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Deepening democratisation?
Exploring the declared motives for ‘late’ lustration in Poland

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Abstract

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

Key words: democratisation; Fourth Republic; lustration; Poland; transitional justice

Having previously been under-researched and inadequately understood, transitional justice in the former Soviet Union and Eastern bloc has become a growing area of research and academic discussion in recent years. Lustration was one of, if not the, most important and controversial transitional justice methods to be used in post-communist Central and Eastern Europe. The region was the first to embrace it so comprehensively and it has remained an important means of dealing with the communist past; so much so that, as Stan put it, ‘(many) observers have employed it as a yardstick for measuring the progress of transitional justice in Eastern Europe and the former Soviet Union’ (Stan 2009a: 12). However, the revival of the debate about transitional justice and how to deal with the communist past, the intense, on-going, and recurring politicisation of the issue, and the passage of ‘late’ lustration and communist-era security service file access laws in several states years after the collapse of the communist system all remain something of a puzzle. It is this puzzle of ‘late’ lustration that this article seeks to address. In this article, I have followed Williams, Fowler and Szczerbiak (2005: 43) and defined lustration as ‘measures directed against former functionaries of and collaborators with the state security apparatus’ that can include ‘simply vetting or screening individuals for past associations with the communist security services without any sanction necessarily following.’ (Szczerbiak 2002: 553).

The article begins by reflecting on why Poland is interesting as a case of late (and recurring) lustration by outlining the progress of the various attempts to introduce lustration and file access laws in this country. It moves on to survey the various attempts that have been made in the academic literature to explain the recurrence of transitional justice and truth revelation issues and changes of trajectory in the way that post-communist states have dealt with them. The main empirical core of the article is an examination of the Polish case looking at the revival of the lustration and file access debate in Poland in the early-to-mid 2000s, focusing particularly on the arguments used by its proponents in the media and parliamentary debates leading up to the passage of the 2006 lustration law. The article shows that the impetus for revising the lustration law came in part from the fact that the truth revelation procedures established at the end of the 1990s were not felt to be working well and themselves created a greater appetite for further lustration and file access. However, the re-emergence of the

lustration issue also became entwined with other debates and was often felt to be indicative of the need to deepen the post-communist democratisation process more generally. The article suggests that approaches to explaining late lustration that posit the notion that it became instrumentalised in post-communist power struggles need to be modified to take account of the fact that the declared motives of those pushing for more radical lustration were, in part at least, programmatically and ideologically driven.

The main primary data source for this article was a qualitative analysis of contributions to the parliamentary debates on the revised lustration law held on 9 March and 20 July 2006, together with the justificatory statement from the draft bill on which the law was based. I draw upon both statements from the main party spokesmen and contributions from other representative second-ranked speakers. I also examine news articles, opinion-editorial pieces from lustration supporters, and analyses of the parliamentary debates published in the centre-right *Rzeczpospolita* daily, the main Polish newspaper of record, and the key opinion-forming liberal-left *Gazeta Wyborcza* daily.

There are clearly a number of limitations to the approach adopted in this article. It is a single country case study, albeit on a particularly interesting (arguably ‘archetypal’) case of ‘late’ lustration, that relies on written sources rather than interviews. There is also a danger of ‘cherry picking’ statements to fit with my purported narrative. Moreover, the article examines the declared motives of lustration supporters which may not have revealed their actual intentions. In order to overcome these problems, I attempt to locate and draw out recurring themes that are developed by several different speakers and contributors to this debate, rather than simply picking individual, sporadic statements that fit with my overall argument. Moreover, the fact that there was a clear and consistent programmatic rationale and recurring themes presented by a range of different contributors to the debate suggests (although does not, of course, prove) that such statements were, to some extent at least, properly thought-through and not simply grafted on as a justificatory after-thought. This, together with the fact that the lustration law enjoyed overwhelming cross-party support, which obviously reduced the scope for using the issue as a means of strategic positioning, provided *prima facie* evidence that there was at least some programmatic underpinning to the motivations of lustration supporters.

The article does not claim that lustration supporters were solely (or even mainly) programmatically and ideologically motivated. It is obviously impossible to know unambiguously whether a particular statement was ideological or instrumental. In practice, as in the case of virtually every political action, the protagonists were likely to have been motivated by an inter-play of both instrumental/strategic and programmatic/ideological factors. Rather, the article’s objective is to try and bring ‘programme-ness’ back into the equation suggesting that at least some ideological motivations may have been significant. This is obviously an analysis that needs to be built upon further but it is important to at least get a clear picture of what the declared motives of lustration supporters were as a key, first stage in the process of developing a more fully-worked explanatory framework.¹

¹ A next step in the analysis, but which goes beyond the scope of what is covered in this article, would be to compare the arguments used by lustration supporters with the statements advanced by those opposing its more extensive use as a transitional justice method. If the latter argued with lustration supporters on programmatic grounds, rather than dismissing their opponents as simply instrumental, then this would provide further evidence that the motivations for lustration were ideological and not strategic.

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

Poland is interesting as an archetypal case of the phenomena of late and recurring lustration. In Stan's (2009b: 261-2) typology of post-communist states' approaches to transitional justice - based on whether they instituted court proceedings against former communist regime functionaries, as well as their enactment of lustration laws and access to communist security service archives - Poland was (along with Hungary) classified as a 'mild' case. In such countries, transitional justice was both delayed in time and less radical in scope than those that, to a greater or lesser extent, pursued all three of these processes strongly and vigorously through citizenship and electoral as well as screening laws (such as the former GDR, the Czech Republic and the Baltic states) but more advanced than those countries that adopted 'weak' approaches to transitional justice with only one or two of the methods outlined (such as Bulgaria and Romania) or those that resisted attempts to re-evaluate the past and seemingly followed a 'forgive and forget' approach (such as Slovakia, Slovenia, Albania and all of the Soviet successor republics except for the Baltic states).

