din-viata-141181>, accessed July 23, 2015.

his party' (Stan, 2012:72). Dumitrescu's primary support network included civil society actors, and he served as chair of Romania's Association of Former Political Prisoners (*Asociația Foștilor Deținuți Politici din România, AFDPR*).²³⁶

Ticu's law (law 187/1999) engaged in the same sort of editorializing as the Czech and Slovak laws. The preamble states that the Securitate, as a political police, carried out a 'permanent terror' against Romanian citizens. It also consistently refers to the communist period as the 'totalitarian communist dictatorship'. Like in the Czech and Slovak Republics, this 1999 Romanian law serves as a platform for expressing the authors' views on communism, in addition to providing a regulatory framework to set up access to Securitate files. Although more research would be needed to determine the impact of these ideological elements, file access in Romania has been the subject of on-going contestation since this law came into effect, and CNSAS faced obstruction from political opponents as it sought to establish control over the Securitate files. This process was not completed until 2006, when President Traian Băsescu ordered that all files be transferred to CNSAS (Stan, 2013:136). Moreover, political struggles also took place within CNSAS as Dumitrescu and other political appointees debated the pace and extent of file declassification (Stan, 2004:356).

To sum up, this section suggests that the argument forwarded in this dissertation has considerable explanatory leverage outside the Czech and Slovak Republics. Both Ukraine and Romania had markedly different experiences under communism. Ukraine was incorporated into the Soviet Union directly, and became communist well before the countries of the Soviet Bloc. Communism in Romania stood apart due to the personality cult surrounding Ceausescu and the *Securitate*'s deep penetration of Romanian society. Exiting communism was also different for both countries – Romania had a violent revolution, while for Ukraine the collapse of the Soviet Union meant statehood as well as regime change. Ukraine shows that transitional justice can come about in

²³⁶ 'Death of a Romanian Archivist', *Radio Free Europe/Radio Liberty*, December 5, 2008, available at: http://www.rferl.org/content/Death_Of_A_Romanian_Archivist/1356746.html, accessed July 23, 2015. 'Constantin Dumitrescu, Romanian Dissident, Dies at 80', *New York Times*, December 6, 2008, available at: <http://www.nytimes.com/2008/12/06/world/europe/06dumitrescu.html/>, accessed July 23, 2015.

similar ways even where democracy is more tenuous, European Union membership is only a distant possibility, and historical debates are reinforced by ethnic and/or linguistic cleavages. All in all, this means that we should expect to find elsewhere that transitional justice is driven by policy entrepreneurs who prioritize ideological content when they design legislation, and that this legislation should in turn reinforce contestation over the past it addresses.

6.3 Political Implications of Increased Contestation

Finding increased contestation matters because it goes against common assumptions, shared by scholars and policy makers, about what transitional justice accomplishes. But this finding also matters because increased contestation over the past has important political implications. Debates provoked by transitional justice legislation can affect political competition in other realms as well, and can also spill over into international discussions about the past.

The preponderance of the evidence presented in the dissertation has focused on contestation linked to the legislation. This type of contestation enables hypothesis testing because it can be clearly traced to the independent variable. I have shown that this contestation persists over time, well after laws come into effect. It is not incidental, confined to formal debate prior to a vote in parliament, or limited to a short period of attention that immediately follows such a vote. However, this debate is not isolated, limited to individual pieces of legislation. Instead, it forms part of a broader political debate over the past. This broader debate is reinforced by the discussions inspired by transitional justice legislation. This legislation adds fuel to the fire, keeping debate going where it might otherwise abate. To be sure, the argument in this dissertation is strictly about the extent of the debate rather than its quality or desirability. The conclusions do not hinge on any normative assumptions about debating the communist past.

Some concrete examples indicate the broader significance of the conclusion that transitional justice promotes contestation over the past. The debate between anti-communist policy entrepreneurs and opponents of transitional justice may deepen political divisions. It may intensify the extent to which political competition is structured by differences of opinion regarding the communist past. As a result of ongoing contestation, differences of opinion over the past may continue to shape how parties view themselves, how parties view each other, and how they are all viewed by voters.

In turn, it may underscore differences between the historical experiences of different countries, and inform foreign policy.

The Czech Republic, where contestation over transitional justice is at a higher level than in Slovakia, illustrates some of these implications. First of all, the debate has long-term implications for how the post-communist left defines itself, because (unlike Western counterparts), social democratic parties need to position themselves *vis-à-vis* the communist past. As noted, there are different responses to this dilemma: Slovakian SMER-SD has embraced the communist legacy to a certain extent, while Czech ČSSD is more resolute in its rejection of this past. In both cases, however, these parties are defined in part by their relation with the communist past, both by the parties themselves and by opponents.

A contributing factor here is coalition politics: in the Czech Republic, the social democrats have consistently refused to form a national government with the communist party (KSČM). While the parties are close on most issues, at the national level ČSSD sees KSČM's refusal to denounce communism as insurmountable, although there are now regional coalitions involving KSČM and ČSSD. This refusal has weakened ČSSD's position at the negotiating table. At the same time, the party has still had to face persistent accusations that it secretly wants to work with the communists. In Slovakia, SMER-SD does not face this problem because there is no long-term Slovakian equivalent of KSČM. Thus, SMER-SD does not face the same coalition quandary, but it is worth noting that in Slovakian coalition politics, the parties on the left, broadly speaking, have chosen to work with the far-right (SNS, which has no explicit anti-communist narrative) rather than the centre-right (which does explicitly reject the communist past).

