

The Power of Secret Information.
Transitional Justice After Communism
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PREVIEW

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The Power of Secret Information: Transitional Justice After Communism

Monika Nalepa

Abstract

The subject of the dissertation is lustration and opening archives of the former secret police in Post-Communist Europe. The first part of the dissertation deals with explaining the puzzling behavior of successors of communist parties in Poland and Hungary. Although they earlier insisted on immunity from transitional justice as the price of liberalization, once they are in a position to do so, they implement it themselves. The explanation offered is that when ex-communists anticipate losing power to anti-communist forces, they try to appease a pivotal median party in order to prevent harsher legislation favored by hard-line anti-communists. The post-communists are behaving rationally, as they are initiating less punitive versions of transitional justice than the anti-communists would. The second part of the dissertation asks which truth revelation procedures are more successful in promoting reconciliation in post-authoritarian societies. It distinguishes between two ways of designing such institutions: (1) by “exploiting incentives,” i.e., providing ex-collaborators with incentives for revealing themselves and (2) by “exploiting evidence.” Evidence-based Truth Revelation procedures (ETRs) start with searching for evidence in the authoritarian regime's secret police files which implicates a politician. When evidence is found, the politician is held accountable for his involvement as a secret informer. Incentives-based Truth Revelation Procedures (ITRs) operate in the reverse order of the traditional court proceedings. They induce ex-collaborators to reveal themselves by offering in exchange the ability to continue their political careers.

The two types of institutions are compared with respect to two criteria which are believed to facilitate reconciliation: reaching all ex-collaborators, and protecting the innocent from false accusations. Results show that it is possible to design ITRs which promote reconciliation better than ETRs by exploiting the uncertainty about the extent to which evidence of past collaboration with the authoritarian secret police was preserved. Game theory is used to derive hypotheses. Elite interviews as well as original survey data from Hungary, Poland, and the Czech Republic are used for empirical testing.

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All problems and mistakes are my own responsibility.

Chapter 1

Introduction: The Power of Secret Information

“The whole institution [of the secret political police] was set up to distort information... they prepared their materials looking through a keyhole. But when you look through a keyhole, you see it! Do you know how a secret police officer would describe our meeting here? Somewhere along the lines: “A representative of a capitalist institution of education from an imperialist country met with a conspirator and editor of illegal newspaper to criticize the secret operations of executive organs of the state in the People’s Republic of Poland and our socialist allies” One has to be very cautious when reading these documents” (interview with author: Michnik 2004)¹

Who Cares for Transitional justice?

Transitional justice denotes legal institutions adopted after the successful transition to democracy that are designed for dealing with members and collaborators of the former authoritarian regime and for managing evidence of their activities. Some former dissidents, such as Adam Michnik, dismiss the very idea of addressing the past and recommend sealing the archives documenting the ancien régime’s human rights violations.² Others argue that citizens of democratizing countries should not entrust public responsibilities to persons who at one point or another collaborated with the former authoritarian regime. Those who take this view believe this denial of responsibility should extend to both open collaborators, such as communist party members and employees of the enforcement apparatus, and secret collaborators, such as in undercover informers and agents of the political police. Some proponents of transitional justice will go as far as to demand that post-transition governments not only publish information about who supported the former regime, but also that it restricts proven collaborators’ access to office (Wildstein 2001, interviews with author: Wildstein,

¹ Adam Michnik is a former dissident and Editor in Chief of *Gazeta Wyborcza*, Poland’s most influential daily. All interviews with elites are cited in the following format: (interview/s with author: *Lastname* 2004) unless the name of the interviewee is obvious. Date and place of the interview are given in the list of cited works at the end of the dissertation.

² Two memorable quotes come from Michnik: “If I didn’t tell [General Czeslaw] Kiszcak at the Roundtable that he would be judged if I came to power, it would be deeply wrong of me to demand it now” (Halmai and Scheppelle 1997, quoted after Elster 2004, p. 193) and “I was not such a coward back then, to be so courageous now [as to seek the prosecution of ex-communists].” The second justification echoed repeatedly in conversations with Czech “celebrity” dissidents along with their own reasons for skepticism towards transitional justice (interviews with author: Kavan, Uhl, and Zak 2004).

Sustrova 2004). These demands often enter into conflict with norms of rule of law, as it is defined in constitutional democracies. Since East and Central European democracies are currently aspiring to become genuine constitutional democracies, the ways in which they go about dealing with the perpetrators and supporters of their former communist regimes have come under the careful scrutiny of legal practitioners and political theorists alike (Ackerman 1992, Holmes 1992, Rzeplinski 1994, Schwartz 1992, Human Rights Watch 1991).

