Of Truths, Secrets, and Loyalties: Political Belonging and State Building in Poland after State Socialism

Saygun Gokariksel

Graduate Center, City University of New York

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OF TRUTHS, SECRETS, AND LOYALTIES:
POLITICAL BELONGING AND STATE BUILDING IN POLAND
AFTER STATE SOCIALISM

by

SAYGUN GÖKARIKSEL

A dissertation submitted to the Graduate Faculty in Cultural Anthropology in partial fulfillment of the requirements for the degree of Doctor of Philosophy,
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Professor Katherine Verdery

Date

Chair of the Examining Committee

Professor Gerald Creed

Date

Executive Officer

Professor Talal Asad

Professor Vincent Crapanzano

Professor Sally Engle Merry (New York University)

Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK
Abstract

OF TRUTHS, SECRETS, AND LOYALTIES: POLITICAL BELONGING AND STATE BUILDING IN POLAND AFTER STATE SOCIALISM

by

Saygun Gökarıksel

Adviser: Professor Katherine Verdery

This dissertation is an ethnographic study of the accusations of ‘collaboration’ with the communist-era secret service in Poland’s capitalist democracy. Situated in the global context of the 1989 ‘revolutions,’ it examines the role of law in drawing the moral and political boundaries of the new body politic and redefining the loyalties of the new citizen-subject of the neoliberalizing state. Specifically, my research concentrates on the legal process called “lustration” (lustracja) in Poland, the state-centered purges of real or imagined secret communist agents, informers, and spies. Focusing on the contentious legal-political struggles from 2005 to 2008 and their aftermath, it explores the following questions: How has the pursuit of justice by the state on behalf of the ‘victims of communism’ paradoxically transformed into a national security policy? Where does the pursuit of justice end and the exercise of disciplinary state power begin? What is the role of law, human rights, and knowledge practices in drawing the line between the two?

On the basis of archival research at Poland’s Institute of National Remembrance, interviews with legal officials and human rights activists, observation of lustration court proceedings, and collection of life histories of the people involved in lustration, my dissertation shows that the passage from ‘transitional justice’ to national security is not as
long and definite as is commonly assumed. The transformation of lustration into an expansive national security mechanism, my research suggests, results from the broad dynamics of state power and the contradictions of legal and capitalist transformations, as well as of truth-making and epistemic practices. In doing so, my dissertation engages the themes of state power, neoliberal citizenship, and epistemic politics that have global relevance beyond the particulars of the Polish or Eastern European experience.

The first section (Chapters 1 and 2) of my dissertation offers a historical overview of the field of lustration by focusing on the highly contested notion of ‘collaboration’ and contextualizing it within the shifting state-citizen relations and conditions of political action, from the 1960s to the 1990s. This section critically analyzes the normative framework of lustration by examining the hegemonic discourses of post-ideology and totalitarianism, as well as the historical legacy of the political opposition against the communist state. The second section (Chapters 3 and 4) is concerned with the ‘postsocialist’ legal-political space of lustration, with an emphasis on the remaking of citizenship and human rights and property transformation in the era of neoliberal democratization. This section shows how lustration mediates the contradictions of inequality and liberty and has become transformed into a national security mechanism. It explores the questions of shame, fear, and responsibility lustration raises.

The final section (Chapters 5, 6, and 7) engages the truth-making and epistemic practices concerning lustration, especially the relations between law, life, history, and memory and the way they affect the subjectivity of people who become subjected to lustration. By focusing on the naming and shaming practices and different forms of suspicion woven around lustration, this section shows how these practices and forms of
suspicion impact the lustrated persons’ relation to themselves and the social world, which they inhabit. With these emphases on the themes of law, subjectivity, neoliberal democratization, and truth-making, my dissertation critically engages the scholarship on lustration and opens the field of transitional justice to the questions of power, inequality, and more comprehensive social-structural transformative justice that have been so far overlooked.
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Every new regime demands betrayal until it consolidates its power. It uses traitors and then gets rid of them. 

István Szabó dir., Sunshine (1999)

It is not novel that revolutions or regime changes in political modernity instigate a radical reevaluation of the ideas, values, and practices acquired under the former regime. Past words and deeds fall under a new description (Fitzpatrick 2005; Rév 2005; Verdery 1999), as the new body politic becomes institutionalized and power constitutes itself as sovereign. This process of nation- and state building is often fraught with vehement accusations of treason or collaboration with the past regime (Kelly and Thiranagama 2010). But what does it mean to institute a new body politic and conduct such reckoning with the past after the global ‘revolutions’ of 1989 that have heralded the so-called age of human rights, rule of law, and free-market democracy?¹

This dissertation explores this question through an ethnographic study of the accusations of ‘collaboration’ with the communist-era secret service in Poland’s capitalist democracy. It focuses on the role of law in redrawing the moral and political boundaries of the new body politic and redefining the loyalties of the new citizen-subject of the neoliberalizing state.² In doing so, my dissertation aims to understand what the socio-legal life of the accusations of betrayal reveal about the global conjuncture of 1989, and conversely, how that conjuncture shapes the legal, moral, and political reckoning with the communist past in Poland and other parts of Eastern Europe.

¹ Note that while taking ‘1989’ as a point of rupture obscures crucial historical continuities and reinforces the liberal narrative of the ‘victorious free world,’ it is undeniable that the events of 1989-1991 have effected a notable change in the symbolic and material order across the world. See e.g., Balibar (2003).
² I use the term “neoliberalization” to highlight the contingent and processual aspect of the set of policies undertaken to build a ‘free-market capitalism’ through ‘deregulation’ of economy, liberalization of trade and foreign investment, and public spending cuts. See e.g., Hardy (2009), Harvey (2005), and Shields (2007). As an ideology, neoliberalism uses the free-market as the paradigm of freedom and moral behavior.
What constellation of forces, ideas, and institutions has constituted that conjuncture? As is well known, the events of 1989 prompted infamous proclamations of the end of history and ideology. While certain political futures seemed to crumble, the past gained a new prominence, becoming a precious object of a thriving memory-industry. A whole set of institutions and technologies of peace-building, truth-making, and reconciliation were conceived to facilitate the ‘transition’ from authoritarian or conflicted countries to a liberal democracy. The emergence of this global field of “transitional justice” also coincided with the ascendancy of the hegemony of neoliberal capitalism that discounted alternative social emancipatory visions as “totalitarianism” or “extremism.” It equated historical communism, fascism, Nazism, and Islamic Fundamentalism with each other as “illiberal violence,” criminal or quasi-criminal regimes. As communism, and the Left in general, were discredited, the memory of fascism became rehabilitated across the world (see e.g., Badiou 2007; Scott 2014; Traverso 2009; Žižek 2001).

Situated in this global context, my dissertation focuses on the legal and moral-political process called “lustration” (lustracja) in Poland, the state-centered purges of real or imagined secret communist agents, informers, and spies. Specifically, I concentrate on the following questions: how has the pursuit of justice by the state on behalf of the victims of communism paradoxically transformed into a national security policy? Where does the pursuit of justice end and the exercise of disciplinary state power begin? What is the role of law, human rights, and knowledge practices in drawing the line between the two? In exploring these questions, my dissertation engages the themes of state power,
neoliberal citizenship, and epistemic politics that have global relevance beyond the particulars of the Polish or Eastern European experience.

The word lustration derives from the Latin *lustratio* “purification by sacrifice.” Many Eastern European countries, including Hungary, the Czech Republic, Slovakia, and more recently, Macedonia and Ukraine, have employed lustration. Lustration was also employed by the U.S. administration in Iraq in 2003-4 to initiate de-Baathification and reorganize the Iraqi security forces (see Meierhenrich 2006).

In Poland, the lustration law was initiated in 1997 on the eve of Poland’s accession to NATO and the European Union. It was introduced as a transitional justice procedure to ensure public trust and transparency, regulate the disorderly accusations of betrayal, protect the “newly emerging democracy” from dangers, and “dismantle the heritage of former communist totalitarian systems.” Recently, lustration has become permanent; it will proceed until the last person who was older than eighteen years old by 1989 dies. Thus, the legal process expresses a certain biological objective, targeting the adult population inherited from the past.

The lustration law requires about 120,000 people – the number depends on the specific version of the law and went up as high as 700,000 – including the political class (MPs) and high and mid-level public employees such as local administrators, board members of state companies, tax counselors, and candidates for these positions, to declare their links with the communist-era secret service. Lustration prosecutors check these declarations against the secret service archives. These archives are largely destroyed and publicly inaccessible, and highly disputed for containing misleading

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3 The European Resolution no. 1096 (1996) was highly influential in the lawmaking process. I will discuss this text in detail in Chapter Three.
information. If the lustrated person confesses to collaboration, the prosecutor publishes his or her name. If the prosecutor determines a “lie,” that person may be banned from his profession or public office for ten years. The lustrated person can appeal to the court to dispute the prosecutor’s decision. But many court hearings are held in secret, because the evidentiary archival material is classified as a state secret. Ironically, by 2007, the majority of Polish people, including veteran dissidents, human rights organizations, and those who initially drafted the law, denounced lustration as a threat to democracy.