Although the Czech and Slovak party systems, in many respects, are like their counterparts in established Western democracies, the ongoing contestation over the communist past fueled by transitional justice legislation sets them apart in a way that perpetuates the East-West divide. The way this affects coalition politics in particular shows that contestation over the communist past can have far-reaching implications. The debate fueled by transitional justice legislation may have a long-term impact, serving to reinforce these aspects, and ensuring that they persist over time. Importantly, though, and to reiterate, while these partisan divisions over the past are conducive to

transitional justice legislation, political parties have not been proactive in translating these divisions into actual transition justice policy; instead, the policy entrepreneurs have taken up that gauntlet, taking advantage of permissive political conditions to promote their policy agenda.

Contestation over the communist past fueled by transitional justice may affect policy making in other areas as well. Foreign policy is a concrete example of a field where such contestation may frame discussions and inform attitudes (Fawn, 2003; Kratochvíl et al., 2006) Especially during the recent conflict between Ukraine and Russia, Czech and Slovakian politicians have defined the national interest and their preferred stance towards Russia by consulting their views on the communist past. By and large, anti-communists advocate a hawkish position against Russia, while on the left, politicians are more open to Russia's claims.

Finally, transitional justice may affect international relations as the political actors who drive the transitional justice agenda in East and Central Europe work together across borders and learn from each other's efforts. In addition, the European Parliament increasingly serves as an arena for pursuing the transitional justice policy agenda. Starting with the 2008 Prague Declaration 'on European Conscience and Communism', the issue has become more and more prominent on the agenda of the European Union. Following the declaration, the EU has declared 23 August 'European Day of Remembrance for Victims of Stalinism and Nazism' and it has created a 'Platform of European Memory of Conscience' in 2011. Memory institutes from across the region, including ÚSTR and IPN, are organized in the platform, which is housed in Prague on the premises of ÚSTR, and which is dedicated to raising awareness of totalitarianism.²³⁷ A further declaration 'On the Crimes of Communism' was signed by European politicians following a conference in the Czech Senate hosted by Jiří Liška. In addition, members of the European Parliament (primarily from the post-communist member states) have formed a standing group 'For the Reconciliation of European Histories' which seeks recognition for human rights abuse under communism alongside the history of the Holocaust. In 2009, the group organized a hearing following which European Parliament adopted a resolution that, among other things, called on member states to open up the

²³⁷ Official website, *Platform of Memory and Conscience*, available at: <http://www.memoryandconscience.eu/>, accessed July 23, 2015.

archives of the former secret services.²³⁸ Taken together, these efforts suggest that policy entrepreneurs, united in a trans-national advocacy network identify communist-era human rights violations as a pre-eminent part of European history, have taken to using the EU to spread domestic norms of anti-communism, including a recognition of communist crimes as the equivalent of Nazism, to a broader audience inside and outside the European Union.

6.4 Towards a Theory of Transitional Justice Effects

At the outset, this dissertation noted that the effects of transitional justice legislation remain under-investigated and poorly understood. Although the question of what transitional justice can accomplish has received increasing attention, many assumptions about transitional justice effects have not been informed by theory building. This dissertation has sought to provide a theoretical framework, and it has tested and confirmed three hypotheses derived from it. With this in mind, I revisit the literature on transitional justice and make three related recommendations, one theoretical and two substantive.

The basis of an improved understanding of the effects of transitional justice legislation has to be a coherent theoretical framework that stipulates what transitional justice is and where it comes from. Many of explicit or implicit assumptions in the present scholarship are based on a limited theoretical foundation: they take a single (often parenthetical) aspect of transitional justice legislation and speculate as to the outcomes that might ensue. Sometimes, assumptions about the beneficial effects of transitional justice are based on little more than the stated intentions of those who drafted the legislation. In other cases, evidence that drafters have ulterior, cynical motivations has led to the assumption that transitional justice legislation may have adverse effects (e.g., undermine the rule of law).

These assumptions are problematic in part because they assume a direct link between intentions and outcomes. As noted in Chapter 1, this link is tenuous because (1) assumptions about intentions

²³⁸ ‘Resolution on European conscience and totalitarianism’, *European Parliament*, April 2, 2009, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0213+0+DOC+XML+V0//EN>, accessed July 23, 2015.

based on public statements made by these policy makers are problematic; (2) those policy makers may fail in designing legislation that accomplishes what they want it to. Especially over time, legislation may have unexpected consequences. As Pierson (2004) makes clear, we must not assume, if an institution produces outcome X, that the original designers wanted X; in addition, we must not assume, if the original designers of a certain institution aim for outcome X, that they will get what they want (cf. Jagger and Richards, 1969).

An additional problem is that these hypotheses tend to look at one aspect of legislation – e.g., context or intentions. As a result, they do not reflect important information that is necessary to inform a complete hypothesis regarding the effects of transitional justice legislation. A theoretical framework that would produce hypotheses should address and connect at least the following three elements: (1) the nature of the primary actors involved in legislation; (2) the legislation itself; and (3) the broader political context. Taken together, these nuts and bolts (*pace* Elster, 1989) of transitional justice legislation serve as the basis for my contestation hypothesis. In a context in which there is no consensus about the past to begin with, a small number of policy entrepreneurs – actors who are primarily motivated by ideology and eschew compromise – draft, introduce, and implement legislation that reflects their niche interpretation of the past. Combined, those elements suggest that the effect of the legislation that comes out of that process is to reinforce the contestation that already exists. This kind of theoretical foundation can facilitate the *ex-ante* formulation of more coherent interlocking hypotheses.