At the same time, there is also a growing literature on transitional justice that associates successful democratization with the reconciliation of resisters of the former authoritarian regime with its former supporters, where reconciliation is understood as the capacity for sharing common democratic institutions (Gibson 2004, Howard – Hassmann 2004). An alienated society, divided into groups and classes suspicious of one another, is not that great a problem for an authoritarian regime that does not legitimize itself through fair elections. In contrast, democratic institutions presuppose a consensus about obeying common “rules of the game” and rely on a culture of trust and reciprocity (North 1990, Knight 1992, Putnam 1994). For democratic consolidation it is necessary that citizens respect and participate in shared democratic institutions. For instance, they should trust courts as the final arbiters in resolving conflicts between one another and respect court decisions even if they disagree with them. They should also recognize results of elections, even if their favorite candidate loses (Przeworski 1992). Many proponents of transitional justice subscribe to the view that its goal is forward-looking reconciliation rather than backward-looking revenge. But when asked about the conditions for reconciliation in post-communist Poland, a journalist in her thirties gave me the following answer:

In a strongly alcoholic situation with lots and lots of vodka, perhaps I could picture myself reconciled with a former supporter of the communist regime. But normally, never! But jokes aside, asking about reconciliation in Poland is like asking about the AC in a car that has no wheels with the car dealer trying to convince you that AC is the car's most important feature! (interview with author: Czarnecka 2004)

For many former “rank and file” oppositionists in Eastern Europe, transitional justice, with its reconciliation promoting ambitions, is like the “morning after” effect

following the carnival of a revolution.³ Who then cares for transitional justice? I argue in this dissertation that politicians do. They care for it a great deal because it affects their career prospects.

Since 1997, all candidates for political office in Poland have had to deny or declare whether they had worked for or consciously collaborated with the communist secret police. Acknowledgments of collaboration are published. However, ex-collaborators are not banned from holding any positions. The voters themselves or an appropriate agency, for positions allocated by nomination, decide whether the ex-collaborator in question can hold office despite his shameful past. Statements denying collaboration are handed over to a special prosecutor's office.⁴ The prosecutor compares the declaration with evidence from the archives. When he finds an understatement of collaboration, the politician is accused of a "lustration lie" and tried before a special division of the Appellate Court. If the court finds him guilty of a lustration lie, he is ineligible for any public office for a period of 10 years (Dziennik Ustaw 2002).

Institutions of Transitional Justice

The institutions of transitional justice that I will discuss in this dissertation are *truth commissions*, *lustration*, known also as screening or vetting, and *opening files* of the former secret political police, known also as declassification. These institutions of transitional justice will be jointly referred to as truth revelation procedures. Truth commissions are temporary bodies of inquiry, appointed to investigate a pattern of human rights abuses committed by an authoritarian regime. The work of truth commissions culminates with the publication of a report documenting human rights violations of the authoritarian regime. Lustration laws are designed for disclosing links of politicians or persons holding positions of public responsibility to the secret political police. They do not impose criminal sanctions upon persons whose past has been discovered, but may undermine their political careers, either by revealing compromising information or by

³ *Carnival of a Revolution* is the title of a historical narrative of the transitions in Central Europe by Kenney (2003)

⁴ Prior to June 1998 this function was supposed to be performed by a lustration court, whose 21 members were to be elected by regional councils of the judiciary. Due to widespread opposition toward lustration amongst the Polish judiciary (the first task of the lustration court was to lustrate itself) in some of the councils no one volunteered to run in the elections (Polish News Bulletin August 27, 1997).

explicitly banning them from holding office. Lustration should be distinguished from decommunization, debaathification, or denazification, which restricts access to office for persons occupying leading positions in the former Communist, Baathist, or Nazi party, respectively. The difference is an important one. Whereas everyone knows who the leaders of the authoritarian party were, the identity of secret police informers is unknown. The design of decommunization laws is limited to determining how restrictive the career opportunities of former communists should be. The design of truth revelation procedures involves decisions about how to manage the unequal distribution of information about who was and was not a collaborator of the ancien régime's enforcement apparatus.

Laws regulating the opening of secret files of the former secret police are designed to enable victims, prosecutors, and researchers to learn about the activity of the ancien régime. Since the release of information contained in the secret files may interfere with the mechanism inducing former perpetrators and collaborators to deliver testimony about their past activity, it is necessary that the implementation of these laws be coordinated with lustration laws or with the operation of truth commissions.