However, it is the significant delay - and, more broadly, recurrence of the issue in political debates - that is one of the most striking features of the development of lustration in Poland and one that requires analysis and explanation. While it was the first country in the region to overthrow communism as a result of peaceful negotiations between the outgoing regime and former opposition, it was more than eight years after the transition to democracy began that Poland finally approved a lustration law. In August 1989, Tadeusz Mazowiecki, an advisor to the Solidarity opposition movement and the first non-communist prime minister in Poland since the country was incorporated into the Soviet bloc at the end of the 1940s, announced in his inaugural policy speech that a 'thick line' would be drawn between the past and present (Mazowiecki 1989). Although he was actually seeking to distance his government from the damage done to the economy by the previous regime, the 'thick line' was often cited as a metaphor epitomising the lenient approach to the communist past adopted by his administration. However, although Poland began with an initial communist-forgiving approach and avoidance of the issue, lustration and file access retained a remarkable capacity to remain on the political agenda when one might have expected them to fade from public memory. Indeed, one of the most striking things about the Polish case was the on-going politicisation of the lustration issue with communist security service secret archives generating a number of public scandals which contributed to the collapse of two governments in the 1990s. It thus provides us with an excellent basis for developing frameworks to explain the phenomenon of 'late' lustration.

Despite various attempts to pass lustration laws in the early-to-mid 1990s, a formalised lustration programme came late to Poland with a mild lustration law only being passed in April 1997 and file access legislation adopted in December 1998, and the two finally becoming operational in 1999 and 2000 respectively following further amendments. The 1997 law stipulated that all elected state officials from the rank of deputy provincial governor up to ministers, prime minister and the President, parliamentary candidates, barristers, judges, prosecutors and leading figures in the public mass media (approximately 20,000 individuals in total) were required to submit written declarations stating whether or not they consciously worked for or collaborated with the communist security services at any point from 1944 to

1990.² All statements denying collaboration were transferred to a state prosecutor, the Public Interest Spokesman (Rzecznik Interesu Publicznego: RIP), who used the communist security service secret archives to assess their accuracy. If the prosecutor found evidence that the declaration was false, the public official was to be tried before a lustration court and office holders or candidates for office who made false statements were banned from public office for 10 years. Verdicts could be appealed but the appeal court's rulings were binding and anyone found guilty of being a 'lustration liar' had to resign immediately upon it making such a judgement (Sejm RP 1997).

At the end of 1998, the Polish parliament also voted to establish the Institute of National Remembrance (Instytut Pamięci Narodowej: IPN). Apart from investigating Nazi and communist crimes and informing and educating the Polish public about the country's recent past, the Institute was set up as the custodian of the communist security service files. The 1998 law granted researchers, journalists, and historians access to the secret archives as well citizens who had been victims of secret police invigilation to their own files. Those who were not felt to be victims of communist persecution - or worked as informers for, or collaborators with, the communist security services - could not have access to their files (even if they had themselves been spied upon) (Sejm RP 1998).

A number of developments during the early-to-mid 2000s brought the issues of lustration and communist security service file access to the fore and led to calls for strengthening existing laws and truth revelation procedures, or introducing more radical ones. Firstly, calls for more radical lustration were linked to the fight against political corruption. This became a more salient issue in Poland following the emergence of the so-called 'Rywin affair' at the end of 2002. Lew Rywin, a prominent Polish film producer, offered Adam Michnik³ an arrangement for a change in a draft media ownership law aimed at limiting the print media's influence on radio and television (which would have been in Michnik's favour) in exchange for a large payment to his friends in power. Rywin claimed that he was acting on behalf of what he called the 'group in power' which wanted to remain anonymous but possibly included the then prime minister and leader of the communist successor Democratic Left Alliance (Sojusz Lewicy Demokratycznej: SLD), which governed Poland 1993-1997 and 2001-2005, Leszek Miller. The incident took place in July 2002, and six months later at the end of December *Gazeta Wyborcza* printed a partial record of Michnik's conversation with Rywin, thus starting the actual scandal (Smoleński 2002).

The Rywin affair was followed by a raft of further scandalous revelations involving politicians and officials from the ruling party, which meant that the corruption issue remained at the top of the political agenda. One of the most serious of these was the so-called 'Orlen affair' surrounding the privatisation of the partly state-owned oil company Polski Koncern Naftowy Orlen (PKN Orlen). The scandal began in February 2002 with the arrest by the Office of State Security (Urząd Ochrony Państwa: UOP) of PKN Orlen's chief executive Andrzej Modrzejewski on the order of the attorney general's office. In an April 2004 interview for *Gazeta Wyborcza*, Wiesław Kaczmarek, who was treasury minister at the time

² As clarified subsequently by the constitutional tribunal, collaboration had to be conscious, secret and connected to the security services' operational activities. A declaration of intent was not enough, there had to be proof of actual activities undertaken in the form of information reports. See: Kroner (1998).

³ A veteran anti-communist opposition strategist but who, in post-communist Poland, became proprietor of the Agora media conglomerate that published the influential *Gazeta Wyborcza*, of which Michnik was founder and editor-in-chief.

of the arrest, claimed that its real purpose was to provoke Modrzejewski's dismissal and, as a consequence, not allow the signing of a \$14 billion contract for oil supplies. The decision to arrest Modrzejewski was, he claimed, taken during an official meeting that he attended in the prime minister's office involving Miller, justice minister Barbara Piwnik and the head of the Office of State Security Zbigniew Siemiątkowski (Wielowiejska 2004; Śmiłowicz 2004; Kublik 2004). Given its perceived potential for undermining the security of Poland's energy supply, the 'Orlen affair' appeared to have even more far-reaching effects than the Rywin affair.