From the general theoretical framework, two elements can be singled out as substantive contributions to the literature on transitional justice. First of all, I have shown that the policy entrepreneur plays a powerful role. Although the individuals I identify have been noted in earlier discussions of transitional justice, their agency had not been fully recognized and theorized. This concept of policy entrepreneurship offers a counterpoint to the partisan perspective on transitional justice, which views policies as produced by strategic parties in an effort to improve their electoral chances and/or undermine the electoral prospects of rival parties.

Second, understanding that transitional justice legislation produces greater contestation over the past can inform future studies investigating the effects of transitional justice legislation. This

finding challenges the conventional wisdom that transitional justice leads to catharsis or reconciliation by bridging societal divides and has important implications for party competition, policy making, and international relations. Moreover, initial applications of this dissertation's argument in other settings has shown that this hypothesis may be relevant elsewhere as well.

6.5 In Closing: On the Grammar of Slavic Verbs

The grammatical concept of aspect differentiates between perfective and imperfective actions. The perfective aspect emphasizes the finality of actions, whereas the imperfective aspect denotes continuity or ongoing action. It is the difference between 'I watched a movie' and 'I was watching a movie'. In English, this distinction is mapped onto verb tense; in Slavic languages, verbs have two separate forms, which linguists call 'aspect pairs': a perfective and an imperfective form.

During field research in Prague and Bratislava, I realized that this grammatical distinction illustrates the dilemmas of transitional justice quite well. For starters, transitional justice is an English term that does not exist in Czech or Slovak – *přechodová spravedlnost*, a direct translation into Czech, conveys nothing of what this new concept has come to denote in English. Instead, another term that loosely translates as 'dealing with the past' is most commonly used to cover the range of practices to which transitional justice refers. The catch is that this term forces a temporal choice on speakers of Slavic languages. While the English language frequently allows speakers to be ambiguous about aspect, Slavic languages such as Czech and Slovak make speakers decide: are they speaking about an imperfective, ongoing process, or about a perfective, definitive action? In the latter case, the verb of choice is 'vyrovnať sa', but in the former, the preferred verb is the imperfective 'vyrovnávať sa' (the -va- infix turns the perfective verb into an imperfective one).²³⁹ Peter Dinuš is one example of a Slovakian speaker who faced this choice: his book on Slovakian transitional justice (2010) is entitled *Vyrovnávanie sa s minulosťou*, that is, *Dealing*_[IMPERFECTIVE] *with the Past*. Dinuš's choice is intentional: he does not foresee that the Slovakian process of dealing with the past can be completed. Instead, he presents this process as self-perpetuating and

²³⁹ Translated most literally, *vyrovnať* means to straighten (*rovný* is *straight*) or to balance. Adding 'sa' (or 'se', in Czech) makes the verb reflexive, so that *vyrovnať sa/vyrovnávať sa* literally means to straighten oneself out, or to balance oneself out. *Vyrovnať sa s minulosťou*, then, is to straighten oneself out with one's past.

never-ending. Many interview respondents, however, consistently used the perfective form, speaking of *vyrovnanie sa s minulosťou* instead. By doing so, they suggest that at some point, to ‘deal with the past’ will become ‘to have dealt with the past’.

So, what does it mean when English speakers talk about transitional justice as ‘closing the books’ (Elster, 2004) or ‘coming to terms with the past’ (Elster, 1998)? What happens once the books are closed, or when we have come to terms with the past? Can the books ever be fully closed or the past finally dealt with? Despite the inherent linguistic ambiguity, much scholarship on transitional justice does clearly assume transitional justice to be a perfective process with catharsis, or reconciliation, at the end.

These assumptions remain untested, which is why it is so important to produce rigorous accounts of transitional justice effects. This dissertation has sought to address that gap, and the findings suggest that Dinuš’s decision to use the imperfective may be more appropriate. Transitional justice is an on-going process. Transitional justice legislation appears in a context in which the past is already debated and subsequently reinforces that debate, keeping it alive in perpetuity. There is no finality and no catharsis.

This is not to say that contestation and debate over the past cannot produce anything of value, or that transitional justice only succeeds if it leads to consensus over the past that it addresses. Transitional justice legislation may, for example, improve the lives of individual victims of human rights abuse (cf. David and Choi, 2005; 2006). In addition, there is no *a priori* reason to assume that debate over such issues in a democratic society should be seen as problematic and that consensus is necessarily preferable.²⁴⁰ My conclusions do not rely on an assumption of the desirability of consensus over debate. However, other points of view are informed by such assumptions and have formed the basis for arguments by scholars and policy makers in support of transitional justice. With this in mind, the conclusion that transitional justice legislation as

²⁴⁰ In order to determine whether debate is better than consensus, one would require a way to measure the quality of debate. This dissertation does not evaluate the quality of the debate over the communist past in the Czech and Slovak Republics, nor does it estimate the effect of transitional justice on the *quality* of political contestation.

designed by policy entrepreneurs has led to persistent contestation over the past gives pause. Insofar as this analysis is persuasive, it should encourage researchers to pursue a more comprehensive theoretical framework to analyze the effects of transitional justice.