Truth revelation procedures such as lustration laws are particularly interesting to political scientists, because they exploit the informational resources of the former regime and thus, have a potential for punishing certain political actors, while rewarding others. Some parties have more ex-collaborators in their ranks than others. They will certainly benefit from having a lustration law in place before the elections. Therefore certain transitional justice bills, such as lustration or decommunization, can be introduced strategically to eliminate political competitors from the electoral race.⁵

In general, truth revelation procedures deal with uncovering what was kept secret under authoritarian rule. Authoritarian regimes, especially long tenured ones like those in Eastern and Central Europe, did not revert to brute force in combating the opposition. Rather than engaging in costly violence against the organized resistance, they would direct their work at infiltrating opposition organizations with a network of undercover

⁵ For instance, in the Czech Republic decommunization was proposed to prevent successors of communist parties from fielding candidates. In the version of the law that gained approval of all veto players and was implemented, the communists were allowed to run in elections, but if they won they could not hold any positions in the Presidium or as committee chairs, etc. This law remained unchanged until the most recent elections in 2002, when the Communist Party of Bohemia and Moravia won so many seats that its presence in the legislature could no longer be ignored.

agents, known also as secret collaborators. The monitoring of the opposition's plans long in advance before their implementation allowed the police to contain dissidence within limits without resorting to violence. The extensive network of secret collaborators consisted of regular citizens who would denounce in special reports their co-workers, neighbors, and sometimes even family and friends if they had been engaged in activity forbidden by the autocrats. Consider, for example, the East German secret political police, STASI, which employed 100,000 full time officers, who worked with a network of 109,000 secret collaborators. After the fall of the Berlin wall, the reports written by these secret collaborators turned out to be so numerous that if stood upright one next to another they would stretch for 125 miles (Welsh 1996). Opening archives with materials produced by the secret political police apparatuses to researchers, victims, and prosecutors requires special agencies prepared for dealing with this extensive archival material. But decisions about how to deal with this compromising information are of critical importance both to supporters and to adversaries of the past regime.

Although being an informer casts a shadow on anybody, it is especially damaging to the credentials of politicians. Moreover, the knowledge of the contents of the files and of the past is not distributed evenly across political actors. Whether a given politician worked as a collaborator of the secret police is usually his private information. On the other hand, the agency looking over the archives of the secret political police knows the contents of the files. This informational structure presents both a challenge and an opportunity: Can one design procedures to make these differences advance the goals of transitional justice, such as long term reconciliation between citizens of different backgrounds and, ultimately, the consolidation of democracy? At the same time, if a party in power knows that its competitor has more ex-collaborators among its ranks, it might implement a lustration law strategically prior to the elections to weaken the opponent. Thus, transitional justice may be used not only to bring about reconciliation between former supporters and resisters of the regime, but also for the purpose of eliminating electoral competition.

Contrary to existing trends in the transitional justice literature, I believe that the important question is not whether to engage in transitional justice at all. Rather, how do the competing demands for implementing or avoiding transitional justice get played out

to create specific policy outcomes? Irrespective of whether we believe that transitional justice is normatively desirable, post-transitional societies have gone about dealing with their respective pasts in different and often extremely interesting ways.

Explaining and Designing Transitional Justice: The Classical Approach.

As early as in 1986 Schmitter and O'Donnell wrote that pacted transitions are made possible by promising the outgoing autocrats immunity from trials and prosecutions in exchange for handing down power to a democratically elected government:

The more brutal, inhumane, and extensive were the repressive actions, the more their actual perpetrators – the institutions involved and those persons who collaborated in them and supported them – feel threatened and will tend to form a bloc opposing any transition. Where they cannot prevent the transition, they will strive to obtain iron-clad guarantees that under no circumstances will “the past be unearthed.” (Schmitter and O'Donnell 1986 p. 29)

This argument has been quoted repeatedly as the reason why autocrats step down peacefully. But how can former dissidents negotiating a transition commit to refraining from transitional justice given that once negotiations are concluded, the autocrats step down, turn over power and are left without any means of protecting themselves from retribution? Although “successful pacts create a focal solution that resolves the coordination dilemmas confronting elites and citizens (...) to succeed, a pact must be self-enforcing” (Weingast 1997).⁶ If transitional justice occurs at all and is observed by autocrats around the world, why do we ever observe other autocrats peacefully stepping down when they still have a chance to hold on to power? Second, suppose that O'Donnell and Schmitter are correct that outgoing autocrats would never want to look back at the crimes of the ancien régime. How does one then explain the puzzling behavior of Polish and Hungarian successors of the authoritarian communist parties, who after reforming their party organization, winning democratic elections and gaining control over the legislative process, adopted transitional justice legislation themselves? This behavior