These scandals in which both former and current security service operatives seemed to be actively engaged, were felt to exemplify the corrupt and cronyistic network that had allegedly colonised Polish capitalism.⁴ They convinced increasing numbers of Poles that politicians, policy-makers, and opinion-formers were involved in a web of large scale business deals as part of a 'shadow economy' involving elites linked to organised criminal networks whose origins were to be found in the former (but still influential) communist security service services. This prompted many Poles to question the virtues of the so-called 'thick line' approach towards transitional justice and led to calls for more radical lustration and revelation of former communist security service networks as a means of breaking this corrupt nexus. Against the background of these scandals, politicians and commentators, particularly from the right-wing Law and Justice (Prawo i Sprawiedliwość: PiS) party, began to call for a radical reconstruction of the Polish state that would replace the post-1989 Third Republic - which they considered to be inherently weak and controlled by corrupt cliques - with a strong and moral 'Fourth Republic'. Originally an idea and critique that enjoyed quite broad political support - including from politicians and intellectual milieu associated with the centre-right (although, after 2005, evolving in an increasingly centrist direction) Civic Platform (Platforma Obywatelska: PO)⁵ - the 'Fourth Republic' came to be associated primarily with the 2005-2007 PiS-led governments and broadening the scope of lustration was seen as a key element of such a renewal. Lustration, therefore, became entwined with broader discourses on post-communist democratisation, specifically a radical critique of post-1989 Poland as corrupt and requiring far-reaching moral and political renewal.

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

⁴ See, for example: Los and Zybertowicz (2000).

⁵ The concept was first developed by political scientist Rafał Matja in a niche conservative journal at the end of the 1990s, although it actually came to prominence in public discourse when the Civic Platform-linked sociologist (and future parliamentary deputy) Paweł Śpiewak used it in the wake of the Rywin affair. See: Matyja (1998); and Śpiewak (2003). For a good summary of the debate on this concept, see: Matja (2004).

The 2006 lustration and file access law

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

The original law that was finally approved by parliament in October 2006 marked a radical departure from the provisions of previous Polish lustration and file access legislation. In order to streamline the verification process, the Public Interest Spokesman's office was abolished and replaced by a special lustration department within the IPN that determined which declarations raised suspicion and warranted investigation. Lustration declarations and the process of determining whether or not someone was a 'lustration liar' were to disappear. Instead, the Institute would issue every person undergoing lustration a certificate ('zaświadczenie') about what kind of documents were held on them in the communist security service archival records. Specifically, these certificates would state if the security services had regarded the person as a so-called 'personal information source' (osobowe źródło informacji) not just as a secret collaborator (Tajny Współpracownik: TW), but also as an operational contact (Kontakt Operacyjny: KO), functionary, official contact or a consultant (Kaczyński 2006a). Those persons in certain positions or fulfilling functions, requiring public trust, or aspiring to hold them, would be issued with such a certificate *ex-officio* - which could then be used as a basis for evaluating their moral qualifications - and private individuals could request them as well. As lustration declarations would no longer exist, there would be no sanctions for individuals who failed to reveal involvement in the communist security services. Rather, the body appointing or employing the person in question - or voters in the case of elected officials - would decide if someone who was described in their certificate as a communist security service agent or informer should occupy the public function in question. For those occupying these positions, such certificates, together with any documents that related to them, would be held in a publicly available register, which every citizen would have the right to see, and be published on the Internet.

The 2006 law broadened the scope of existing rules on disclosing collaboration significantly and expanded the categories of persons covered by the lustration law to encompass an estimated 400,000-700,000 individuals (the exact number was not clear). This included, for the first time: teachers and the heads of educational institutions; university lecturers and senior administrators; journalists, editors, and publishers of both public and private media; diplomats; legal counsellors, notaries, tax advisers, and certified accountants; local councillors; the heads of state-owned companies and those in which the state treasury held a share; members of the management and supervisory boards of companies listed on the stock exchange; senior national state administration and local government officials; and employees of 'para-state' bodies such as IPN itself (Gardynik 2007). The Institute would publish lists of persons registered as communist security service functionaries and their 'personal information sources' with an explanation of why the latter appeared in the archives. The first

list was to be published within three months of the new law coming into effect and then updated at least once every six months.

In November 2006, Kaczyński signed the new draft into law but on condition that a series of amendments were passed. In place of IPN certificates outlining the contents of the archives on candidates for public office, lustration statements (where such candidates or office-holders once again declared whether or not they had secretly collaborated with the communist security services) would be re-introduced, although these would still be checked by a special lustration prosecutors department within the Institute rather than the Public Interest Spokesman. Penalties for submitting false lustration declarations would also return, as would the use of the criminal procedure if there was a discrepancy between the contents of the files and the individual's lustration declaration or if an individual wanted to appeal against their inclusion in the list of communist secret service collaborators. The scope of lustration was also extended to several additional categories including: bailiffs; academics other than university lecturers; members of the supervisory boards of companies with specific importance to public order and state security; members of local and national examination commissions; and National Bank of Poland managers (Kaczyński 2006b; Gardynik 2006, 2007).