Appendices

Appendix A: Interview Respondents

Interviews with 72 respondents were carried out during between January-May, 2013. All respondents signed informed consent agreements forms, agreeing to be interviewed and consenting to be included in this list and (with one exception) to be recorded. This procedure was reviewed by the McGill University Research Ethics Board and registered as #2003-1112.

The categorizations (political actor, official, and journalist) as well as the brief biographical notes reflect the respondent's situation at the time of the interview, and are provided to illustrate the respondent's relevance to the analysis rather than to offer a comprehensive description.

Table A List of Elite Interview Respondents

Name	Interview Date	Respondent Description
Bělobrádek, Pavel	April 11, 2013	Czech Political Actor. KDU-ČSL Chair (2010-present).
Benda, Marek	April 2, 2013	Czech Political Actor. ODS MP (1990-present); Son of dissident and ÚDV director Václav Benda.
Brixi, Otto	March 13, 2013	Slovakian Political Actor. SMER-SD MP (2012-present)
Budaj, Ján	January 31, 2013	Slovakian Political Actor. Dissident; VPN Leader (1989-90); SDK MP (1998-02).
Čarnogurský, Ján	May 15, 2013	Slovakian Political Actor. Dissident; Lawyer; KDH founder; VPN; Federal Deputy Prime Minister (1990); Slovakian Prime Minister (1991-1992); KDH MP (94-98); Justice Minister (1998-2002);
Chmel, Rudolf	March 13, 2013	Slovakian Political Actor. Culture Minister (ANO, 2002-05); Deputy Prime Minister (Most-Híd, 2010-12); MP (Most-Híd, 2012-present);
Choma, Igor	March 12, 2013	Slovakian Political Actor. SMER-SD MP (2010-present); Mayor of Žilina.
Cicoň, Antonín	March 13, 2013	Slovakian Political Actor. SMER-SD MP (2012-present)
Dienstbier, Jiří	February 26, 2013	Czech Political Actor. ČSSD Senator (2011-present); Presidential Candidate (2013); Member of Fed'l Assembly (1990); Son of prominent dissident Jiří Dienstbier sr.
Drda, Adam	February 18, 2013	Czech Journalist. Works Freelance, Czech Radio; author of <i>Kdo ve Stínu Čeká na Moc</i> (2006)
Dubovský, Patrik	May 7, 2013	Slovakian Official. ÚPN historian, left during Petranský's tenure.
Exner, Václav	April 16, 2013	Czech Political Actor. KSČM MP (1992-2010)
Fila, Lukáš	March 12, 2013	Slovakian Journalist. Writes for <i>SME</i>
Gál, Fedor	April 22, 2013	Slovakian Political Actor. Sociologist; Dissident, co-founder VPN. Left politics after early 1990s.

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Name	Interview Date	Respondent Description
Hamšík, Ivan	April 4, 2013	Czech Journalist. Writes for <i>Reflex</i>
Heller, Šimon	April 24, 2013	Czech Political Actor. Student activist, opposes KSČM inclusion in regional government.
Hořava, Pavel	March 6, 2013	Czech Political Actor. KDU-ČSL party secretary (2010-present).
Hradílek, Adam	February 27, 2013	Czech Official. ÚSTR historian; Published 2008 exposé on Milan Kundera
Jičínský, Zdeněk	April 23, 2013	Czech Political Actor. Dissident, Charta 77 Signatory (1977), KSČ member (until 1969); ČSSD MP (1996-2002; 2003-2010); Member of Fed'l Assembly (1990-1992)
Just, Petr	February 19, 2013	Czech Political Actor. Political Scientist; Campaign advisor to Jan Fischer (2012-13).
Kalina, Juraj	April 27, 2013	Slovakian Official. ÚSTR historian; Candidate for ÚPN Chairmanship (2013).
Kasal, Jan	March 27, 2013	Czech Political Actor. KDU-ČSL MP (1990-2010).
Korda, Eugen	May 6, 2013	Slovakian Journalist (<i>SME, Nova TV</i>).
Krajňák, Ondrej	May 14, 2013	Slovakian Official. ÚPN Chair (2013-present).
Křeček, Stanislav	February 14, 2013	Czech Political Actor. ČSSD MP (1998-2013); member of Fed'l Assembly (1990).
Kruliš, Vladimír	March 6, 2013	Czech Political Actor. Campaign advisor to Miloš Zeman (2012-13).
Kubík, Jiří	April 4, 2013	Czech Journalist; Deputy Editor-in-Chief <i>MF Dnes</i> (2007-present).
Langer, Ivan	April 25, 2013	Czech Political Actor. ODS MP (1996-2010); Interior Minister (2006-09).
Langšádlová, Helena	February 15, 2013	Czech Political Actor. TOP '09 MP (2010-present).
Lehký, Miroslav	April 23, 2013	Czech Official. Dissident; <i>Charta 77</i> Signatory (1989); Worked for ÚDV, ÚPN, ÚSTR.
Liška, Jiří	April 15, 2013	Czech Political Actor. ODS Senator (1996-2010); Member of Fed'l Assembly (1992).
Mečiar, Vladimír	May 13, 2013	Slovakian Political Actor. VPN/HZDS. Slovakian Interior Minister (1990); Prime Minister (1990-1991; 1992-1994; 1994-1998); MP (1998-2006).
Mikloško, František	May 6, 2013	Slovakian Political Actor. Dissident; VPN; KDH MP (1990-2010).
Miklovič, Michal	May 14, 2013	Slovakian Official. ÚPN historian.
Mojžiš, Ján	May 6, 2013	Slovakian Official. Director of NBÚ (2001-2003).
Morbacher, Ľubomír	February 1, 2013; May 14, 2013	Slovakian Official. ÚPN historian.
Navara, Luděk	March 28, 2013	Czech Journalist. Writes for <i>MF Dnes</i> . Documentary maker author of <i>Příběhy Železné Opony</i> series; founder of <i>Paměť, Memory</i> , an NGO dedicated to opening up the communist past.
Nicholson, Tom	May 14, 2013	Slovakian Journalist. Writes for <i>SME</i> .
Nicholsonová, Lucia	March 15, 2013	Slovakian Political Actor. SaS MP (2012-present).