My dissertation focuses on the following questions: how has Polish lustration become an object of so much contention even of those people who were targeted or victimized by the communist-era state security? How has a transitional justice form like lustration come to be seen as a threat to liberal democracy and human rights, which it is supposed to promote? Through archival and ethnographic research in Poland, my dissertation will show the dynamics through which the lustration process has woven around itself a culture of conspiracy, proliferating suspicions of people’s loyalty and expansive rumors and fears of betrayal. Specifically, I will concentrate on the period from 2005 to 2008 when the rightwing populist government amended the lustration law to raise the number of lustration’s subject population to 700,000 and turned lustration into a quasi-revolutionary policy of nationalist purification. My field research is largely concerned with the aftermath of that volatile period, which witnessed intense social and legal-political struggles around lustration and left behind a number of people who had been publicly shamed or accused of collaboration with the communist regime.

Let me underscore that in this research, I employ the popular understanding of “lustration” in Poland. Thus, by lustration, I mean not only a specific law and its
practices, but also the broad field of formal and informal accusations of collaboration, expositions of alleged secret agents, and inquiries about one’s links with the communist-era secret service and in general, the party-state. As such, lustration refers to an accusatory and denunciatory mode of discourses and practices that examine and expose one’s past links with the communist state, especially its security apparatus. These discourses and practices traverse a variety of institutions, ranging from courts, media agencies, trade unions to professional ethical commissions and archival and research institutions.

Approaching lustration in this way, my research departs from the scholarship that studies Polish lustration either legalistically by confining it to its formal legal-institutional domain, or instrumentally by approaching it merely as a matter of party-political struggle and electoral competition. I also depart from the social studies that treat Polish lustration only as a lens to understand the problems of neoliberalization, particularly the rightwing mobilization using lustration as a popular rallying point. Instead, I approach lustration holistically and problematize it by expanding on the anthropological research on treason and betrayal; law and transitional justice; and archival practices. I study Polish lustration within the broad dynamics of state power and the contradictions of legal and capitalist transformations, as well as of the truth-making and epistemic practices. In what follows, I will argue that the explosive social-political antagonisms around lustration and the transformation of the legal process into an expansive state security mechanism must be understood as a combined effect of those dynamics and contradictions.
More precisely, my study analyzes lustration in two parts. The first one concerns the problems of epistemology and truth-making process, and focuses on how the communist state’s categories and artifacts of power have been paradoxically reproduced by the legal and knowledge practices that claim to dismantle them. It studies the law’s and nationalist historiography’s uncritical employment of the highly contested security files as their most authoritative and transparent source of truth – the files generated by the state, which is on many other occasions denounced as a system of lies. This part of my analysis thus concerns the peculiar afterlife of the security files and the ambivalent social force that the communist state’s epistemology commands in today’s Poland.

The second part focuses on how the lustration discourse and practice mediates the antagonisms, vulnerabilities, and anxieties of uncertainty and belonging produced by the social, legal, and political-economic transformations from state socialism. It shows the way lustration has become such an intense object of political struggle for hegemony under the conditions of neoliberal democratization. Lustration, I argue, not only concerns the past communist state violence, but also the uneven, devastating effects of the capitalist transformations taking place since the 1980s.

Thus conceived, my dissertation not only contributes to the scholarship on Polish lustration, but also, more broadly, critically engages with the narrowly conceived studies of transitional justice. The chapters that follow will unpack and problematize transitional justice along four interrelated lines of inquiry. The first one will focus on the constitutive role of law and highlight the intimate relation of law to power, hegemony, and social struggle. This line of inquiry conceives law as a battlefield of discourses, practices, and institutions, one that is marked by a variety of historical forms of organized suspicion.
Here, I also consider law as a part of the contingent process of hegemony and its shifting centers. While law often reinforces the normative framework of the ruling class, it also empowers actors and enables counter-hegemonic collective action, albeit in limited form.

The second line of inquiry will investigate the largely understudied nexus of transitional justice and neoliberal democratization. Most transitional justice research isolates law from social and political-economic processes. It fixes the object of violence, to which law is supposed to respond, in the past. As such, it often assumes transparency or immediacy in the way the past event, object, or experience of violence communicates in the present. By highlighting the role of mediation and the articulation of communist state violence with the structural violence of neoliberalization, my research will show how different forms of violence and multiple temporalities are lived and become entangled in the present. Building on this insight, I will explore an alternative mode of political responsibility that corresponds to this overdetermined nature of violence, to which lustration responds, however without acknowledging it.4

Thirdly, I will analyze the moral-political and historical framework constructed by and around lustration. Instead of treating the normative values espoused by that framework as static and predetermined, my study will focus on what may be called the “moral economy” of lustration, the ways in which moral ideas, values, and sentiments are produced, mobilized, and circulated in class struggle or other social struggles, in this

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4 I use the notion of overdetermination to highlight the multiple forces active at once in a given situation or phenomenon. It helps think about the simultaneous operation of a multiplicity of factors in producing a single observed effect. As is well-known, the notion is first coined by Sigmund Freud (1955) [2010] and later elaborated by Louis Althusser (1969) [1990]. See also Raymond Williams (1977) and Etienne Balibar and Immanuel Wallerstein (1991) for their reflection on the notions of determination.
case, around lustration. Like my analysis of overdetermined violence, this study will highlight the multilayered dimension of moral sentiments woven around lustration.⁵

Furthermore, I will concentrate on the truth-making and epistemic practices underpinning the moral-historical framework of lustration. I will be especially concerned with the archival and documentary practices of the state. Instead of treating the state archives as a storehouse or transparent source of evidence and truth, I take them as artifacts and documents generated by the state for its own strategic purposes. As such, archives reveal more about the social life of state power and anxieties of government than about the so-called moral truth of the person who figures in its records, as in lustration. Thus, the security archive, I suggest, is best suited for the ethnography of the state.

The fourth line of inquiry brings together the last three and explores the general structure of subjectivity that is implied or constituted by the moral economy of lustration, the type of truth-making and epistemic practices related to lustration, the tense relationship between lustration and the contradictions of neoliberal democratization, as well as the effects of the lustration law on the people, who have become subjected to it. With these emphases on the themes of law, subjectivity, neoliberal democratization, and truth-making, my dissertation critically engages the scholarship on lustration and opens the field of transitional justice to the questions of power, inequality, and more comprehensive social-structural transformative justice that have been so far overlooked.

In the next section, I will offer a brief historical context for my study of Polish lustration and an overview of my field research. The following sections will discuss more in depth the scholarship I engage in this dissertation and detail my theoretical-methodological framework. I will conclude the Introduction with an outline of the

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⁵ For the notion of “moral economy,” see E.P. Thompson (1971; 1991) and Didier Fassin (2005).
dissertation chapters. At the end of this Introduction, I also offer a brief overview of the legal and political history of the Polish lustration process.

2500 YEARS OF LUSTRATION

The scholarship on lustration rarely reflects on the etymological ramifications of the word ‘lustration.’ Since ‘1989’ was supposed to inaugurate a new ‘free world,’ lustration was also taken to be something like a brave new word with no historical repertoire. Thus, reflecting on its long history or highlighting its Roman meaning, “purification by sacrifice” is at best seen as a polemical gesture and at worst a futile exercise. But that history is important if one wants to have a sense of the historical specificity of the current usage of the word lustration and its shifting meanings across time.

Lustration derives from the Latin lustratio and lustrum. According to the Dictionary of Greek and Roman Antiquities (1843),

Lustration was originally a purification by ablution in water. But the lustrations…are always connected with sacrifices and other religious rites, and consisted in the sprinkling of water…or in the burning of certain materials, the smoke of which was thought to have a purifying effect […] Lustrations were made in ancient Greece, and probably at Rome also, by private individuals when they had polluted themselves with any criminal action. Whole cities and states, also, sometimes underwent purifications, to expiate the crime or crimes committed by a member of the community.

The Romans performed lustrations on many occasions on which the Greeks did not think of them; and the object of most Roman lustrations was not to atone for the commission of crime, but to obtain the blessing of the gods upon the persons or things, which were lustrated. The object of this lustration was to preserve the flock from disease, contagion, and other evils. All Roman armies, before they took the field, were lustrated; and, as this solemnity was probably always connected with a review of the troops, the word lustratio is also used in the sense of the modern review. […] Altars were erected on the shore, and the vessels manned with their troops assembled in order close to the coast. Everybody kept profound silence, and
priests standing close by the water killed the victims, and carried the purifying sacrifices in small boats three times around the fleet….

*The establishment of a new colony was always preceded by a lustratio with solemn sacrifices.* The city of Rome, as well as other towns within its dominion, always underwent a lustratio *after they had been visited by some great calamity, such as civil bloodshed, awful prodigies, and the like.* A regular and general lustratio of the whole Roman people took place after the completion of every lustrum [approximately every four years]. This lustratio (also called lustrum) was conducted by one of the censors, and held with sacrifices [such as a pig, ram, a sheep, and an ox.] […] The first lustrum was performed in B.C. 566 (604, emphases added).

The lustration that I have studied in Poland is different. In the ancient Greek and Roman lustration, there is no reference to human rights, the rule of law, ‘crimes against the nation,’ or repressive totalitarian regimes. Yet, the emphases on pollution, purification, the review of troops, the vision of great calamity and the collective expiation of crime, as well as the censor’s regular examination of the ‘whole people,’ all echo in the post-1989 rendering of lustration in Poland. They form, as it were, the ‘historical unconscious’ of contemporary lustration practices.