⁶ Some scholars argue that international actors can offer their reputation and powers to act as guarantors of agreements between outgoing autocrats and the former opposition. Whereas the domestic opposition risks little loss of face by reneging on a promise made to the autocrats, international actors care more about their reputation. Suppose that in one country during negotiations leading to the transition the opposition promises that it will not engage in transitional justice against the former autocrats and then it reneges on these promises. The opposition loses little, since the probability of it being involved in another transition is almost zero. If the international community does not react, it affects the credibility of future peaceful transitions that might have otherwise taken place in other countries.

is puzzling because such procedures hurt the post-communists' electoral prospects. Finally, given that transitional justice procedures are adopted amidst strategic maneuvers, how can these outcomes of electoral manipulation lead to reconciliation? And what must truth revelation procedures do in order to bring about reconciliation? Must they sanction all the guilty or protect the innocent? Can they do both? How can these procedures work at all if evidence of autocrats' wrongdoings and their collaborators' undercover work is unreliable?

In this dissertation I raise three arguments. First, the limitations placed transitional justice procedures cannot last any longer than the transition negotiations themselves. Second, electoral incentives and limited information impose serious constraints upon the possibility of designing efficient transitional justice procedures.⁷ The final claim is normative: For the purpose of designing efficient transitional justice institutions, one could exploit the informational deficits mentioned above and incentives politicians have to preserve their careers. Politicians are not only the designers but also the subjects of transitional justice. For instance, lustration - the most popular transitional justice law in post-communist Europe - is designed to screen politicians, justices and candidates for government office for past collaboration with the ancien régime's secret police. Even if transitional justice outcomes are always distorted by strategic concerns, knowing an optimal procedure can be useful as a standard of comparison that allows us to make estimates of the distortion.

In the next section I discuss the details of each chapter of this dissertation. Next, I justify my choice of method – comparative institutionalism.

A Roadmap of the Dissertation

The next chapter presents a brief history of truth revelation procedures in each of the three countries. Chapter 3 deals with the first of a series of transitional justice puzzles. During the negotiations preceding transition to democracy, outgoing autocrats expect that former dissidents will demand some form of redemption for their sufferings. But in that case, why do we observe regime transitions at all? Why would the autocrats ever step down? Arguments about the impossibility of making such incredible promises have long

⁷ "Efficient" is understood as "bringing about reconciliation," a subject I take up in chapter 6.

been present in the literature on credible commitments, which developed into the International Relations literature on “relative gains.” In a typical bargaining game, the outcome in which a promise (of refraining from trials and purges) is made, the service performed (autocrats step down) and the promise is kept (no trials or purges) Pareto dominates the subgame perfect equilibrium (no transition) because the party that made the promise is better off by reneging after the service is performed. In the aftermath of pacts regulating the transition to democracy three outcomes are possible: (1) Autocrats refrain from stepping down; (2) Autocrats step down and don't suffer transitional justice (3) Autocrats step down and suffer transitional justice. The fact that outcomes (2) and (3) occur presents a serious challenge to the literature on credible commitments. In Chapter 3, I account for this anomaly using the same game theoretic framework. I present a game of incomplete information such that in the unique subgame perfect equilibrium, for different parameter values, all three possibilities can happen. The critical parameters represent characteristics of electoral institutions, the structure of the pre-transition opposition and the post-transition electorate. I formulate hypotheses that are tested with data from cases that underwent pacted transitions in the form of roundtable negotiations: Poland, Hungary and the Czech Republic. Data come from interviews with political elites from former communist parties (*the post-communists*) and two different types of opposition parties – those willing to negotiate the transition (*the liberal opposition*) and those opposing it (*the anti-communists*). One of the surprising findings of this chapter is that the more autocrats have been successful in infiltrating the opposition with collaborators, the more likely they are to democratize. Intuitively, they have less to fear that the opposition will implement transitional justice legislation when everyone knows it might implicate some former dissidents.