Name	Interview Date	Respondent Description
Ondruš, Vladimír	February 1, 2013	Slovakian Political Actor. Dissident; VPN; Deputy Prime Minister (1991-1992).
Osuský, Peter	March 13, 2013	Slovakian Political Actor. MP (SDK, 1998-2002; Most-Híd, 2010-2012; SaS, 2012-present); Chair of DS (1990s); OKS (2000s).
Pajerová, Monika	April 18, 2013	Czech Political Actor. Student Leader, 1989; Advisor of ÚSTR Director Daniel Herman.
Palko, Vladimír	May 15, 2013	Slovakian Political Actor. MP (SDK, 1998-2002; KDH 2002-2010); Interior Minister (2002-2006).
Petranský, Ivan	May 14, 2013	Slovakian Official. ÚPN Chair (2007-2013).
Placák, Petr	February 26, 2013	Czech Political Actor. Dissident, musician, artist, author, anti-communist activist.
Plesl, Jaroslav	April 4, 2013	Czech Journalist. Writes for <i>Reflex</i> .
Poliačik, Martin	March 13, 2013	Slovakian Political Actor. SaS MP (2010-present).
Ripka, Vojtěch	March 25, 2013	Czech Official. ÚSTR historian.
Ruml, Jan	April 29, 2013	Czech Political Actor. Dissident, <i>Charta 77</i> Signatory; MP (ODS, 92); Interior Minister (ODS, 92-97); Senator (US, 98-04); Son of dissident Jiří Ruml.
Šámal, Zdeněk	April 12, 2013	Czech Journalist. Head of Reporting, ČT.
Šidlo, Jindřich	April 8, 2013	Czech Journalist. Writes for <i>Hospodářské Noviny</i> .
Špidla, Vladimír	April 27, 2013	Czech Political Actor. ČSSD MP (1996-98); Social Affairs Minister (1998-2002); Prime Minister (2002-2004); European Commissioner (2004-09).
Srholec, Anton	May 7, 2013	Slovakian Political Actor. Former political prisoner, Chair of KPV-SR.
Štefanec, Ivan	March 14, 2013	Slovakian Political Actor. SDKÚ-DS MP (2006-2014); Member of European Parliament (2014-present).
Štětina, Jaromír	April 16, 2013	Czech Political Actor. Senator (SZ, 2004-2010; TOP '09/STAN, 2010-2014); Member of European Parliament (2014-present).
Tabery, Erik	March 19, 2013	Czech Journalist. Editor-in-Chief of <i>Respekt</i> .
Třešňák, Petr	April 23, 2013	Czech Journalist. Writes for <i>Respekt</i> ; author of 2008 exposé on Milan Kundera.
Uhl, Michal	March 7, 2013	Czech Official. Member of ÚSTR Council; Son of dissidents Petr Uhl, Anna Šabatová.
Vagač, Filip	May 15, 2013	Slovakian Official. Chair, Ján Langoš Foundation.
Vagovič, Marek	May 7, 2013	Slovakian Journalist. Writes for <i>SME</i> , <i>Týždeň</i> .
Vandas, Jaroslav	February 14, 2013	Czech Political Actor. ČSSD MP (2009-2013).
Vocel, Marek	February 19, 2013	Czech Political Actor. Managed Karel Schwarzenberg Presidential Campaign (2012-13).
Volná, Kateřina	February 13, 2013	Czech Official. Former ÚSTR historian.
Voňka, Martin	February 19, 2013	Czech Political Actor. Managed Karel Schwarzenberg Presidential Campaign (2012-13).
Wollner, Marek	April 9, 2013	Czech Journalist. Works for ČT, presenter of investigative journalism show <i>Reportéři</i> .