Furthermore, lustration has another history from the 16th century onwards in the territories called Poland today. It was then used in the context of the king’s examination of wealth: the roads, lands, and crops. The king designated someone called “lustrator” (*lustrator*), the inspector who checked and registered who used what part of the king’s land. The travel diaries of lustrators I studied reveal that their lustration mainly consisted of compiling a list of names for tax purposes (Falniowska-Gradowska 1973). Curiously, the lustrators also collected denunciations from the subjects and arbitrated the conflicts in villages on behalf of the sovereign. A part of this emphasis on denunciations and lists of names may still be observed in the current practice of Polish lustration.
In the 19\textsuperscript{th} and 20\textsuperscript{th} centuries, “lustration” gained a technical, economic meaning. It was used by government officials and the historians of economics until the late 1980s.\textsuperscript{6} It mainly referred to the economic assessment of property, especially ‘national property’ after the establishment of the Polish nation-state in 1918. Thus, lustration’s link to land and wealth remained. Moreover, I came across two distinct usages of the word lustration in the early 1950s: one in the context of the assessment of the land and the organization of the Auschwitz-Birkenau State Museum in Poland; the other referred to the massive social mobilization against the Colorado potato beetles allegedly dropped by U.S. airplanes, something like a biological weapon, to starve the newly established socialist republics of Eastern Europe. In Poland the inspection and purification of the farm fields from the beetles was referred as lustration.

In the 1990s, lustration became a popular word in Poland, referring to the examination and exposition of the secret communist agents. But it has continued to have archaic connotations to many Polish people; the word lustration is actually rarely used in daily life outside the context of the communist past or secret agents. At first sight, lustration seems to have gained strictly a moral-political meaning, inscribed in the process of banishment from public life and confession of guilt. Yet, its historical links to property and sovereign power, as we will see, continue to linger, recast in the new network of concepts and institutions of equality, liberty, and security marking Poland’s capitalist democratization.

\textbf{THE KRASIŃSKI SQUARE OR THE NEW ARCHITECTURE OF THE NATION}

\textsuperscript{6} Thanks to Piotr Franaszek and Władysław Peksa for this information.
The Krasiński square in Warsaw, which was rebuilt in the 1990s, *materializes* the symbolic architecture of the new nation-state. It shows how the relationship of law and history, and of memory and nation building, is reconfigured after the implosion of the communist states. My field research on lustration often took me to that square.

On one side, there is the Field Cathedral of the Polish Army, which functions as the central church of the Polish Army since 1989, hosting its major religious feasts. The church registers the key moments of the national history: the Katyń massacre (1940) perpetrated by the Soviet security forces, the tragic presidential plane crash in Smoleńsk (2010), which killed 96 people on board, including the Polish president, and the Polish clergy’s various heroic and sacrificial involvement in past and recent military missions, including the “war on terror” in Afghanistan led by the U.S. armed forces.

On the opposite side of the church, there is the newly built monument complex dedicated to the Warsaw Uprising against the Nazi occupation. The monument delineates the heroic figures that represent the Polish resistance waged by the clergy and the Home Army fighters, which the communist authorities used to call bandits or criminals. Behind this monument stands the recently built Supreme Court building, a modern L-shaped glass building surrounded by tall columns, on which are inscribed Latin texts on law and justice. The Roman law, which the communist authorities sought to marginalize due to its ‘bourgeois features’ (its sanctification of private property), has come back in full swing.

Furthermore, on one end of this transparent building is seated the Lustration Bureau of the Warsaw branch of the Institute of National Remembrance. This Bureau is responsible for conducting lustration in Warsaw. Next to it stands the eloquent national library, formerly the Krasiński Palace, and in front of it, the monument of colorful
pegasuses, dedicated to the memory of the Tiananmen Square Massacre of 1989. With this arrangement of buildings and monuments, Krasiński square well testifies to the layers of the imagined national time and space of ‘postsocialism.’ While it highlights the grand national narrative by weaving together different tragic or catastrophic historical moments (uprisings and wars) that have articulated the Polish nation to Roman Catholicism, the square also points to the prominence of law, justice, and knowledge, though a new transparent one, in the new architecture of the nation.

Figure 1 In front of the Supreme Court Building and the Lustration Bureau of Warsaw
Photo by the author, March 2009

Polish lustration has been conceived in this context. It was to redraw the boundaries of the new national political community and establish transparency in public life by identifying and banning the collaborators of the former regime, which is now mainly represented as a foreign (Soviet) occupation. However, that was not easy; the theme of treason and national loyalty has been a contentious issue in the history of
Poland, raising longstanding, perplexing questions about the virtues and benefits of resistance and collaboration. These questions gained particular importance during the partitions from the late 18th century to the early 20th century, when the Polish-Lithuanian Commonwealth was divided among the Austro-Hungarian Empire, the Russian Empire, and Prussia. The questions of treason and loyalty were often entangled in the problems of the great chasm that divided the gentry and landed nobility, which ‘felt Polish,’ and the poor peasants and workers, which did not ‘yet’ have that feeling (Porter-Szűcs 2002; Walicki 1994). What did it mean then to collaborate or resist in an elite-led ‘national’ uprising? Who defined what treason was? What was a more virtuous course of action: to resist in an uprising that had no chance of winning, or to accommodate with the institutions of the partitioning power and work for the survival of the ‘Polish’ culture? The former position had become embraced by the messianic “romantic” nationalism, while the latter by the “realist” nationalist orientation toward negotiation (Kloczkowski and Szuldrzyński 2008).

Similar questions have arisen later in the 20th century. Did the historic Round-Table negotiations between the dissident activists and the party-state authorities that marked the ‘end of communism’ express a realist orientation, or did it materialize the dissidents’ betrayal of the Polish nation? Was Ryszard Kukliński, who defected to the C.I.A. in the late 1970s and disclosed the Warsaw Pact’s military secrets to allegedly ‘save’ the thriving anti-communist opposition in Poland, a national hero or a traitor? Did General Wojciech Jaruzelski, who led the coup against the massive “Solidarity”
movement allegedly to ‘save’ Poland from a possible Soviet invasion in 1981, betray or serve the Polish nation? None of these questions has been settled.\(^7\)

The history of the Polish nation-state rarely offers examples of ‘pure heroism.’ In a land of shifting national borders, warring states, tragic uprisings, brutal occupations, death camps, and antagonistic social movements, the lives of people have been entangled in highly contingent and conflicting political and moral allegiances. But such entanglement is rarely acknowledged by nation-state building projects that seek to expand state power and to transform and monopolize the relations of loyalty. As historians of Eastern Europe suggest, postwar trials often took a retributive character and aimed to punish the traitors and class enemies by using the language of national security and class justice (Brommer 2004; Deák, Gross, and Judt 2000). Their vision of justice was rooted in a stark victim-perpetrator framework, which was also endorsed by the Nuremberg trials (Mamdani 2015). Expanding on a punitive, nationalist, and state-centered understanding of socialist justice, the Stalinist authorities in Poland, Hungary, and Czechoslovakia conducted policies of national purification. They inflicted suffering on masses of people who fell under the ‘wrong’ categories and justified it by invoking the objective laws of history. The mechanistic, economistic, and teleological understanding of class and ‘transition to socialism’ by Stalinism had grave consequences for the

\(^7\) Certainly, one may refer to many other historical figures, the loyalties of which came under scrutiny in the more ‘distant’ past, but still remain disputed. General Józef Piłsudski, the legendary leader of the Interwar era Polish state had been suspected of spying for the Austria-Hungarian Empire. In the early 20th century, the Marxist philosopher Stanisław Brzozowski met the ostracism of the Socialist Party of Poland, which accused him of collaboration with the notorious Tsarist secret police, Ochrana. The evidence for his alleged collaboration was never presented and he remained under suspicion (Sierakowski 2011; Miłosz 2012). Poland’s world-renowned writer Czesław Miłosz (1990) [1953] wrote highly influential literary works probing the ethical conundrums of loyalty in relation to communist “totalitarianism.” Like the Czech writer Milan Kundera, Miłosz was recently accused of collaborating with the Stalinist regime.
hundreds of thousands of people who became a mere statistical target of the state project of ‘building socialism.’

Although it may be tempting to say that a similar punitive and purificatory impulse has outlived state communism and found expression in radical lustration laws—but note that postwar purification of Nazi collaborators was not called lustration—it is important to underscore that the social, legal, and political-economic conditions under which the lustration laws are envisioned and put into effect today are remarkably different. For one thing, the events of 1989 and the subsequent changes had a different political horizon. They were celebrated as the triumph of liberal democracy, free-market, and human rights in both the West and the East, especially among the dissident intellectuals. Yet, the dissolution of the communist states and movements, as Etienne Balibar (2003) observed, also left a certain void. “Politics [became] empty of errors, crimes, and manipulations, empty of organizations, disciplines, and revolts, but also empty of stakes and problems.” It was, indeed, this “nihilistic situation,” he suggested, that made many commentators hastily proclaim the end of history and ideology (85).