Chapter 4 returns to the classical claim of Schmitter and O'Donnell -that outgoing autocrats during pacted transitions insist on immunity from trials and purges before agreeing to open and democratize. A student of the literature on comparative democratization is tempted to extrapolate the resistance of autocrats to transitional justice to their successor parties – in the case of Eastern Europe – to the post-communists. I discover empirical behavior that invalidates such extrapolations. As it turns out, in Poland and Hungary the successors of communist parties, instead of avoiding retroactive

legislation that penalizes the authoritarian wrong-doers, have been proposing and even implementing such measures themselves. A considerable body of literature finds the come-back of post-communist parties in Eastern Europe surprising and makes attempts to explain it (Ishiyama 1999, Grzymala-Busse 2002, Bozoki 2002, Druckman and Roberts 2004). It is indeed surprising that the successors of parties that were responsible for decades of authoritarian rule and were extremely unpopular in 1989 would be winning elections only a couple of years later. But even more surprising than their unexpected revivals is that they have adopted policies that scholars of comparative democratization and transitology have considered harmful to them - so harmful, that they predicted that fear of transitional justice might even prevent transitions from occurring.

The explanation I offer starts with an observation that transitional justice gets adopted prior to elections. Elections in post-communist Europe are very frequently accompanied by turnovers in power. If the post-communists do not adopt any transitional justice bill, then as a result of the elections, they may lose proposal power to anti-communist oriented forces. In such a case they risk suffering from a very harsh bill, because the median of the legislature may be ready to accept any transitional justice bill rather than accept no bill at all. Post-communists can prevent this harsh treatment by implementing a mild bill themselves. If this bill is sufficiently punitive to appease the new parliamentary median, it will stay when they lose power.

I also find that the post-communist transitional justice pre-emptive strike may not be sufficient to prevent a harsh bill. This is because the post-communists can use only *ex-ante* expectations about the distribution of power in the future legislature when choosing their strategy. The actual outcome of the elections may not stand up to these expectations. The results are illustrated with case studies from Poland and Hungary. Chapter 4 concludes the explanatory chapters of the dissertation. The remainder of the dissertation is devoted to designing truth revelation procedures.

Supposing that all above strategic concerns do not arise, how would one go about designing ideal truth revelation procedures; that is, procedures that most efficiently promote reconciliation? What are the criteria for a just transitional justice procedure? Chapter 5 presents an argument that norms of due process, such as non-retroactivity, avoiding collective responsibility and other procedural guarantees are not adequate for

evaluating truth reconciliation procedures. Principles of due process were designed for established democracies or constitutional monarchies, not for new democracies trying to come to terms with an authoritarian past. The goal of transitional justice is that citizens become reconciled to the extent that they can share common democratic institutions, so that democracy consolidates and becomes “the only game in town” (Linz and Stepan 1978). I argue and demonstrate that reaching all perpetrators and not accusing any of the innocent of collaboration - or in other words, avoiding the errors of false acquittal and false conviction - are more suitable criteria for evaluating transitional justice procedures.

In Chapter 6 I ask how is it possible to punish all guilty of authoritarian repression and other collaboration with the ancien régime when evidence is either incomplete or its authenticity is problematic? Outgoing autocrats, especially if they knew early enough that they were to abandon positions of control, had both the power and incentives to destroy and manipulate evidence of the crimes they authorized against former dissidents. Many scholars have condemned transitional justice wholesale because it fails the two normative goals of justice: avoiding errors of false conviction and false acquittal.⁸ I challenge this approach by proposing an alternative framework for studying lustration laws and truth commissions, one that distinguishes between incentives-based and evidence-based truth revelation procedures (ITRs and ETRs). ITRs create incentives for perpetrators to step forward and testify against themselves by rewarding the perpetrator or ex-collaborator with immunity from criminal charges, serious sentence reduction or, in the case of ex-collaborators, with the possibility to continue his career. ETR legislation does not provide such incentives and operates in a fashion similar to ordinary justice (Posner and Vermuele 2004). Using ITR procedures allows for the extraction of statements from those wrongdoers for whom evidence does not even exist. I use game-theoretic models to represent the mechanisms of ITRs and ETRs. Their performance with respect to avoiding false conviction and false acquittal is compared and I discover plausible conditions under which ITRs will perform considerably better than ETRs. The practical implication of this finding is that decision makers responsible for transitional justice who want to maximize the number of sanctioned perpetrators, while

⁸ Not implementing transitional justice is equivalent to maximizing the values of false acquittal, as none of the guilty will be punished.

keeping the abuse of innocent low, should choose incentives-based over evidence-based procedures. Three predictions about the operation of ITRs and ETRs are formulated. The critical parameters are the proportion of fabricated files (contributing to false accusations) and the proportion of destroyed files (contributing to false acquittals), as well as the number of collaborators or perpetrators of human rights violations in the ancien régime.