Although the new lustration law came into force in March 2007, the constitutional tribunal gutted the new provisions in May 2007 when it ruled that large sections of the amended law violated Poland's Constitution (Olczyk and Sopińska 2007; Czuchnowski and Wroński 2007). In particular, it ruled that the definition of who held public office was too broad, and limited the number of categories of persons undergoing lustration significantly. It ruled that the provisions of the law should not include: any academics employed by private universities and only senior academic managers in public higher education institutions; heads of state primary and middle schools, and private schools; the heads of private companies; journalists; private TV and radio producers; the publishers and editors of private journals; bailiffs; statutory auditors; tax advisers; and members of sports governing bodies. It also banned as unconstitutional the proposed publication by IPN of a catalogue of 'secret collaborators' and 'operational contacts' on the Internet. However, the tribunal did not question the provisions for lustrating candidates for senior office nor those that required the loss of office for anyone found to be submitting a false lustration declaration. As Nalepa (2013: 202) put it, 'even with the provisions struck down by the Tribunal, the Institute still expanded its powers compared to what they were under the 1997 law'.

After 2007, the issue of lustration and file access became somewhat less salient in Polish politics. One might argue that this was inevitable given passage of time since the collapse of communism. However, it was also because the constitutional tribunal's gutting of the new legislation created confusion as to what the new law's precise provisions were. Moreover, PO, which ousted PiS from government following a snap parliamentary election held in the autumn of that year, increasingly downplayed the lustration and file access issues as part of a conscious effort to reach an accommodation with the liberal-left cultural and media establishment which had always been extremely wary of - and, in some cases, openly hostile towards - these processes.

Explaining 'late' lustration

Attempts to describe and explain the key drivers of changes of lustration trajectory and the recurrence of the issue - specifically the phenomenon of 'late' lustration and truth revelation - in the academic literature is divided between: those who focus on its protagonists' political and electoral-strategic calculations; and those who ascribe more ideological and programmatic motives to them. One particular variant of those who adopted the so-called 'politics of the present' approach developed originally by Welsh (1996)⁶ is to try and explain the recurrence of the lustration issue through what might be termed a political elite strategy explanation. This is based on the notion that political actors responded rationally to impulses such as (actual or anticipated) popular and societal demand to further their own partisan interests. One such attempt to explain lustration trajectories with reference to elite strategic positioning developed by Nalepa (2010a) is rooted in an explicitly rational-choice framework and based on the idea that, when determining their strategic choices, supporters of lustration used the issue in a calculating way for party advantage.⁷ Nalepa tries to explain the specific timing of transitional justice in post-communist states, particularly in cases such as the Polish one where pacted, peaceful transitions to democracy were followed by delayed lustrations. Her explanatory framework is based on what she terms a 'skeletons in the closet' argument which models the incentives of former dissidents from the anti-communist opposition and regime functionaries.

In terms of the Polish case, one of the things that Nalepa attempts to explain is why the issue of lustration re-surfaced in the mid-2000s so many years after the transition to democracy, and specifically the puzzle that is the core research question tackled in this article: why were the lustration and file access laws amended and strengthened after PiS came to office in 2005? Nalepa argues that this was due to the rise of political elites that emerged from anti-communist opposition groupings that had not been infiltrated by the communist security services and, therefore, had fewer collaborators in their ranks and were untainted with the previous regime. However, notwithstanding problems with Nalepa's explanation of the Polish case at an empirical and factual level,⁸ one of the biggest difficulties with her 'skeletons in the closet' model is that it posits the notion that the transitional justice issue was almost completely instrumentalised by strategic, office-seeking political elites. The same problems are evident (albeit more implicitly) in some other variations of the 'politics of the present' explanatory framework that focus on strategic political and electoral factors. This approach potentially under-estimates the importance of normative factors and fails to grasp fully the extent to which that the motives of those pushing for lustration and transitional justice may have been, in part at least, genuinely programmatically and ideologically driven. Indeed, even those pro-lustration parties and political actors who saw the sponsorship of truth revelation procedures as a useful power tool to gain an advantage over their competitors may also have been committed to these policies for ideological and programmatic reasons.

There are a number of examples in the literature on post-communist transitional justice of attempts to account for different patterns of post-communist lustration - including explaining the recurrence of debates and changes of trajectory in countries such as Poland - that suggest that a greater emphasis should be placed on precisely such normative, ideological-programmatic factors. As authors such as Horne (2009), Calhoun (2002, 2004) and Appel (2005) rightly point out, one cannot assume *a priori* that lustration is used simply for political manipulation, which some of the 'politics of the present' approaches have a tendency to

⁶ See also: Williams et al (2005).

⁷ Nalepa's main arguments are also summarised in: Nalepa (2010b).

⁸ See, for example, the critique in: Szczerbiak (2016: 16-18).

imply. These accounts are based on the idea that political elites believed, or came to believe, that a more radical approach to such issues was both necessary and desirable from a normative perspective. Horne (2009), for example, sees the fact that some countries embarked on late lustration as an expression of the perceived need to improve the quality of post-communist democracy and deepen the democratisation process. Building on this notion that ‘there is a collective sense that the past actively affects the political and economic reality of the present’ (Horne 2009: 357), Horne (2009: 366) sees lustration as ‘resonating with a symbolic and institutional sense that something about the democratic transitions in incomplete’. Thus, post-communist governments in Poland (but also in other post-communist states such as Latvia, Macedonia, Slovakia, and even those that instituted transitional justice measures early on such as the Czech Republic) continued to grapple with the issue and, in some cases, used new lustration laws as a means to further, and correct some of the problems associated with, post-communist transition by packaging them with other reform measures to meet public concerns about issues such as corruption, distrust and inequality.

Debates on the 2006 Polish lustration and file access law

So how do the arguments used by supporters of more radical lustration during debates on the 2006 law fit these different explanations, at least as far as their declared motives were concerned? Although they were linked and often overlapped, it is possible to identify a number of distinct themes.