This nihilism also caused the uncritical global embrace of the Euro-American norms of capitalist democracy and the rule of law. Consequently, both the endpoint of ‘transition’ and the nature of ‘transition’ were conceived differently than how they used to be in the 1950s and the 1960s. Unlike in postwar Europe and in the decolonized countries of the so-called Third World, the ‘transition to democracy’ of the 1990s consciously avoided developing a comprehensive social-structural transformation or engaging with the issues of socioeconomic justice. It was not that the ‘transition to democracy’ did not involve structural reforms. Clearly, that transition comprised
neoliberal ‘structural adjustment’ or “shock therapy,” as it is called in Poland, but the important difference was that neoliberalization and socioeconomic issues in general were not considered within the framework of the transition to democracy and transitional justice. Politics and economics were supposed to be two disparate spheres. Following this lead, transitional justice upheld an ethical and political focus, promoting the principles of human rights and the rule of law and other liberal-democratic institutions that are viewed in isolation from socioeconomic or class matters (Arthur 2009; Guilhot 2002). As David Scott (2014) has cogently argued, the liberal vision of accommodation and reconciliation came to replace the earlier radical vision of social emancipation and revolution. The justice of transitional justice has acquired a legalistic character and built on the model of criminal justice; or else, justice is associated with the truth and reconciliation commissions that aim to promote national unity, peace, and stability. The revelation of past crimes and the moral recovery from past violence or trauma come to stand for what justice is. Justice is mainly defined negatively as the absence of injustice (Badiou 2001). In short, as the meaning and structure of transition and justice have changed, so has the kind of attention the questions of social equality and justice have received.

Polish lustration is then pursued in this shifting context of transition and justice. It has been entangled with dilemmas and contradictions from the very beginning. The peripheral position of Poland in the global relations of power, the internal contradictions of neoliberal democratization, the particular legacy of state communism, as well as the social-historical experience of its end have raised further challenges for lustration. The rhetoric of freedom and equal rights (equality before the law) encountered the rapidly
expanding social inequalities and vulnerabilities. The proclamation of regained national sovereignty encountered the dramatic dependence on foreign or transnational capital, European legal regulations, and later NATO and the C.I.A. The radical break with the past declared by the political leaders encountered the reality of visible legal, institutional, and human personnel continuities. The violence of “shock therapy” made a farce out of the emergent ruling class’s language of peaceful or ‘velvet’ democratic transition, for which 1989 was supposed to stand in contrast to the guillotine of the French Revolution.

Thus, it does not come as a surprise to see that the Spanish policy of “thick line” adopted by the Polish authorities in a short time has come to mean a forgetting of and unaccountability for the injustices and inequalities that the communist state produced and neoliberalization has reproduced. It does not come as a surprise that this problem has given way to restless social-political antagonisms, to which the dominant political bloc has responded by repressing and demonizing them as ‘dangerous’ and instituting a variety of security measures. Perhaps it also does not come as a surprise that the ‘Europeanization’ process – not only austerity and the exploitative economic policies, but also the liberal legal-political space authorized by European legal standards, including its human rights conventions and institutions – is a prominent factor contributing to the securitization of democracy and lustration in Poland.

**OVERVIEW OF FIELD RESEARCH**

My field research on lustration has begun in 2007. During my short trips to Poland, I had learned about the legal process, made contacts, and filled out the required applications to be able to conduct ethnographic research on this not-so transparent process. Finally, I had
the opportunity to conduct twenty-one months research between 2009 and 2011 at the Polish Institute of National Remembrance (Instytut Pamięci Narodowej, IPN), the state institution that was established in 1998 to prosecute the “crimes against the Polish nation,” manage the communist-era security files, which occupy 60 miles of shelf space, and undertake educational activities, including conducting and publishing historical research and organizing public exhibitions. Since 2007, the IPN also has been hosting the Lustration Bureau (Biuro Lustracyjne). The Institute has 17 branches, located in the major cities and towns of Poland.⁸

I was mainly located at the Kraków branch of the IPN, where I conducted interviews with the IPN employees and historical research at the security archive that was kept in the recently renovated 18th century palace in the small town of Wieliczka. I spent a year in the reading room mostly in the company of young scholars, priests, and nuns, the most frequent visitors at the time. Since it was possible to order any declassified material from different IPN branches to my desk, I virtually had access to all the files across Poland. This access was useful to further investigate some of the lustration cases that I studied in depth. After all, it was those security files that were used as the main evidentiary source in the lustration examinations and court proceedings. It was also important to see what those files looked like and learn how (not) to read them if only to become more immune to the ‘secret powers’ they were often thought to embody.

Since it was not possible to identify a bounded ‘community’ or ‘neighborhood’ of lustration or satisfactorily contain lustration in a single institution, my field research was dispersed among several cities and institutions. Aside from archival research at the IPN, I

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⁸ As of 2012, the IPN has 2,200 employees, out of which 211 work at the Bureau of Lustration. There are in total 29 lustration prosecutors. Their salaries are remarkably high: 12,700 PLN/month (app. 4,250 USD).
conducted interviews with legal officials, lustration prosecutors, human rights lawyers, historians, and journalists; observed lustration court proceedings and analyzed national and international court verdicts, including the European Court of Human Rights; studied cultural productions around the issues of lustration (e.g., theater plays and cinematic productions) and participated in the public meetings organized by the IPN (e.g., workshops, exhibitions, and book presentations); and collected life histories of the persons involved in lustration. In total, I was able to identify and have access to 12 court proceedings in the cities of Warsaw, Kraków, Poznań, and Wrocław, thanks to the help of the lustration prosecutors and the lawyers of the Helsinki Human Rights Foundation in Warsaw. But I also examined many other (past) lustration cases, media revelations of ‘secret agents,’ and informal accusations of betrayal by studying media reports and conducting interviews with the concerned persons. This study also guided me in my more random and general conversations with the people on the trains, in the parks, in the coffeehouses, and in lunch places.

During my field research, I was often struck by this puzzle: while lustration was hardly a topic people spoke about in daily life (at least by 2009), mentioning the word was able to generate a number of strong reactions in my interlocutors. Some people started talking about the ‘shameless communists’ who robbed Poland; some people said lustration was a topic for politicians and for men craving power, not for the ordinary people; some people alarmingly said lustration was needed for state security; some people said lustration was boring (nudna) and seemed exhausted by the topic; some other people said they were sorry for me, as the topic of lustration was morally so complex and
heavy (ciągły temat); but the great majority of people said lustration had to be done in the early 1990s and now it was too late and complicated.

All these reactions have revealed important aspects of the historical course of Polish lustration. As mentioned before, lustration has been a very polarizing issue since the early 1990s, mediating different anxieties about the socialist past and the uncertain future. But this emphasis on belatedness also highlights how the pure object of lustration, as it were, has been irretrievably lost, overwhelmed by the tumultuous course of post-1989 transformations. With the passage of time, lustration has become enmeshed with the questions of power, accountability, violence, and security related to not only the communist past, but also capitalist democratization.

In fact, the discourse of belatedness of lustration is not new. The lustration law was only initiated in 1997 eight years after the ‘end of communism.’ Let me briefly describe here the fundamentals of the history of the lustration law to give a sense of this belatedness.\(^9\) The lustration law was initiated partly to deal with the problem of the extra-legal accusations of collaboration, known as the “wild lustration” (dzika lustracja), including mysterious ‘leakages’ from the security archives and sensational ‘private’ or media denunciations. The law was supposed to regulate the “wild lustrations” and provide the accused with the judicial means to clear his or her name. At the time, the security archives were run by the Ministry of Interior (the new secret police), which had been suspected of using them for political purposes. To manage and secure those archives, the IPN was established shortly after the introduction of the lustration law.

Another reason for the initiation of lustration in 1997 concerned the process of Poland’s accession to NATO (1998) and the European Union (2004). The lustration law

\(^9\) See the appendix of this chapter, where I discuss this history more in detail.
was conceived as part of the reforms to ensure the credibility and security of the Polish state in the newly reorganized international field of military, political, and economic alliances. In fact, European Resolution no. 1096, passed in 1996, as we will discuss in the following chapters, had a decisive impact on the framing of the lustration law as a legal measure to dismantle the ‘totalitarian heritage’ and secure the “newly emerging democracy” (see Calhoun 2002).

Furthermore, it is important to highlight that 1997 was also the year when the new Polish Constitution was finally made and a number of crucial laws were introduced, concerning civil servants, public administration, security forces, and state secrets. The initiation of the lustration law, then, coincided with the institutionalization of the new legal, political and economic order. Certainly, one may also point to the fact that by 1997, the rightwing mobilization around lustration became more powerful and, indeed, at the time, a rightwing coalition government was formed.

So why had lustration not been initiated earlier? One may invoke different reasons to answer this question. In the following chapters, I will explore this question from different angles. But here I want to highlight that the issues of lustration, from the very beginning, have been entangled in the general problem of ‘managing’ the violence of neoliberal state building and the contradictions of capitalist democratization. True, the liberal ex-dissident governments of the early 1990s promoted a particular secular-civic vision of law-governed, pluralist and ‘inclusive’ democracy, in which they reflected on the issues of lustration and reckoning with the communist past. But it is important to underscore that the violence of neoliberal “shock therapy” policies also did not allow for the introduction of lustration, which would mean opening another front of struggle. At
the time, no one knew what would come out of the volatile, yet fragmented and disorganized protests of the millions of people who in a short time lost their workplaces, incomes, and sometimes houses (by 1994, the unemployment rate reached to 15 per cent) (see e.g., Ekiert and Kubik 2001; Hardy 2009). Thus, one of the main reasons for the ‘delay’ of lustration was the liberal governments’ concern for the stability and security of neoliberal state-building. Indeed, those governments considered the neoliberal restructuring of economy as a way to abolish or settle accounts with the communist past (see Śpiewak 2010).