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Name	Interview Date	Respondent Description
Žáček, Pavel	March 5, 2013	Czech Official. ÚSTR director (2008-2010); ÚSTR historian (2010-2014) worked for ÚDV, ÚPN; Ran for Czech Senate on ODS ticket (2014).
Zájac, Pavol	May 7, 2013	Slovakian Political Actor. KDH MP (2012-present).
Zájac, Peter	May 2, 2013	Slovakian Political Actor. Literary Scholar; VPN; MP (SDK, 1998-2001; Most-Híd, 2010-2012); Chair OKS (2007-2012).
Žiak, Miloš	May 3, 2013	Slovakian Political Actor. Advisor to President Václav Havel (early 1990s).
Židek, Leo	February 20, 2013	Czech Political Actor. Former Political Prisoner, Deputy Chair KPV-ČR.
Žitný, Milan	May 6, 2013	Slovakian Journalist. Wrote for <i>Respekt</i> ; now works freelance; Member of Independent Commission, Federal Ministry of the Interior, 1992
Zmajkovičová, Renáta	May 14, 2013	Slovakian Political Actor. SMER-SD MP, Deputy Speaker of Slovakian National Council (2002-present)

Appendix B: Abbreviations and Acronyms

This list contains the most commonly used abbreviations and acronyms in this dissertation. Country codes (CZ for the Czech Republic, SK for Slovakia, RO for Romania, PL for Poland, and UA for Ukraine) are used to identify the country where the term originates, unless this is clearly stated in the full term itself.

Table B List of Abbreviations and Acronyms

Abbreviation or Acronym	In Full	Translation
ABS	Archiv Bezpečnostních Složek	Archive of the Security Branches (CZ)
AFDPR	Asociația Foștilor Deținuți Politici din România	Association of Former Political Prisoners of Romania (RO)
ANO	Aliancia Nového Občiana	Alliance of the New Citizen (SK)
ANO	Akce Nespokojených Občanů	Action of Dissatisfied Citizens (CZ)
BStU	Bundesbeauftragte für die Stasi-Unterlagen	Federal Commissioner for the Stasi Records (DE)
CNSAS	Consiliul Național pentru Studierea Arhivelor Securității	National Council for the Study of the Securitate Archives (RO)
CVVM	Centrum pro Výzkum Veřejného Mínění	Centre for the Study of Public Opinion (CZ)
ČSSD	Česká Strana Sociálně Demokratická	Czech Social Democratic Party
ČT	Česká Televize	Czech Television
DS	Demokratická Strana	Democratic Party (SK)
DEU	Demokratická Unie	Democratic Union (CZ)
HSD-SMS	Hnutí za Samosprávnou Demokracii – Společnost pro Moravu a Slezsko	Movement for Autonomous Democracy – Society for Moravia and Silesia (CZ)
HZDS	Hnutie Za Demokratické Slovensko	Movement for Democratic Slovakia
IPN	Instytut Pamięci Narodowej	Institute of National Memory (PL)
KDH	Kresťanskodemokratické Hnutie	Christian-Democratic Movement (SK)
KDU-ČSL	Kresťanská a Demokratická Unie – Česká Strana Lidová	Christian and Democratic Union – Czech People's Party
KPV-ČR	Konfederace Politických Vězňů – Česká Republika	Confederation of Political Prisoners – Czech Republic
KPV-SR	Konfederácia Politických Väzňov – Slovenská Republika	Confederation of Political Prisoners – Slovak Republic
KSČ	Komunistická Strana Československa	Communist Party of Czechoslovakia
KSČM	Komunistická Strana Čech a Moravy	Communist Party of Bohemia and Moravia (CZ)
KSS	Komunistická Strana Slovenska	Communist Party of Slovakia
LB	Levý Blok	Left Bloc (CZ)
LSU	Liberálně Sociální Unie	Liberal Social Union (CZ)
NBÚ	Národný Bezpečnostný Úrad	National Security Office (SK)
ODA	Občanská Demokratická Aliance	Civic Democratic Alliance (CZ)
ODS	Občanská Demokratická Strana	Civic Democratic Party (CZ)

Abbreviation or Acronym	In Full	Translation
OF	Občanské Fórum	Civic Forum (CZ)
OH	Občanské Hnutí	Civic Movement (CZ)
OKS	Občianská Konzervatívna Strana	Civic Conservative Party (SK)
OĽaNO	Obyčajní Ľudia a Nezávislé Osobnosti	Ordinary People and Independent Personalities (SK)
OUN	Orhanizatsiya Ukrayins'kykh Natsionalistiv	Organization of Ukrainian Nationalists (UA)
PiS	Prawo i Sprawiedliwość	Law and Justice (PL)
SaS	Sloboda a Solidarita	Freedom and Solidarity (SK)
SB	Służba Bezpieczeństwa	Security Service (PL)
SDK	Slovenská Demokratická Koalícia	Slovak Democratic Coalition
SDKÚ-DS	Slovenská Demokratická a Kresťanská Únie-Demokratická Strana	Slovak Democratic Christian Union – Democratic Party
SDSS	Sociálnodemokratická strana Slovenska	Social Democratic Party of Slovakia
SDĽ	Strana Demokratickej Ľavice	Party of the Democratic Left (SK)
SKOI	Stála Konferencia Občianskeho Inštitútu	Standing Conference of the Civic Institute (SK)
SIS	Slovenská Informačná Služba	Slovakian Intelligence Service
SMER-SD	SMER-Sociálna Demokracie	Direction – Social Democracy (SK)
SMK-MKP	Strana Maďarskej Koalície – Magyar Koalíció Pártja	Party of the Hungarian Coalition (SK)
SPR-RSČ	Sdružení Pro Republiku – Republikánská Strana Československa	Coalition for the Republic – Republican Party of Czechoslovakia (CZ)
SNS	Slovenská Národná Strana	Slovakian National Party
SSM	Socialistická Svaz Mladěže	Socialist Youth Federation (CS)
StB	Státní Bezpečnost	State Security (CZ)
ŠtB	Štátna Bezpečnosť	State Security (SK)
SZ	Strana Zelených	Green Party (CZ and SK)
TOP '09	Tradice Odpovědnost Prosperita '09	Tradition, Responsibility, and Prosperity, '09 (CZ)
ÚDV	Úřad pro Dokumentaci a Vyšetřování Zločinů Komunismu	Office for the Documentation and Investigation of the Crimes of Communism (CZ)
ÚPN	Ústav Pamäti Národa	Institute of National Memory (SK)
UPA	Ukrayins'ka Povstans'ka Armiya	Ukrainian Insurgency Army (UA)
US	Unie Svobody	Union of Freedom (CZ)
ÚSTR	Ústav pro Studium Totalitních Režimů	Institute for the Study of Totalitarian Regimes (CZ)
VONS	Výbor na obranu nespravedlivě stíhaných	Committee for the Defense of the Unjustly Prosecuted (CZ)
VPN	Verejnost' Proti Násiliu	Public Against Violence (SK)
ZPKO	Zváz Protikomunistického Odboja	Federation of Anti-Communist Resistance (SK)