The final, chapter uses existing survey data as well as new survey data I have collected to explain the connection between truth procedures' capacity for reducing errors of false conviction and false acquittal and their contribution to reconciliation. Using new data from a survey of public opinion conducted in Hungary, Poland and the Czech Republic, I show how the public's sensitivity to errors of false acquittal and false conviction critically affects their ability to be reconciled. The policy implication of this research is that if the goal of policy makers is to achieve reconciliation, truth revelation procedures that minimize levels of false acquittal and false conviction should be adopted in democracies coming to terms with their past because sensitivity to errors of false conviction and false acquittal explains variability in demand for transitional justice better than threat perceptions of ideological extremists, political ideology, or one's past involvement in the democratic opposition. Evidence from surveys is aided with illustration from elite interviews carried out in Poland, Hungary and the Czech Republic by the author.

A Note on Methods: Institutional Analysis and Case Studies

The following chapters contribute to the comparative analysis of institutions in new democracies. The three countries that have been selected as case studies for this research diverge in their choices of managing the informational resources of the communist regime. I explore the institutional determinants of these choices. The way in which Hungary, Poland and the Czech Republic have gone about setting up their transitional justice institutions, has also had considerable impact on the development of democratic institutions in these countries.

First, consider the judiciary. transitional justice statutes that have been submitted for judicial review have given constitutional courts across Central Europe the opportunity to test their independence from other governmental branches and public opinion

(Schwartz 2001, interviews with author: Cepi, Mikule, Sajo, 2004). They also have provided high courts with the opportunity to signal to lawmakers how they will interpret norms of legal continuity, retroactive justice and due process (Wyrzykowski 2004, Ujazdowski 2004).⁹

Second, lustration laws can affect the stability of executives. Between 1992 and 1995 lustration scandals toppled two fragile cabinets in Poland. A 2002 article of a Budapest daily revealed that the new Prime Minister, Peter Medgyessy, had worked as an undercover agent for the military counterintelligence. Medgyessy and his ministers kept their posts only after agreeing to appoint an ad hoc parliamentary committee to search for traces of collaboration with the Hungarian secret police among all cabinet ministers between 1990 and 2002.

Furthermore, as argued above, transitional justice can also affect political outcomes indirectly, via lustration, by interfering with the way electoral laws allocate legislative seats. In 2000 two leading presidential candidates in Poland had lustration cases in court. If both had lost, their names would have been wiped off the ballot and the second runner up would have become the nation's president. In Albania, a transitional justice bill passed only three months before the elections resulted in a total of 94 candidates having their names wiped off the ballots, since they had been accused of collaboration with the secret political police. In Poland just before the end of 2004, the House speaker and leader of the largest House party was forced to resign his seat because the lustration court found him to be a lustration liar. The political crisis that has followed the court's verdict may prevent the social democratic parties from forming a pre-electoral coalition to compete in the 2005 elections.

The anticipation of electoral outcomes may influence the exact forms of transitional justice. Even post-communists, who are generally believed to be hurt by transitional justice, may preventively adopt mild forms of such bills just before elections if they fear these elections will bring into power hard-line anti-communists.

An institutional approach to the study of transitional justice is new to this field and very few data have been collected for the purpose of empirical testing. A notable

⁹ The role of high courts in settling outgoing autocrats' concerns about transitional justice is discussed in Chapter 3.

exception are the surveys conducted by James Gibson. In collecting my own data I have followed his example and focused on reconciliation, as the dependent variable. Instead of collecting data on a wide universe of countries which have undergone transitions to democracy, I focus on three countries. My surveys are therefore part of a case study approach. A distinctive advantage of taking a case study approach is the possibility of focusing on the mechanism by which the phenomenon of reconciliation is achieved:

Case studies enable researchers to discover enough about countries to distinguish idiosyncratic from general causes, to identify interactive and connected causes, and to understand how peoples' interpretations of events - the meaning that they have for people - affect their actions (Granato and Scioli 2004).

The study of each of the three countries I use here has two components - the qualitative and the quantitative. The qualitative approach is based on elite interviews and has been employed to reconstruct the beliefs and preferences of political actors modeled in the theory chapters. Between January and July of 2004, I conducted 109 elite interviews. I spoke with politicians at the national level of government - parliamentarians, ministers, justices, academics from various social science departments, and with leaders of politically active lobbies – in other words, elites who are the targets of lustration procedures. I also interviewed staff members in institutes specializing in processing documents of the former regime. The elite interview protocol included questions (1) about deals of refraining from transitional justice made at the Roundtable Negotiations, (2) on which political parties are believed to be most infiltrated by the secret police, and (3) to what extent politicians follow the preferences of the electorate in determining when and which transitional justice legislation gets passed. These data are used most systematically in Chapter 3, but evidence from elite interviews is cited throughout the dissertation. I also asked respondents about their experiences with passing and undergoing lustration about the size of the secret collaborator network and how reliable they believed the files to be. Some of the questions in elite interviews were designed to test whether in future research one could use the following variables as proxies for politicians' beliefs: the tenure of the authoritarian regime for the size of the collaborator network, the strength of the opposition for the extent of fabricated evidence, and the length of negotiations preceding the transition for the extent of destroyed evidence.