The failure of the Polish lustration model

Many of the strongest arguments in favour of a new lustration law were rooted in the idea that Polish truth revelation procedures in their current form - that is, the 1997 lustration and 1998 file access laws, together with the ways in which these were interpreted through court judgements - had not proved themselves. Introducing the PiS draft during the March 2006 debate on the new lustration law, party spokesman Arkadiusz Mularczyk argued that ‘(t)he necessity of introducing new regulations arises from the ineffectiveness of the current law’ (Sejm RP 2006a: 137). Speaking in the same debate, PiS Deputy Zbigniew Girzyński claimed that: ‘Only when the vision of lustration was unavoidable, as the 1997 election approached (and) when it was clear that the political pendulum would reverse, in April 1997 a lustration law was passed but even when it was passed everything was done to torpedo it’ (Sejm RP 2006a: 144). The 1997 law was, he claimed, ‘meant to satisfy the conscience of the political class...deceive public opinion into thinking that lustration was occurring... (and) create(d) a mechanism which, instead of allowing historians access to these archives in a *de facto* substantive way, led to a situation where these historians...had problems obtaining the IPN files’ (Sejm RP 2006a: 145).

One of the main reasons why the current lustration legislation was not felt to have met its objectives was the fact there were no negative legal consequences arising from the act of having been a communist security service functionary or collaborator: it was only submitting a false declaration that led to any sanctions being imposed upon an individual. As Arkadiusz Mularczyk put it in the March 2006 debate, the lustration law ‘has not succeeded in realising its basic objectives, specifically: revealing materials which were secret up until now, ensuring the effectiveness and swiftness of court proceedings’. The Polish lustration law adopted ‘a solution...which was unknown in other states of the former communist camp’ whereby ‘the basic task of the court is to check the truthfulness of lustration declarations’, as opposed to

monitoring what the security services and the persons who collaborated with them actually did. In other words, under the Polish lustration system, ‘failing to disclose work, service for or collaboration with the security services is sanctioned much more harshly than simple collaboration’ (Sejm RP 2006a: 137).

Another reason why it was felt that the current system of lustration was not working was that it was very difficult to bring a successful case to conclusion in the lustration court. This was because either the court judgements were too generous to those suspected of lying in their lustration declarations or the trials were conducted in secret, dragged on for years and, as the justificatory statement attached to the 2006 PiS draft law (which formed the basis for the eventual legislation) put it, often ended ‘in a judgement which simply pose(d) hypotheses and (did) not determine the facts unambiguously’ (Sejm RP 2006b: 40). Writing just before he released his infamous ‘list’, pro-lustration commentator Bronisław Wildstein (2005) argued that, ‘it is clear that in these kinds of cases, Polish courts function not just in a very sluggish way, but are exceptionally understanding in relation to the accused. In the case of (Marian) Jurczyk⁹ the fact that his (security service) reports did not particularly harm the opposition, the Supreme Court recognised as proof that he was not an SB [Służba Bezpieczeństwa, the communist security services] collaborator. In addition, the SLD managed to introduce an amendment to the law which meant that a final verdict would only come into effect after cassation in the Supreme Court. This is not just a mockery of the principles of a state governed by the rule of law (where appeal to the higher court instance is an exceptional path) but, at the same time, dragged out an already years-long procedure’.

Moreover, lustration verdicts were often determined by evidence from former communist security service functionaries who appeared at lustration trials and, as the justificatory statement attached to the 2006 PiS draft law put it, ‘in most cases submitted testimony advantageous to those undergoing lustration’ (Sejm RP 2006a: 36). As Janusz Kurtyka (2006), President of IPN from 2005 to 2010, argued: ‘In our current process of lustration we often have a situation where the handling officers speak on behalf of the agent that they were once handling. The officer will always protect their agent.’ He continued that ‘(t)he lack of specific mechanisms to verify archival documents, by (for example) calling witnesses who know and understand archival procedures, is also striking; this can have an influence on the result of a trial’. Indeed, even when proof of collaboration existed ‘on paper, they (the spy handlers) deny it saying that it (such proof) was entered falsely’.

At the same time, the definition of what constituted collaboration with the communist security services was narrowed progressively. As noted above, even before the Public Interest Spokesman and lustration court began their work, the constitutional tribunal defined collaboration extremely narrowly in its November 1998 decision, ruling that simple registration as an informer in the operational evidence of the security services did not represent sufficient proof of collaboration, which had to ‘materialise’. As the justificatory statement attached to the 2006 PiS draft law put it: ‘In this situation, the threat of revealing compromising material became illusory and...it did not pay for those undergoing lustration to reveal the truth in their lustration declarations’ (Sejm RP 2006b: 33). As a consequence of the constitutional tribunal’s narrow definition of collaboration, not all those whose declarations were subject to screening by the Public Interest Spokesman could complete the full lustration

⁹ A veteran Solidarity activist and leader of the 1980 Szczecin strike that led to the union’s formation, who was accused of submitting a false lustration declaration.

process. According to the to the draft law justificatory statement, between 1999 and 2004, the Spokesman only directed 153 declarations that he suspected of being false to the lustration court for evaluation. He could not proceed with court actions against a further 588 where he had justified suspicions on formal grounds that they were false but the only evidence that he had was a personal (and not an operational) file. This meant that 80% of those whom he suspected of submitting false declarations evaded responsibility, a group that included: 47 parliamentary deputies; 43 representatives of the media; 16 ministers and deputy ministers; 12 provincial governors and deputy governors; and two employees of the Presidential Chancellery. According to the justificatory statement, ‘one can assume that these people received prior warning that the relevant documents had been destroyed’ (Sejm RP 2006b: 36).¹⁰