Appendix C: List of Legislation

This is an overview of transitional justice legislation discussed in this dissertation. It lists all legislation that concerns the legacy of the Czechoslovakian secret police, StB. While other relevant legislation is also included, this does not purport to be a comprehensive list of all Czech and Slovak transitional justice legislation.

In identifying legislation, this dissertation follows the Czech and Slovak convention which lists first the number of the law, second the year, and lastly the abbreviation ‘Sb.’ (Czech: *Sbírka zákonů*) or Zb. (Slovakian: *Zbierka zákonov*), for ‘compendium of laws’.

For the period up to 1993, federal legislation is listed under Czechoslovakia, whereas republic legislation is listed under the individual republic.

Table C1 Czechoslovakian Transitional Justice Legislation

Number	Full Title
119/1990 Sb.	Zákon o soudní rehabilitaci [Law on Judicial Rehabilitation]
403/1990 Sb.	Zákon o zmírnění následků některých majetkových křivd [Law on Relief for the Impact of Some Property Grievances]
451/1991 Sb.	Zákon, kterým se stanoví některé další předpoklady pro výkon některých funkcí ve státních orgánech a organizacích České a Slovenské Federativní Republiky, České republiky a Slovenské republiky. [Law Which Sets Some Further Conditions For Executing Some Functions in State Bodies and Organizations of the Czech and Slovak Federal Republic, the Czech Republic, and the Slovak Republic]
480/1991 Sb.	Zákon o době nesvobody [Law on the Period of Un-Freedom]

Table C2 Czech Transitional Justice Legislation

Number	Full Title
279/1992 Sb.	Zákon o některých dalších předpokladech pro výkon některých funkcí obsazovaných ustanovením nebo jmenováním příslušníků Policie České republiky a příslušníků Sboru nápravné výchovy České republiky [Law on Some Further Conditions For Executing Certain Functions Occupied through Institution or Appointment by Officers of the Police of the Czech Republic and Officers of the Corps of Correctional Training of the Czech Republic]
198/1993 Sb.	Zákon o protiprávnosti komunistického režimu a o odporu proti němu [Law on the Immorality of the Communist Regime and on Opposition against It]
254/1995 Sb.	Zákon, kterým se mění zákon č. 451/1991 Sb., (...), ve znění nálezu Ústavního soudu České a Slovenské Federativní Republiky ze dne 26. listopadu 1992, vyhlášeného dne 15. prosince 1992 v částce 116/1992 Sb. [Law Which Changes Law 451/1991 Sb. (...), as per the Decision of the Constitutional Court of the Czech and Slovak Federal

Number	Full Title
	Republic dd. November 26, 1992, Pronounced on December 15, 1992 in issue 116/1992 Sb.]
140/1996 Sb.	Zákon o zpřístupnění svazků vzniklých činností bývalé Státní bezpečnosti [Law on Access to the Files Created through the Activities of the Former StB]
422/2000 Sb.	Zákon, kterým se mění zákon č. 451/1991 Sb. (...), ve znění pozdějších předpisů [Law Which Changes Law 451/1991 Sb. (...), as per Later Provisions]
107/2002 Sb.	Zákon, kterým se mění zákon č. 140/1996 Sb. (...) a některé další zákony [Law Which Changes Law 140/1996 Sb. (...), and Some Further Laws]
181/2007 Sb.	Zákon o Ústavu pro studium totalitních režimů a o Archivu bezpečnostních složek a o změně některých zákonů [Law on the Institute for the Study of Totalitarian Regimes and on the Archive of the Security Branches and on Changes to Some Laws]
262/2011 Sb.	Zákon o účastnících odboje a odporu proti komunismu [Law on Participants in Resistance and Opposition against Communism]

Table C3 Slovakian Transitional Justice Legislation

Number	Full Title
125/1996 Zb.	Zákon o nemorálnosti a protiprávnosti komunistického systému [Law on the Immorality and Illegality of the Communist System].
533/2002 Zb.	Zákon o sprístupnení dokumentov o činnosti bezpečnostných zložiek štátu 1939 - 1989 a o založení Ústavu pamäti národa a o doplnení niektorých zákonov (zákon o pamäti národa) [Law on Access to Documents about Activities of State Security Branches 1939-1989 and on the Establishment of the Institute of National Memory and on Additions to Some Laws (Law on National Memory)],
219/2006 Zb.	Zákon o protikomunistickom odboji [Law on Anti-Communist Resistance]