The impact of “shock therapy” was such that the ex-communists won the national parliamentary elections in 1993, thanks to their social-democratic rhetoric of social welfare and security and in spite of their vocal opposition to anything like lustration. Of course, like all other parties (liberal or rightwing), the ex-communists also continued to implement the free-market reforms, embracing the task of creating a new capitalist and democratic society (see Majmurek and Szumlewicz 2009). Shortly after the initiation of lustration in 1997, the so-called “second wave” of neoliberalization (1999-2001) was introduced by the rightwing coalition party and later extended by the ex-communists’ party. This second wave was a set of policies packaged as part of the European accession process. Specifically, it targeted the state, drastically cutting jobs in the public sector and privatizing such important sectors as public transportation, telecommunications, and the health sector. Many public employees, mostly women, lost their jobs (see Hardy 2009; 10

10 Jane Hardy describes the impacts of this “therapy:” “The initial impacts were brutal for many ordinary people. Employment in the state sector fell by 14 per cent in 1989-1990 and output in the socialized sector fell by 24 per cent. Unemployment rose from 0.05 per cent in December 1989 to 8.4 per cent (more than 1.5 million) by 1991. Real wages fell in the state sector in 1990, and real household incomes decreased by over 30 per cent for pensioners and more than 50 percent for peasant households” (2009, 29).
The lustration law, with its explicit focus on the state–screening of public employees – was introduced at this moment as a transitional justice and security measure. The private sector was not subjected to lustration.

The early 2000s witnessed another cycle of economic crisis and austerity and by the mid-2000s, unemployment rose to 25 per cent (about 40 per cent among the young). This number still did not count those people who fled to the Western European countries for employment after the accession of Poland into the European Union in 2004. It is at this moment that the radical rightwing populist parties began substantially challenging the hegemony of the dominant bloc of ex-dissident liberal and ex-communist parties. They rallied around radical lustration and de-communization projects to repair and nationalize the corrupt, foreign-capital led capitalism and rebuild a new, ‘morally pure’ Republic.

From 2005 to 2007, the rightwing government established a new anti-corruption watchdog (an ‘independent’ secret police), changed the Constitution and some important laws (like the public media law), screened and reorganized the military intelligence and other security forces, sought to improve relations with the U.S. military and capital to counterbalance Brussels and Moscow, and proposed to change the education system, ban abortion, insert Christian references into the Constitution, and remove the names associated with communism from public space (Dudek 2013; Pankowski 2011). It was in this context that the rightwing government amended the lustration law to expand its force, extend its reach to previously excluded arenas (e.g., education and media institutions), and turn it into a radical purificatory policy in the service of “moral revolution” (rewolucja moralna) and new nation-state building. Yet, after the landmark decision of
Poland’s Constitutional Tribunal in 2007, radical lustration became notably disarmed and has continued to function to this day in a more limited way. My field research concentrated on that most tumultuous period of the lustration law (2005-7) and its legal-political aftermath.

How then to assess the impact of the lustration law? What is the number of lustration statements that lustration prosecutors examine in a year? For instance, in 2008 and 2009, the Lustration Bureau examined 7,770 statements and took 94 to the courts, suspecting a lie. The courts decided 17 “lustration liars.” In 2012, the Bureau checked about 7,500 statements and took 87 to the courts. The court determined 38 “lustration liars” that year. But the impact of lustration was not only manifest in these numbers, as a senior lustration prosecutor, Jarosław Skrok, told me. Indeed, the real force of lustration was its preventive power; lustration arguably deterred many more people, who did not apply for a public position in order not to risk lustration.

Such risks were an important matter in state-citizen relations, as the human rights lawyer Mikołaj Pietrzak stressed at our meeting. And no citizen must be left alone in that risky encounter with the state office, because the citizen and the state were never on equal footing. Thus, Pietrzak and other Helsinki Human Rights Foundation’s lawyers had initiated a special program (after 2007) to monitor and document the human rights violations in the “settlement of accounts with the past,” specifically the lustration process. They did it in the spirit of the dissident activists involved in the opposition against the

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11 [http://wyborcza.pl/1,76842,7694312,Nasza_bardzo_droga_lustracja.html](http://wyborcza.pl/1,76842,7694312,Nasza_bardzo_droga_lustracja.html) (last accessed 10 August 2015) 

12 [http://wyborcza.pl/1,75968,12360857/IPN_ani_biedny__ani_przesladowany.html](http://wyborcza.pl/1,75968,12360857/IPN_ani_biedny__ani_przesladowany.html) (last accessed 10 August 2015) Most of the “lustration liars” were retired judges and prosecutors, governors, and some board members of state companies.


14 Conversation with M. Pietrzak, 28 April 2009.
communist state in the 1970s and the 1980s. Pietrzak asked, “Can the law demand that the citizen be a hero?” What was at stake in lustration was the reinterpretation of what had constituted the norm of ordinary life, of relating oneself to the state and its security apparatus during communism. Who could say or afford to say ‘no’ to the security officer who knocks at the door? Must that heroic refusal be taken as the defining norm of past words and deeds? These questions, I have understood, were also closely related to the determination of who is supposed to be the ‘normal’ citizen-subject of new Poland.

My research on lustration is then located at these intersections of law, history, and citizenship. Before detailing my conceptual framework, however, let me discuss how I situate my research in the scholarship on lustration. Later, I will expand on this literature review by relating my research to the anthropological studies of treason, law, and archives.

LUSTRATION AS A STUDY OF TRANSITIONAL JUSTICE AND THE LEGACY OF COMMUNISM

Reflecting on the social studies of ‘postsocialist’ Eastern Europe, Katherine Verdery (2003) has identified two major lines of inquiry. One of them has investigated the problems of the ‘transition to democracy’ (e.g., corruption, backwardness, and political impasse) in the ‘legacy of communism,’ focusing on the networks of power, privilege, and institutions inherited from the past (see Ekiert and Hanson 2003). This line of inquiry has been dominant in the scholarship. The other, more marginal line of inquiry investigates the problems of ‘transition’ by developing a critical analysis of the uncertain capitalist transformation. It focuses on privatization, class formation, state transformation, as well as the social experience of dispossession, alienation, and
disenfranchisement, especially of the working people (see e.g., Burawoy and Verdery 1999; Creed 2011; Dunn 2004; Gal and Kligman 2000; Ghodsee 2012; Halmai and Kalb 2011; Hann 2001). In what follows, I will briefly discuss how these studies approach the themes of lustration and develop my own theoretical-methodological framework.

The research on Polish lustration is dominated by the studies of political scientists and legal scholars, who embrace the first line of inquiry. They frame lustration as a problem of the communist legacy and transitional justice. Lustration is typically presented as a legal measure to address the human rights abuses of the former regime and facilitate the transition to a peaceful and stable democracy (see Calhoun 2004; Czarnota, Krygier, and Sadurski 2005; Elster 2004; Mayer-Rieckh et al. 2007; McAdams 1997; Minow 1998; Nalepa 2010; Nedelsky and Stan 2015; Priban et. al 2003; Teitel 2000; Verdery 2012). By effecting a change in the state personnel, lustration is supposed to refashion a democratic identity for the state and restore its moral authority (Borneman 1997). But lustration is also needed to protect the fragile “democratic reform process” and as such, it is an “institutional and symbolic step toward good governance” (Horne 2009, 713-4). Furthermore, lustration is usually described as indispensable to meet the popular demands for justice (see Cepl and Gillis 1996; Stan 2014). It is presented as a natural response to these demands for justice; whatever lustration does is supposed to serve for the moral recovery of the “victims of communism,” on behalf of whom the legal process exercises power. Thus, even when lustration and allegations of collaboration wrongly target people or deprive their subjects of the means for self-defense, such violence is deemed necessary. In the new moral hierarchy of victimhood, it is the victims
of communism and their suffering that count most and have come to define the new nation (see Stan 2015).15

I have two major objections to this type of research on lustration. The first one concerns a theoretical-methodological point: as mentioned above, that research often assumes an abstract, hypothetical point of view of a presupposed “society,” “people” or “victim” (e.g., “people want lustration”) and rarely investigates who these “people” are, how they come to desire or want lustration, and what conflicting expectations of justice and truth are raised by different social groups and victims. Instead, that research takes for granted the self-described goals of lustration and uses them to justify the legal process. Nor does it ask: how has lustration – and its various forms – become the dominant form of reckoning with the communist past? How does it attempt to monopolize the field of historical justice? What other visions of social justice and equality has lustration displaced? In the following chapters, I will examine these questions.

My second objection concerns the kind of victimhood ethics espoused by those studies. They often uncritically employ the terms of the victim-perpetrator framework and do not interrogate their own position when they claim to speak for the victims. Nor do these studies engage with the fact that the passage between victims and perpetrators may not be as distant and definitive as it may seem. In fact, the historical record suggests that victims’ violence, especially the violence perpetrated by the organized forces like the state and popular nationalist movements in the name of victims, may generate a cycle of violence of tragic magnitude and even genocidal violence (see e.g., Mamdani 2001).

I also want to underline that the pro-lustration studies often disregard or trivialize the violence of lustration. By referring to the letter of the law, they claim that the Polish lustration law is too benign or ‘forgiving.’ For instance, they do not consider the accusatory and shaming practices involved in lustration as injurious. However, the penal nature and the punitive effects of the lustration law, as we will see, have been central to the public contentions around the legal process and are acknowledged as such by Poland’s Constitutional Tribunal and international institutions such as the European Court of Human Rights.