Moreover, the establishment of IPN itself created a greater appetite for further revelation. It did so by throwing into sharp focus frustrations about the limitations and contradictions of how the current provisions were working, highlighted by the release of the ‘Wildstein list’. As pro-lustration commentator Tomasz Wiścicki (2005) put it: ‘Supporters of the publication the inventory of (the IPN) archives see this (the Wildstein list) as a symbol around which those who support opening up the communist security service files can coalesce.’ Similarly, as PiS Deputy Girzyński put it speaking in the March 2006 debate on the new lustration law: ‘(I)n spite of the enormous restrictions, the Institute of National Remembrance started to function, historians - especially those from the Institute, which had greater access to these files - started to write books, write articles, which unveiled the reality of communist Poland. Thanks to this, things are now coming into the open which unveil the truth about what happened, (and) also unveil the truth about (what) this anti-lustration front (represents).’ Referring to Wildstein’s list specifically, Girzyński argued that the journalist ‘undertook a certain act of civic bravery providing access to the wider public to the contents of the IPN materials, a list of the names of those people who were contained in the IPN materials, which led to a situation where even a Sejm dominated by the left had to add certain resources to the IPN to finally begin the process of unveiling the truth’. Moreover, thanks to being given access to the files former opposition activists ‘were (now) able...thanks to their contents...to un-mask the people who had informed upon them. All of this, maybe a bit against the intentions of those who passed the legislation, reveals the truth about these times’ (Sejm RP 2006a: 145).

Lustration and democratisation

Calls for a more radical lustration and file access law also became bundled up with broader critiques, and an ongoing process to improve the quality, of post-communist democratisation. An important justification for pushing forward with it was the idea of lustration as a key element of a policy package to renew and cleanse politics and public life. For example, Wildstein (2005) argued that: ‘The Third Republic was constructed on (the basis of) a fundamental inequality. A democratic state constructs the basic equality of citizens on the basis of equal access to information. Citizens have the right to know the past of those who want to represent them and have a right to know about the activities which were undertaken against them by the totalitarian regime. They have a right, and even an obligation, to know their recent past which, in large part, is contained in the secret documents of the PRL secret services’. Pro-lustration academic Barbara Fedyszak-Radziejewska (2005) also said that: ‘I

¹⁰ For more on this, see: Kaczyński (2006c) and Nizieński (2006).

regard lustration as an important instrument of democracy, understood as something more than just putting a voting card into a ballot box once every four years. The true sense of democracy exists in the possibility of making a choice - if we don't know who to choose between, then that choice is an illusion'. Fedyszak-Radziejewska also defended the release of the 'Wildstein list' on the grounds that, 'by speeding up the lustration process, Wildstein has strengthened the democratic system in the Third Republic'.

Speaking in the March 2006 debate on the new lustration law, PiS spokesman Mularczyk argued that: 'This draft fully realises the principle that the Polish Republic is a democratic state ruled by law that realises the principle of social justice' (Sejm RP 2006a: 137). PiS deputy Girzyński argued that 'in 1989 when we began systemic changes and (a process of) transformation, one really serious thing was neglected, which today has repercussions in our public life, the neglect associated with the transparency of the Security Service archives, with questions of lustration' (Sejm RP 2006a: 143). Marek Suski, another PiS Deputy, also argued that, 'the question of opening up the SB and other communist state service archives now in this parliament is one more attempt to bring Poland in line with normality, with a democratic, sovereign and, what is more, just state. Because the law emerges from a system of values and without a just state you cannot talk about full democracy and sovereignty. The history of the last few years shows that although Poland is a sovereign and democratic state it is, at the same time, deeply unjust. This is undoubtedly a shameful, still untreated boil from the times of the (communist) Polish People's Republic' (Sejm RP 2006a: 137).

Closely linked to this notion of lustration as an element of democratisation and the cleansing of politics and public life, was the idea that public positions should be held by those who had behaved honourably. For example, speaking in the March 2006 debate Mularczyk said that the proposed certificates that individuals would have to submit under the new law outlining the nature of their collaboration 'will have a significant impact upon the evaluation of that person's moral qualifications that are essential for fulfilling public functions' (Sejm RP 2006a: 138). Similarly, PO parliamentary caucus leader Jan Rokita argued that, 'public figures who are in professions or functions where a certain public trust and credibility is required; these should be treated exactly the same by the lustration law...(A)ll those who perform public functions, functions based on trust - and who, in connection with that, in a democratic state should have fully open, and not hidden, biographies - all of these should be obliged to submit a lustration declaration' (Sejm RP: 2006a: 139). Rokita argued that by ensuring that 'politicians cannot hide their biographies', the new lustration law would 'guarantee the decency of politics and public life' (Sejm RP 2006a: 142).

Greater openness and transparency

A key specific benefit of pushing ahead with a more radical lustration and file access law, linked to these broader concerns about the need for more far-reaching post-communist democratisation, was felt to be that it responded to the need for greater openness and transparency in public life. In particular, it would satisfy the public's 'right to know' the backgrounds of its public officials and authority figures who occupied positions of public trust. For example, speaking during the 2005 parliamentary election campaign, PO prime ministerial candidate Jan Rokita argued that 'absolute transparency' and 'openness of politicians biographies' was a 'fundamental aspect of (an honest) state'. Rokita said that, '(a)s long as the biography of even one politician is hidden in some secret archive and cellar, then you don't have an honest state' (Gazeta.pl 2005).