Appendix D: Overview of Election Results

This appendix presents election results for Czechoslovakia (up until 1993) as well as the Czech and Slovak Republics (as of 1993). For Czechoslovakia, results are presented by republic due to the fact that there was no federal-level party system even in the Federal Assembly. The Czechoslovakian Federal Assembly (*Federální Shromáždění*) contained 300 seats, 150 each in the Chamber of the People (*Sněmovna Lidu*, 75 seats for each republic) and the Chamber of Nations (*Sněmovna Národů*, with seats distributed proportional to the distribution in each republic). In addition, each of the two republics had a National Council (*Národní Rada*). These bodies were converted into national parliaments after 1993, becoming the lower house (Chamber of Deputies) of the Parliament of the Czech Republic (*Poslanecká sněmovna Parlamentu České republiky*) and the National Council of the Slovak Republic (*Národná rada Slovenskej republiky*).

Table D1 Czechoslovakian Election Results (1990-1992)

Czech Republic					
1990			1992		
Parties	Federal Assembly	National Council	Parties	Federal Assembly	National Council
OF	118 (67.0%)	127 (63.5%)	ODS-KDS	85 (48.9%)	76 (38.0%)
KSČ	27 (15.3%)	32 (16.0%)	LB	34 (19.5%)	35 (17.5%)
KDU	15 (8.5%)	19 (9.5%)	ČSSD	16 (9.2%)	16 (8.0%)
HSD-SMS	16 (9.1%)	22 (11.0%)	HSD-SMS	0 (0.0%)	14 (7.0%)
			SPR-RSČ	14 (8.0%)	14 (7.0%)
			KDU-ČSL	13 (7.5%)	15 (7.5%)
			LSU	12 (6.9%)	16 (8.0%)
			ODA	0 (0.0%)	14 (7.0%)
Total	176 (100%)	200 (100.0%)		174 (100%)	200 (100.0%)

Slovakia					
1990			1992		
Parties	Federal Assembly	National Council	Parties	Federal Assembly	National Council
VPN	42 (33.9%)	48 (32.0%)	HZDS	57 (45.3%)	74 (49.3%)
KDH	25 (20.2%)	31 (11.0%)	KDH	14 (11.1%)	18 (12.0%)
KSS	20 (16.1%)	22 (14.7%)	SDSS	5 (4.0%)	0 (0.0%)
SNS	15 (12.1%)	22 (14.7%)	SNS	15 (11.9%)	15 (10.0%)
Együttélés	12 (9.7%)	14 (9.3%)	Együttélés	12 (9.5%)	14 (9.3%)
DS	0 (0.0%)	7 (4.7%)	SDĽ	23 (18.3%)	29 (19.3%)
SZ	0 (0.0%)	6 (4.0%)			
Total	124 (100.0%)	150 (100.0%)		126 (100.0%)	150 (100.0%)

Source: <http://www.parlgov.org>, accessed July 26, 2015.

Table D2 Slovakian Election Results (1994-2012)

Parties	1994	1998	2002	2006	2010	2012
HZDS	61 (40.7%)	43 (28.7%)	36 (24.0%)	15 (10.0 %)		
SMER-SD			25 (16.7%)	50 (33.3%)	62 (41.3%)	83 (55.3%)
KDH	17 (11.3)		15 (10.0%)	14 (9.3 %)	15 (10.0%)	16 (10.7%)
SDK		42 (28.0%)				
SDKÚ-DS			28 (18.7%)	31 (20.7%)	28 (18.7%)	11 (7.3%)
SNS	9 (6.0)	14 (9.3%)		20 (13.3%)	9 (6.0%)	
SMK-MKP		15 (10.0 %)	20 (13.3 %)	20 (13.3 %)		
Most-Híd				14 (9.3%)	14 (9.3%)	13 (8.7%)
SaS					18 (12.0%)	11 (7.3%)
OĽANO					4 (2.7%)	16 (10.7%)
<i>Other</i>	63 (42.0%)	36 (24.0%)	26 (17.3%)			
Total	150 (100.0%)	150 (100.0%)	150 (100.0%)	150 (100.0%)	150 (100.0%)	150 (100.0%)

Source: <http://www.parlgov.org>, accessed July 26, 2015.

Table D3 Czech Election Results (1996-2010)

Parties	1996	1998	2002	2006	2010
ODS	68 (34.0%)	63 (31.5%)	58 (29.0%)	81 (40.5%)	53 (26.5%)
ČSSD	61 (30.5%)	74 (37.0%)	70 (35.0%)	74 (37.0%)	56 (28.0%)
KSČM	22 (11.0%)	24 (12.0%)	41 (20.5%)	26 (13.0%)	26 (13.0%)
KDU-ČSL	18 (9.0%)	20 (10.0%)	22 (11.0%)	13 (6.5%)	
US		19 (9.5%)	9 (4.5%)		
TOP09					44 (22.0%)
<i>Other</i>	31 (15.5%)			6 (3.0%)	24 (12.0%)
Total	200 (100.0%)	200 (100.0%)	200 (100.0%)	200 (100.0%)	200 (100.0%)

Source: <http://www.parlgov.org>, accessed July 26, 2015.

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