Perhaps more symptomatically, the ‘pro-lustration’ studies often assume that a person’s reluctance about or opposition to the idea and practice of lustration is a sign of his or her secret guilt. People object because they have something to hide or fear. The proponents of lustration usually invoke this claim to explain away the critical concerns about lustration and even subject their critics to a moral blackmail: if you are against lustration, then, you must approve the violence of the secret police. For instance, the political scientist Monika Nalepa (2010), in her influential quantitative research on Polish lustration, develops the thesis of what she calls “skeletons in the closet.” In her view, what explains certain political groups’ criticism of lustration is that lustration would adversely affect their inner circles and cause them to lose important public offices. In a similar vein, the eminent Polish sociologists Jadwiga Staniszkis (1991) and Andrzej Zybertowicz (2000) suggest that it is the new leading political and economic elites’ origins in the communist establishment that explains their critical approach to lustration. These people oppose lustration because it is not in their self-interest.

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16 See e.g., Adam Czarnota’s talk at the conference mentioned above (footnote 14) as well as Horne (2009) and Nalepa (2010). Indeed, this assumption is widely shared.
I want to underscore that the terms of ‘rational choice theory’ underpin much of the scholarly research on lustration (see e.g., Huntington 1993). As is well-known, this theory assumes that each actor seeks to maximize self-interest by making ‘reasonable’ choices in accordance with the rules of the game. But this approach is also widespread among the critical studies of lustration. These studies often argue that lustration has become a political instrument of anti-communist nationalists to repress their opponents. In this view, lustration mainly functions as a window-dressing for the rightwing groups to pursue their political interests and consolidate their position (see e.g., Fowler, Williams, and Szczerbiak 2005; Michnik 2014; Szczerbiak 2002; Walicki 1997). But these studies do not explain what it is that makes lustration particularly instrumentable or how lustration, in the first place, has become a useful political tool.

My dissertation critically interrogates the assumptions of the rational choice theory underpinning these pro- and anti-lustration views. I do not mean that personal or collective interests are not important in approaching the issues of lustration. Nor do I claim that political struggle is not important or that people’s past entanglements with the communist-era secret service do not influence their view of lustration. But the rational choice theory is too blunt and limited to explore these questions, which I think are essential to understanding the dynamics of Polish lustration: what constellation of social-historical forces, ideas, and passions constitutes the conflicting positions on lustration? What are the international and national conjunctures that are central to the configuration of political alliances vis-à-vis lustration? What are the major contradictions of neoliberalization and democratization that articulate and give way to the social-political antagonisms around lustration? In my view, these questions are more fruitfully analyzed
by the studies that follow the second line of inquiry into the ‘postsocialist’ present and examine lustration in the context of capitalist transformation and rightwing populism.\footnote{The rational choice theory or what is sometimes called “power politics” approach has recently received critical reflection. See e.g., Szczerbiak (2015) and Calhoun (2002). While they both underscore the importance of ‘ideology’ in taking a position about lustration, these studies do not contextualize lustration within the dynamics of capitalist democratization. For that, see Gil Eyal’s (2000) insightful analysis of Czech lustration and the way it operates with the purificatory violence exercised by neoliberalization.}

**LUSTRATION AS A STUDY OF NEOLIBERAL GLOBALIZATION AND RIGHTWING POPULISM**

A part of the research on the nexus of capitalist transformation and Polish lustration focuses on the legacy of communism and analyzes how it *corrupts from within* the project of building a ‘normal’ free-market capitalism. These studies idealize a sort of pure free-market economy or capitalism, against which they label the Polish transition as ‘pathological.’ Jadwiga Staniszkis’s influential study of “political capitalism” is an eloquent example (1991). As mentioned above, she argues that it is the (former) communist *nomenklatura* or political elites that mostly benefited from the privatizations undertaken since the second half of the 1980s. Her criticism focuses on the specific political origins of the emergent capitalist class in post-1989 Poland – the property, wealth, and other privileges accumulated by the former communists.

In a similar vein, Maria Łoś and Andrzej Zybertowicz’s (2000) study of neoliberal globalization and the “new knowledge economy” is concerned with the secret and illicit participation of the (former) communist-era security apparatuses in the privatization of what they call the “police-state.” They observe that many security officers, who were laid off in 1989-1990, began running private security companies. These mafia-like security companies functioned alongside the newly reorganized police
forces. Drawing on their ‘skills,’ the ex-security officers used these companies to monitor entrepreneurs and economic activities, and blackmail or threaten certain competitors from entering certain sectors. These ex-security officers also sold valuable economic intelligence papers to the foreign corporations interested in investment. In short, the transition toward a knowledge-based post-industrial economy provided many opportunities for the ex-security officers to convert their knowledge and expertise into capital and use a variety of methods of violence with impunity as a private security company. Thus, the authors suggest, Polish capitalism will remain pathological unless the corrupt and criminal ex-security officers and their collaborators are punished and banned from public life. They conclude that lustration was necessary not only for dispensing justice to the victims of the communist-era security service, but also for building a healthy competitive, self-regulating market and protecting it from ‘outside’ interference.

Notwithstanding the insight they provide to the secrets of the privatization of the economy, these two studies fail, I think, to provide a critical analysis of capitalism. Their principal concern is about identifying who benefited from privatization and who joined the ranks of the emergent ruling classes. However, even then, their argument seems to miss the empirical fact that it is the communist-era technocrats and managers of state firms who mostly benefited from the capitalist transformation – not necessarily the party elite or activists, as Staniszkis claims (see Eyal et. al 2000).

But my main contention is about something else. Neither of the studies, in my view, offers a proper understanding of capitalism as a social-historical formation. Where or when did capital accumulation not involve political actors, or security organizations? Where did a capitalist mode of production ever institute a purely self-regulating market,
free of state regulation or intervention and exercises of various illicit forms of violence? When are economics and politics ever so independent of each other in the history of capitalism? In short, both Staniszkis’ and Łoś and Zybertowicz’s analyses do not provide much insight into the discursive and structural tensions of capitalist democratization in Poland and the way those tensions articulate the antagonisms around lustration. Instead, those studies are concerned with repairing and normalizing the actually existing (corrupt) capitalism in Poland through lustration.

In a well-researched study, the political scientist David Ost (2005) investigates the dynamics of social-political mobilization around Polish lustration. His research suggests that the arguments developed by the two studies discussed above, in fact, constitute the crux of the rightwing populist discourse.\textsuperscript{18} Ost’s study provides an empirically rich account of what is commonly known as the displacement thesis: the nationalization of class struggle under the hegemony of “market fundamentalism” or neoliberalism. Specifically, Ost shows how rightwing populist leaders and trade union activists gradually have managed to organize the anger of the dispossessed and fragmented working class in the language of xenophobic, anti-Semitic, and anti-communist nationalism. Instead of highlighting the economic causes of that anger, these rightwing groups, so Ost argues, have diverted the workers’ “economic anger” toward discriminatory and majoritarian identity politics, including lustration. They often invoked the figure of the “red baron” or secret communist agents to blame and explain away the problems of neoliberalization. As a result, the class interests of the workers have not found proper expression.

\textsuperscript{18} In fact, both Staniszkis and Zybertowicz have played an important role in the rightwing groups.
The anthropologist Don Kalb’s (2009) research on Polish working class nationalism provides a perceptive critique of David Ost’s influential analysis.¹⁹ He contends that Ost is largely concerned with the discourse of the political and union elites and offers little to understand the formation of “illiberal” populist tendencies from below.²⁰ Drawing on the Polish anthropologist Michał Buchowski’s study of “internal orientalization” (2006), Kalb rightly notes that the working class is systematically “orientalized” and marginalized by the Westernizing liberal elites of Poland. Since the early 1990s, these elites and the aspiring middle class tended to dismiss the workers’ and peasants’ grievances about the transformations, or discredit those people as “civilizationally incompetent” and even “dangerous” (see e.g., Sztompka 1993). As a result, the popular classes, Kalb argues, have articulated their discontent in the anti-elitist, nationalist language available to them. In other words, the “illiberal” nationalism that Ost attributes to the rightwing political and union leaders, in his view, is an “organic” expression of the “subaltern” working people. It emerges from the workers’ authentic historical-cultural world, from their personal and collective experiences under communism, from their memory of struggle against the factory managers. In short, what Ost sees as the rightwing manipulation of the workers and the displacement of their economic anger into a support for radical lustration appears to Kalb as the “return of the repressed,” the authentic desire of the working people “traumatized” by the capitalist transformations (2009, 296).

¹⁹ See also Pankowski (2011) who found fault with Ost’s work for discounting the historical-cultural repertoire of rightwing populism in Poland.
²⁰ Kalb asks, “Are these illiberal views largely imposed by willful rightwing political elites or have they somehow organically emerged from Polish popular classes?” (2009, 293, emphasis added) Then, “Should we not see it [nationalism] as an effort at explaining their own dispossession while symbolically leaving the social goal of a democratic market society?” (ibid, emphasis added)
In this dissertation, I will expand on and critically engage with these analyses of David Ost and Don Kalb. Both analyses are useful to contextualize lustration in the social history of transformations. However, as far as lustration is concerned, in my view, they do not adequately grasp the role of mediation. In different ways, their analyses of lustration are too mechanistic. Thus, they fail to grasp the object of lustration in its fluidity and complexity.