The quantitative analysis encompasses the analysis of original survey data (for assessing levels of reconciliation). The survey questionnaire was designed to query non-elite respondents about their political tolerance, threat perceptions of ideological extremists and sensitivity to false acquittal and false conviction errors. Questions about their demand for lustration and political affiliations were also put forward. This design intended to test for future research how feasible is the operationalization of reconciliation as demand for transitional justice.

Poland, Hungary, and the Czech Republic are critical for analyzing transitional justice in East Central Europe for the same reasons these countries are important for the systematic study of their anticommunist protests (Ekiert 1996) and their party states and their transitions (Grzymala Busse 2001). For one, there has been considerable diffusion of experiences in these three countries. In times preceding the transition, oppositionists in the Czech Republic learned from the experience of Hungarian insurgents how to avoid military confrontation with the regime. Following Budapest '56 and Prague '68, the Polish Martial Law regime could exploit the credibility of the threat of external intervention (by Soviet or Warsaw Pact armies). It also hired Hungarian experts to train the Polish military in successful de-mobilization tactics, while avoiding the reversal to re-Stalinization in the Czech style. Similarly with transitional justice: the ability of one state to hold its perpetrators accountable for past human rights violations affects what other states do with their own perpetrators. For instance, when Czechoslovakia and East Germany adopted legislation dealing with files of the secret political police in 1990, lustration laws became the subject of heated debates in Poland and Hungary. For the better or worse, Transitional justice has been diffusive, especially among the Visegrad countries, which had been closely observing each other's policies before, during and directly after the transition.

A Note on Terminology

Following the existing literature on democratization in East and Central Europe (Kitschelt, et al. 1999), I reserve the term "post-communist" for use in reference to countries to describe formerly communist countries that transitioned to democracy in

1989 -1990. “Post-communist” in reference to parties is used to describe successor communist parties’, that is, party organizations created on the basis of former communist parties so that these organizations could be competitive in democratic elections. Examples include Social Democracy of the Republic of Poland (SdRP) and the Hungarian Socialist Party (HSP). “Liberals” in reference to parties is used to describe parties created by those former dissidents who were willing to negotiate with the outgoing communists the conditions for transition of power. “Anti-communist” in reference to parties is used to describe parties created by those dissidents who were unwilling to pact with the communists. Finally, I use the term “communist” in reference to parties to describe the parties in power in East and Central Europe prior to the democratic transitions, even if the term “communist” was not included in their official name, as in the case of “Polish United Workers Party” or “Hungarian Socialist Workers’ Party.”

Chapter 2

Dealing with the Files in Post-communist Europe: Hungary, Poland, and the Czech Republic.

The historical narrative below offers some interpretation to events that I believe are most relevant for asking questions about who adopts transitional justice, as well as when and why it is adopted, and how these procedures can get designed in a way that ultimately leads to reconciliation. I also provide some historical background on the nature of the communist regimes themselves, including the ways they combated the democratic opposition. The processes preceding the transition are important for the hypotheses about how different transitional justice procedures contribute to reconciliation. I argue later in the dissertation that these factors can be operationalized as (1) the size and quality of the secret informer network; (2) the size and quality of the opposition; and (3) the length of negotiations and certainty of ultimate transition. But history could be relevant for the choice of transitional justice policies for two other reasons. First, the ways in which the authoritarian regimes dealt with outbreaks of popular resistance may determine the demand for transitional justice (Schmitter and O'Donnell 1986). Second, the way in which the authoritarian regimes dealt with the democratic opposition might influence which transitional justice policies new democratic policy-makers may wish to implement. Most of the literature on transitional justice in post-communist Europe focuses on the transitional justice legislation in force at the time of the author's writing (Welsh 1996, Huyse 1995, Walicki 1997). However, in order to explain the implementation of transitional justice procedures it is also important to account for unsuccessful attempts at passing transitional justice legislation. We must also take into account proposals drafted in committees that were rejected on the floor of parliament; statutes passed but then vetoed by the president or the upper chamber, or struck down by the Constitutional Court; and subsequent amendments to transitional justice bills.