Similarly, introducing the draft law in the March 2006 parliamentary debate, Mularczyk said that it was underpinned mainly by the idea of ‘openness and transparency of public life’ and that its main purpose was to ‘reveal the past of those people fulfilling public functions’ (Sejm RP 2006a: 136). Speaking in the same debate in his capacity as PO parliamentary caucus leader, Rokita said that ‘it is high time to finish with the secrets, pretend-secrets, pseudo-secrets, gossip and tittle-tattle that have accompanied the lustration procedure in the recent years’ and that the way to tackle these various problems was ‘openness, only openness’ (Sejm RP 2006a: 139). PiS Deputy Suski also argued that: ‘The efforts of Polish society for openness, (and to) reveal the agents of the Polish People’s Republic are a fight for justice’. This, he said, was ‘the key to constructing a justice-based state - (and in determining) if Poland is honest, or (if Poles are being) lied to’ (Sejm RP 2006a: 158).

Speaking in the July 2006 debate on the draft law, PiS Deputy Girzyński said that the new legislation, ‘introduces a...completely new principle for...lustration’. He continued: ‘We have not passed a lustration law, we have passed...a law for revealing information contained in the documents of the communist state security service organs’ (Sejm RP 2006c: 295). Indeed, Girzyński argued that: ‘this law ends the lustration process. We are not passing new principles for lustration. We are approving the revelation of all of these materials. We want to finally end the game of files. Every public person will have to reveal their file’ (Gazeta.pl 2006). Speaking in the same debate, PO spokesman Sebastian Karpiniuk also argued that thanks to the ‘full openness’ of the archives which the new law would facilitate, Poles would ‘finally be able differentiate victims from executioners, decent people from informers or apparatchiks of the Polish People’s Republic’s security service apparatus’, thereby ‘guaranteeing decency in politics and public life’ (Sejm RP 2006c: 296).

This need for openness was justified on the grounds that the Polish public had a ‘right to know’ the background of its public representatives and authority figures. Wildstein (2005) argued that the Polish Third Republic ‘was constructed on a fundamental inequality’, namely that: ‘(a) democratic state builds the basic equality of citizens on the basis of equal access to information. Citizens have the right to know the past of those who want to represent it and have a right to know about the activities which were undertaken against it by the totalitarian regime. They have a right, and even an obligation, to know their contemporary past, which, in large part, is contained in the secret documents of the PRL (Polish People’s Republic) secret services’. Similarly, speaking in the July 2006 debate on the new law, Karpiniuk argued that: ‘The time has finally come...for a reckoning with the past (when) Poles finally have the right to know both their executioners as well as the functionaries representing the repressive apparatus of the Polish communist republic. Poles finally have a right to see who imprisoned them and who was imprisoned. They finally have a right to know who collaborated and by what methods they were recruited to collaborate’ (Sejm RP 2006c: 296).

Greater openness was also justified on the grounds that it would put an end to informal, so-called ‘wild’ lustration, taking smears and the danger of blackmail based on the documents located in the communist security service archives out of politics. Explaining why he felt that openness of the files was so important, during the 2005 election campaign PO prime ministerial candidate Rokita said that he could not imagine that a government could be effective ‘in conditions where every week some group of functionaries, politicians, investigative journalists or provocateurs removed consecutive secret materials on anyone,

whether it was a politician from the governing camp or an opposition politician.’ ‘This,’ he said, was ‘a situation in which governing is absolutely impossible’ (Gazeta.pl 2005).

Similarly, speaking in the July 2006 debate, Girzyński said that: ‘We want to finally end the situation which has meant that up until now you could play with the files, that you could take advantage of leaking information against people in order to ruin their political careers, or ruin them in every other area of public life in which they function’ (Sejm RP 2006c: 295). Karpiniuk also said that, ‘only full openness of the archives...will lead to a situation in which no person performing a public role or fulfilling an occupation of public trust can be blackmailed by so-called smears (‘haki’) in the files...the more openness, the fewer half-truths and understatements’ (Sejm RP 2006c: 296). On another occasion, Karpiniuk drew on his experience as a local councillor where he said that he had often wondered if some of the decisions taken in his town were due to blackmail based on the manipulation of secret knowledge contained in the communist security service files (Smoleński 2006).

Communist security service links with post-communist elites

Another recurring theme that ran through calls for more radical lustration and files access laws was the idea that these processes were required to end the entanglement of the communist security services with post-communist economic, political and cultural elites. It was widely felt that - through their connections with the world of business and politics which stemmed from (often corrupt) communist-era networks - many former communist security service functionaries and other officials linked to the previous regime enjoyed privileged positions in the Polish state. These discourses often included explicit references to the various scandals that were linked to the processes of privatisation, awarding of contracts, and interference with the legislative process that emerged in Poland at the beginning of the 2000s. They were felt to shed light on the ability of networks linked to former communist service functionaries to exercise influence in various formal and informal power structures. For example, Wildstein (2005) argued that the work of the parliamentary investigative commission into the so-called ‘Orlen affair’ showed that ‘communist security service networks are still alive’ and this ‘game of files’ was possible ‘precisely because this knowledge is (only) available to (the) chosen ones, and this situation is optimal for former functionaries (including those in Russian intelligence) who have this knowledge.’

Defending Wildstein’s actions in releasing his infamous list another pro-lustration commentator Piotr Skwieciński (2005) argued that, ‘various structures of a business-financial character have an “SB” (and “military”) provenance and, in addition to former communist security service functionaries, their membership also includes former (security service) collaborators. These structures carry out an active economic, financial and political game, and secret collaborators participate in this game’. He described this ‘corrupt network’ as ‘the core of the real social system of the Third Republic’ which the ‘post-UB (Urząd Bezpieczeństwa, the pre-1956 communist security services) mafia’ was committed to defending against attempts by the then-opposition to try and break up. Defending the importance of more radical truth revelation, Skwieciński argued that ‘the possible revelation of the existence of agent entanglements in the media and business communities would be a change whose importance it is difficult to overestimate....This would allow the discovery of the prior sources of part of the existing financial and financial-mafia construct. And also one of the sources of the support that the oligarchic system still enjoys in part of the media’. He defended Wildstein’s actions as ‘acting in a state of higher necessity’ as ‘the revelation of at

least part of the post-UB entanglements’ because it ‘increased the chances of breaking up that (Third Republic network) system’.