For one thing, Don Kalb’s account of the “return of the repressed” is not fully convincing. Do the workers’ memories of communism and their “traumatic” experience of transformation remain unaltered over time? When they narrate “local histories” and link it to their views on lustration more than a decade after the fall of communism, do these workers simply recall the past as it was? How can their narratives of the past and views on lustration stay immune to the vicious political battles and media wars around lustration? I doubt that this return of the repressed is ever the return of the same. As in mainstream psychological studies of trauma, the repressed here is treated as frozen in time and space; the past experience is supposed to communicate itself in the present as it was, without any mediation.

I think that instead of assuming some organic language of the workers, we need to investigate the politics of temporality and the forms of mediation that present certain types of narratives as more authentic and generate a desire to remember certain events and connect them to the ongoing issues like lustration. David Ost’s analysis seems more concerned with the question of mediation. He presents a rich account of the discursive strategies of rightwing political parties to organize the anger of the workers against the political, religious, and sexual minorities. Yet, his account also builds on the sharp

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21 See Raymond Williams (1977) for an insightful discussion on the notion of mediation.
distinction between economy and politics like Jadwiga Staniszkis’s account. He assumes that the economic causes of dispossession must also express themselves as economic anger and focuses on the political manipulation of that anger.

How to identify or pin down “anger” as “economic anger”? What else is in the life of “economic anger”? I think Ost’s study treats anger and, in general, emotions too mechanistically and instrumentally. It does not recognize the contingent and dynamic life of anger and its less intelligible forms and expressions. Moreover, his distinction between “political liberalism” and “economic liberalism” does not allow him to see how the ideas and institutions of political liberalism (e.g., individual-centered human rights, private property, and the juridical-formal equal citizenship) contribute to the problems of labor exploitation and alienation. Nor does his account pay attention to how the liberal legal doctrines of security or liberal discourse of populist irrationality is a part of the problem he scrutinizes.

Overall, both Kalb’s and Ost’s accounts fail to grasp the overdetermined nature of the object of lustration. Kalb’s account does not problematize the way the violence of the communist state (e.g., repression, coercion, and privileges) articulate with the violence of capitalist transformation (social dispossession and exclusion) and become the composite object to which lustration responds. There is a temporality to this object. The importance of temporality is acutely manifest when lustration is conducted 16 years after the ‘end of communism,’ when it is not possible to neatly disentangle the issues of reckoning with the past from the present struggles for hegemony and mobilization around lustration. Similarly, Ost’s account of anger needs to be seen as a mixture of many effects. Just as
violence is rarely a pure phenomenon – as Etienne Balibar (2015) suggests, there is no pure ethnic, racist, or capitalist violence—anger also needs to be seen in this way.

Finally, neither Ost’s nor Kalb’s account adequately examines the mediatory power of law, state, and epistemic and truth-making practices in the social-political antagonisms around lustration, or in the transformation of the lustration process into a national security policy. Likewise, they are not concerned with the social life of the accusations of betrayal or collaboration, or with the moral and political questions they raise concerning the boundaries of the new body politic and forms of belonging. I have constructed my theoretical-methodological framework to address these shortcomings. Of particular help have been the anthropological studies of treason/betrayal, law, and archival practices.

THEORETICAL-METHODOLOGICAL FRAMEWORK OF RESEARCH

The themes of treason and betrayal have recently drawn the attention of anthropologists. Their studies examine the accusations of betrayal in particular historical-cultural contexts to explore the tense and fragile social and political relationships that make up one’s world (e.g., Crapanzano 2011; Jensen 2010). The anthropologists Tobias Kelly and Sharika Thiranagama’s study of treason provides a useful theoretical framework for my research on lustration. Below, I quote at length their eloquent description of that framework:

Treason has often been treated as a pathology or a distortion of political life. Its importance has, therefore, been sidelined in social and political analysis. However, one of the central propositions of [our study] is that…the identification and prosecution of treason are constant, essential, and “normal” parts of the processes by which attempts are made to reproduce social and political order. Placing treason at the heart of our attempts to understand the ways in which political regimes are made and unmade helps
us raise important questions about categories of belonging, about their moral, political, and economic foundations, and about the often contradictory choices faced by modern political subjects. The bond between the state and its citizens is never complete, as it is mediated by a host of contradictory affiliations to kin and social groups and can be overruled by wider ethical obligations. The specter of treason is thus embedded within notions of the loyal citizen. Citizenship is itself fraught with risk. The fidelity of even those who appear to have the greatest allegiance can never be assured. Betrayal is always a possibility. It is not just the stranger that is feared and suspected but also the seemingly faithful citizen. Therefore, political conflict should not be understood as just the marking of difference or the delineation of boundaries but as the product of a tension inherent in the state-citizen relationship. Both states and their citizen/subjects are prone to the moral and social unease produced by fundamentally incomplete forms of loyalty and legitimacy. Antagonism is produced not only between the citizens and the one who appears to be different but among those who seem to be the same, those who at first glance, seem to share the most intense sense of solidarity. Intimacy is not the antithesis of fear but can be at its core (2010, 2, emphases added).

Thus, Tobias Kelly and Sharika Thiranagama propose to study treason by focusing on three key themes: “the relationship between treason and the fragile nature of state-building processes;” “the forms of suspicion and fear that are inherent in social and political relationships;” and “the ethical nature [ambiguity] of treason” (3).

This is a stimulating framework to study the social-political life of Polish lustration. It helps explore how lustration maps the new moral and political boundaries of belonging; how accusations of collaboration serve to define ‘the people’ in whose name the new political regime speaks; and how state building, reorganization of state-citizen relations, and redefinition of citizen loyalties are fraught with risk, fragility, and fear. But my central problem with this account is precisely the ontological assumptions it makes regarding the so-called fragility, fear, and riskiness about social and political relationships. These features or affective states are mainly treated as given or inherent, like human nature. The same may be said about Kelly and Thiranagama’s treatment of
the ‘dark side of intimacy,’ ‘multiple and conflicting allegiances,’ and ‘ambiguities’ of social relations and ethical choices. To say “betrayal is a constant possibility” does not explain much, in my view. It is a useful departure point, but has a limited analytical value.

My research builds on this framework by thinking it through the scholarship on lustration discussed above and by introducing new themes to analyze the social-historical structure in which such “constant possibility” of betrayal, “inherent” fragility of state-citizen relations, and forms of suspicion are produced and reproduced. In this respect, I will specifically focus on the themes of state, law, violence, citizenship, and epistemic and truth-making practices.

First, focusing on the state is particularly important in approaching the accusations of treason. The latter, indeed, sheds much light on the distinctive logic of modern state power – the state’s historical development into an increasingly abstract and “impersonal” structure, which at the same time keeps evoking such strong sentiments (see Skinner 1989). But focusing on the state is also important in analyzing the course of the transformations from socialism in Eastern Europe (see Grzymala-Busse and Luong 2002; Ganev 2007). While privatization of the state assets and resources was key to the accumulation of capital, it also became clear that privatization did not work without state provision, without recomposing the state on the other end, as Katherine Verdery (1996) has shown. Moreover, capitalist state building not only changed the material world, but also has transformed the moral-political discursive space. It has brought a new force to previously rehearsed ideas of democracy, freedom, and human rights, as well as to the

\[22\] Thanks to Talal Asad for formulating this point.
accusatory practices of betrayal. As such, Polish lustration, my dissertation highlights, needs to be understood in this material and discursive context of state transformation.

Second, I think Kelly and Thiranagama’s framework may fruitfully be complemented by the studies that explore the intersection of law and suspicion. In this respect, Hussein Agrama’s ethnographic study of law in Egypt is insightful. Defining modern (liberal) state law as organized suspicion, Agrama (2012) shows how the practices and institutions of law produce different forms of suspicion, as they expand into more and more domains of everyday life (see also Asad 2004). One of the driving engines of lawmaking is to settle suspicion and ascertain ambiguity. Yet, the law paradoxically fosters even more suspicion and ambiguity in an attempt to overcome them. In that, it becomes difficult to distinguish what is legal from what is not.

This account of the interplay of law and suspicion sheds important light on the socio-legal life of lustration. As we will see in the following chapters, the concern with legal and political manipulation and the ambiguities surrounding the legal and moral categories of “collaboration” are central to the struggles around the lustration process. While the lustration law is partly initiated to regulate the ‘wild’ field of accusations and suspicions of betrayal, it also has introduced new mechanisms of suspicion.

Anthropologists often highlight this dialectical relationship between the legal and the illegal or the ‘criminal’ (see e.g., Comaroff and Comaroff 2006; Das and Poole 2004). In conversation with that research, I approach law as a set of discourses, practices, and institutions, one that dialectically defines itself against what it considers as ‘illegality’ or the ‘wild’ exercise of power. The constituent power, which establishes the new legal-political order, never completely disappears, and it emerges with full force at critical
moments (see Negri 1999). That is why the 1989 Round-Table negotiations, the ‘primal scene’ of transformation, as we will see, are constantly invoked by radical nationalist lustration proposals. Finally, I want to underscore that I do not approach law merely as an instrument of the ruling class, but see it as also constitutive of the field of social struggle and transformation (Poulantzas 1980; Hunt 1990; Merry 1990). Anthropological studies of transitional justice have shown that law is at once a site of the government of peace and conflict taking place at multiple local, national and international scales, and also a field of social struggles, the terms of which are mediated by specific historical-cultural contexts (see e.g., Hinton 2011; Wilson 2001). And many of the legal rights, especially civil and social rights, have been won by the popular struggles that fought for them on the streets and in workplaces (see e.g., Balibar 2014; Kearns and Sarat 1997). These rights produce real effects on people’s lives even if they are not revolutionary in themselves.