Hungary

Upon entering the University of Economics in Budapest from the side of the Liberty Bridge (Szabotczaag) one is startled to see to the very left of the main gate an impressive statute of Karl Marx. But before one even remarks that apparently, in Hungary, the décor of institutions still lags behind social and political changes, at the other end of the Main Gate a large marble memorial plaque catches one's eye – this time it honors Imre Nagy, a hero of the Hungarian anti-communist uprising. Young Hungarians, in particular, will comment that this plaque serves as a good metaphor of Hungary's dealing with the past (interview with author: Kis 2004).

In Hungary, the communist regime lasted from 1948 to 1989. The two years of semi-democracy between 1946 and 1948 observed a tightening of the Soviet grip of control over all institutions of the new state.¹ The Stalinist rule of Matyas Rakosi was relaxed in late 1953, leading to the prime ministership of Imre Nagy. Nagy represented a promise of de-Stalinization, liberalization and reform. But he failed to build a political base within the communist party and was ousted from his post and the party in March 1955. Rakosi was not able to purge the party of Nagy supporters and was replaced by Erno Gero.² This shift only deepened the crisis and encouraged further criticism of party politics, culminating in the 1956 uprising of the Hungarian people against the Communist state. The Hungarian army, which had been completely re-organized following World War II, was too weak to take any decisive steps against the revolutionaries.³ Instead of supporting the communist state, the police forces joined the ranks of the revolutionaries and some units, such as the ones in Budapest, even coordinated the distribution of firearms amongst the insurgents. The first response of the Soviet troops stationed either in Hungary or in close proximity to its borders failed to end the uprising. The Hungarian communist state collapsed. Meanwhile, the revolutionary movement was amazingly effective at developing revolutionary institutions. Over the eleven days during which the insurgents controlled Hungary, seventy parties and associations were created, eighteen of

¹ Even in that period trials and purges of members of non-communists parties were conducted under the pretext of de-nazification.

² The replacement was encouraged by the Soviet Union which during the 20th Congress of Communist Party of the Soviet Union condemned Stalinist methods.

³ The army's reaction was largely ambiguous. For more information about the reaction of communist state institutions to the uprisings, see (Ekiert 1996, ch. 3).

which were registered. Also a network of workers' councils independent of the official communist trade unions emerged. It was not until the communist Janos Kadar asked the Soviet Union for reinforcement troops that communist rule was re-installed on November 4th.

Ekiert (1996) cites the most recent Soviet sources disclosing that as a result of the second Soviet intervention about 4000 Hungarians died and 13,000 were wounded as of January 15, 1957. In addition, 193,216 refugees escaped to Austria and Yugoslavia before Hungary succeeded in sealing back its borders. At the same time, 669 Soviets were killed and 1495 wounded.

Despite these extremely violent events, Hungary has been surprisingly lenient in dealing with its perpetrators of human rights violations. After the transition of 1989 the lack of political will for dealing with perpetrators of human rights violations has been attributed to the "curse of evenhandedness." Some scholars argue that if violence was perpetrated on both sides of the conflict, a transitional justice procedure might further antagonize, instead of reconciling the two sides of the conflict.⁴ Below is an excerpt from "A Student Diary: Budapest October 16 - November 1, 1956," by Laszlo Beke, which suggests why Hungarians could be more eager than anyone else in East Central Europe to "let bygones be bygones:"

The major was dragged over to a tree by several fighters. His ankles were tied and he was strapped to one of the lowest branches. He kicked at the rope and paper forints fell from his pockets. In a few seconds the winds scattered more money than a worker could have saved in years. His body was only three feet from the ground. The revolutionists gathered leaves and paper and piled them under the suspended major. He screamed and pleaded for mercy. He cried out that he would cooperate with us and would tell us all the AVH names we wanted. But the students and workers just laughed at him. They brought the other AVH police over at gunpoint to watch. They lit the fire. As the flames licked at his hair, the AVH men turned white at the sight. They were led away to be locked up.⁵

Hungary's 1956 uprising was not only the bloodiest in the history of communist rule in Europe, but with the exception of the East German insurgence against communist

⁴ Other scholars however, maintain that two-sided violence acknowledged by both sides of the conflict through evenhanded transitional justice procedures is the only way to ensure reconciliation in a post-conflict society (Gibson 2004a)

⁵ The AVH was the Hungarian secret political police. After the uprising the tasks of the AVH were transferred to the newly created III/III agency - part of the Ministry of Interior. The III/III however recruited most of its personnel from the former AVH and essentially followed the same operational tactics.