Two pro-lustration sociologists, Sojak and Zybertowicz (2005), also argued that lustration was ‘the one procedure thanks to which we can get to know important mechanisms of systemic transformation. The mechanisms that are responsible for the chronic illness of the Third Republic’. Again, linking the need for lustration with recent scandals they asked: ‘Is it possible (after the Rywin affair) to write about the functioning of the media without taking into account the behind-the-scenes dimensions? Is it possible (from the time of the Orlen and PZU¹¹ commissions) to analyse the improprieties of small and large-scale privatisation without analysing the (communist security service) agent dimension?’ Arguing that the Polish state could not afford to ignore the way that the hidden, behind-the-scenes aspect of the country’s systemic transformation had played out, they claimed that ‘(w)ithout lustration we cannot correctly diagnose Polish problems. Without staring into the eyes of communist evil we cannot be in a position to deal with today’s weaknesses.’

Although perhaps not as often as one might have expected, the need for greater lustration and file access was sometimes linked specifically with the radical ‘Fourth Republic’ project which was, as noted above, was based on a harsh critique of post-1989 Poland as corrupt and requiring far-reaching moral and political renewal, with the broadening of the scope of lustration coming to be seen in many people’s minds as a key element of such a renewal. Specifically, as noted above, the notion that political life in the post-communist period was manipulated by the former (but still influential) communist-era security services prompted many Poles to question the virtues of the so-called ‘thick line’ approach towards transitional justice. In debates on the new lustration and file access law, these were reflected in calls for the dis-entanglement of the ruling elite from such secret networks. For example, speaking in the March 2006 debate in support of the proposed new lustration law, PiS Deputy Suski argued that: ‘Knowledge about the people who make up the elite, who was on the side of darkness and who was on the side of light, is the dawn of the Fourth, just Republic. This dawn, this (new) beginning, (is what) Law and Justice is seeking’ (Sejm RP 2006b: 158). Similarly, Stanisław Pięta, another PiS Deputy, argued that ‘without truth and justice there is no honest Poland. Without these values there will be no Fourth Republic’ (Sejm RP 2006b: 163).

Conclusion

Poland is an archetypal case of late and recurring lustration. Although it began with a communist-forgiving approach, exemplified by the so-called ‘thick line’ policy that avoided radical transitional justice measures, the lustration and file access issue retained a remarkable ability to endure and remained on the political agenda when one might have expected it to fade from public memory. Subsequent years were punctuated by various attempts to renew efforts at securing transitional justice with belated lustration and file access laws being adopted and, after some delay, finally becoming operational at the end of the 1990s. Attempts were then made to extend these truth revelation processes in the mid-2000s culminating in

¹¹ PZU (Powszechny Zakład Ubezpieczeń) was a monopolist communist-era state insurance agency which was later converted into a state-owned company and established a number of subsidiaries. These included PZU Życie, which appeared to be particularly active in diverting large sums of public money into private investments, the mass media and political parties. The company seemed to have corrupt connections to many important political and business figures and linked with former and current security service officers. See: Los (2005).

amendments to radically expand the scope of these the lustration and file access laws being approved (although not fully enacted) in 2006 and 2007. This significant delay - and, more broadly, the recurrence of the issue in political debates - is one of the most striking features of Polish lustration and thus provides an excellent basis for developing frameworks to explain the phenomenon of 'late' lustration.

This article shows that in the Polish case the impetus for revising the lustration law in the mid-to-late 2000s came in part from the fact that the truth revelation procedures established at the end of the 1990s were not felt to be working well, while the establishment of IPN itself created a greater appetite for further revelation. However, in addition to this lustration also became bundled up with broader discourses on post-communist democratisation, specifically the radical 'Fourth Republic' critique of post-1989 Poland as corrupt and requiring far-reaching political and moral renewal, and other developments in post-communist politics which one needs to understand in order to make sense of the issue. The article finds that the idea of pushing forward with more radical lustration was linked to broader concerns about the need to deepen and improve the quality of post-communist democracy, particularly a perceived need to tackle corruption and satisfy the public's right to information about the backgrounds of its public officials and authority figures. This was often bound up with the notion that officials linked to the former regime had taken advantage of communist-era networks to turn their old political power into economic influence, which prompted many citizens and political elites to question the virtues of the 'thick line' approach.

The article, therefore, suggests that so-called 'politics of the present' approach to explaining the recurrence of lustration - positing the notion that it became instrumentalised as a political tool in post-communist power struggles - needs to be modified. It fails to grasp fully the extent to which the motives of those pushing for lustration and transitional justice were, in part at least, programmatically and ideologically driven and did not appear to be motivated purely and simply by partisan interests and instrumental imperatives to gain strategic advantages over political competitors. In this sense, the analysis presented here supports the arguments of authors such as Horne (2009), who see the emergence of late lustration as being tied to efforts to improve the quality of post-communist democracy. This directs our attention to the important point that in many post-communist states, such as Poland, examining discussions about lustration separately from other political developments under-estimates the extent to which these issues often became entwined with other, broader democratisation discourses. These related as much to the relationship between transitional justice and the perceived failures of post-communist democratisation as they did to questions of coming to terms with the communist past, with lustration posited as a project designed to implement democratic renewal and enhance the quality of democracy.

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