Third, my dissertation complements Kelly and Thiranagama’s study by focusing on the legal-institutional arrangements of citizenship rights. These arrangements structure the intersubjective space of fear, suspicion, and uncertainty, which is essential to lustration. With the dismantling of social rights in the age of liquid modernity or neoliberalization, the quality of life also deteriorates for most of the people (Balibar 2014; Bauman 2011). As the networks of social solidarity dissolve and brutal market competitions and precarious labor become the norm, betrayal becomes a real possibility. Betrayal is a “We relationship,” writes Vincent Crapanzano (2011, 171), and involves the abandonment of not only a person, but also the social relationships of exchange and reciprocity. As we will see, the dissolution of the famous “Solidarity” movement and
neoliberal “shock therapy” policies have given way to the myriad forms of suspicions and accusations of betrayal in Poland.

In this sense, I investigate how the problems or contradictions involving remaking the new citizenship and national political community shape the Polish lustration process. The central contradiction that I focus on is also the one Partha Chatterjee lucidly states for postcolonial democracies: the “proclamation of equal citizenship and majority rule, on the one hand, and the dominance of property and privilege, on the other” (2011, 17). Situated in the historical time-space of Poland’s peripheral capitalist democracy, my analysis highlights how the violent contradictions of capitalist transformation and class formation expand into suspicions of betrayal and give way to the rightwing populist movement and the increasing securitization of lustration.

To this end, my dissertation interrogates the major moral-political hierarchies established between different modalities of violence in capitalist modernity. Studies of violence often identify with its dramatic and excessive quality and as an extraordinary event (e.g., war, massacre, terrorism) that ruptures the flow of everyday life and overwhelms meaning (Coronil and Skurski 2005; see also Goodale and Merry 2007). While this view typically locates violence outside the legal, political, and economic symbolic and material order (e.g., capitalism), it also reifies violence as an entity or autonomous agent, presenting it as an asocial force beyond the normal and the normative. As such, that view assumes and reinforces the dichotomy between war and peace, violence and non-violence, and state and civil society. While “peacetime” structural violence generated by contemporary capitalism is often considered normal, ordinary, and even necessary and the people injured by it “collateral damage” (Bauman 2011), the
violence to which transitional justice responds is usually presented as extraordinary past violence (war, state-sponsored violence, or totalitarian repression). Consequently, most transitional justice research fails to adequately account for the multiple factors contributing to the production and reproduction of violence in the present through institutions and practices that are considered normal and unrelated to the ‘violent past.’

Fourth, I will examine the normative framework of Polish lustration to study the moral economy of the legal process and the social force or efficacy of the accusations and revelations of collaboration (even when these accusations are not true). This normative framework holds together the competing arguments about lustration and draws on the following sets of discourses: the global post-ideological discourse that incriminates, de-politicizes, and de-historicizes the history of the Left and particularly Soviet-style socialism, by reducing it to a chronicle of total repression, cruelty, and mass violence; the redeployment of the old paradigm of totalitarianism, which is historically developed by and for the liberal West, expressing its own fears of the state’s total ‘penetration’ of society, where there would be no possibility of individual autonomy, political life, or social relationships of intimacy and trust (see Arendt 1973); the “judicial mode of historiography,” especially popular among anti-communist nationalists, which constructs the past to identify criminal or quasi-criminal individuals and name names, and thus, is individualizing and event-centered and expresses the modes of suspicion integral to criminal law (Ginzburg 2002); the “Nuremberg model of justice,” which imposes a sharp distinction between victim and perpetrator and espouses the absolute moral superiority and purity of the victims, whom it turns into mere figures of nationalist ideology, flattening the heterogeneous field of victimhood (Mamdani 2015).
Finally, my dissertation will concentrate on the theme of epistemic and truth-making practices. The particular end of state communism in Eastern Europe has prepared the conditions for a fierce struggle around the state archives (see the appendix below). In this context, I focus on the following questions: how is it that the communist-era security files are treated as the most authoritative and transparent source of truth even by the anti-communists, who denounce communism as a system of lies? What is the source of the social-political and epistemic force of these files, of the ‘revelations’ from these files? How do these files continue to exert their force in spite of the widespread criticisms of their false or misleading content and their manipulative purposes?

In the following chapters, I will explore these questions. But here let me say a few words about some of my tentative conclusions. I think a part of the answer to those questions lies in the general modern tendency, as in law and historiography, to treat state documents as the ultimate source of knowledge and truth. Both law and history are considered to belong to the state (e.g., the Rankean approach to history). But there is also a well-established epistemic orientation that approaches the documents and archives as a transparent source of knowledge. This orientation is also popular among certain types of politically engaged research that studies the state archives to retrieve information, recover the missing or lost voices of the past, and initiate the ‘return of the repressed.’ This approach purports to ‘read between the lines’ or ‘read against the grain’ in an effort to write alternative and subversive histories ‘from below’ (see Mawani 2012). Indeed, this type of reading also has been common in Polish lustration practices.

I think that it is the totalitarianism paradigm that rationalizes such contradictory treatment of the communist-era security archives. Such contradiction is internal to the
totalitarianism paradigm, which presents the communist state as both omnipotent and omniscient (it knows everything about the citizens) and yet, at the same time, deceptive and treacherous. The documents of the communist state are treated as having the highest capacity to disclose the real truth about the past; but when it comes to the records concerning economic planning or popular support for the regime, they are treated as lies. Such double treatment is manifest in two modes of reading the security files: one either reads the security files to find hidden plots and conspiracies, always reading between the lines, what I call overinterpretation; or one reads the files cursorily and takes at face value the rhetorical presentations of the security officers and their activities and tasks, what I call literalism. These two modes of reading, as we will see, exist side by side in lustration.

My approach to the Polish secret service files is different. I draw on the recent scholarship that highlights the agency and materiality of the files and examines how they generate the reality they present, produce the things they describe, and “make up” the people they classify (Hacking 2004; Hull 2012b; Poenaru 2013; Stoler 2010; Vatulescu 2010; Verdery 2014). This is not to say that the files are simply misleading or unreliable as a source of historical knowledge, or that the communist-era security apparatus is too deceptive to conduct social research. I do not think that security apparatus was any more deceptive than that of the Western capitalist states.23

But my point is that we need to approach these security files and apparatuses for what they are, before trying to ‘repurpose’ them for different ‘normative’ goals and use them for moral recovery and redemption. These files are produced for the purposes of

23 As historians of modern Europe suggest, the Soviet security apparatus indeed drew heavily from the Western security apparatuses (Holquist 1997).
state security and, as such, are most illuminating when we study them to understand the informational aspects of communist state power and state-citizen relations, and the kind of suspicions, anxieties, and fears marking them. This is not just a question of truthfulness or authenticity of the files’ content. As Matthew Hull (2012a) writes, “In the ‘epistemic murk’ that characterizes bureaucratic arenas, the truth or falsity, authenticity or inauthenticity is often not what determines their effects [...] Their very inauthenticity or falseness may make them more effective” (258) In the following chapters, I will then explore alternative modes of critical engagement with the security archives beyond the retrieval and recovery type of research (see also Povinelli 2002). Instead of focusing on what lies behind or between the lines, I will focus on what is on the line in my reading of the security files (see Hellbeck 2006). This reading of the files, in turn, will throw light on the social-historical structure of accusations and suspicions of betrayal in Poland.

In sum, I have thus far proposed to develop Kelly and Thiranagama’s account of treason by focusing on the following themes: the state, law, citizenship, truth-making and epistemic practices, and the general moral economy of lustration. Based on this discussion, I will offer a brief overview of the dissertation chapters in the next section.

OVERVIEW OF DISSERTATION CHAPTERS
The dissertation is divided into three sections. The first (Chapters 1 and 2) offers a historical overview of the field of lustration by focusing on the highly contested notion of ‘collaboration’ and contextualizing it within the shifting state-citizen relations and conditions of political action, from the 1960s to the 1990s. The second section (Chapters 3 and 4) is concerned with the ‘postsocialist’ legal-political space of lustration, with an
emphasis on the remaking of citizenship and human rights and property transformation in
the era of neoliberal democratization. The final section (Chapters 5, 6, and 7) engages the
truth-making and epistemic practices concerning lustration, especially the relations
between law, history, and memory and the way they affect the subjectivity of people who
become subjected to lustration.

Chapter 1 “Neither Immoral Opportunists nor Pitiful Victims: the Socialist
Collaborator?” critically examines lustration’s normative framework by focusing on the
modes of representation of the ‘collaborator’ that became dominant after 1989.
Specifically, I concentrate on the hegemonic discourses of post-ideology and
totalitarianism that conceive the collaborator within a clear-cut victim-perpetrator
framework either as some kind of a ‘moral pervert,’ or a ‘pitiful victim’ of pervasive
repression. In conversation with these discourses, I reconstruct a case study of a certain
self-described socialist, who has recently admitted to collaboration during his lustration
examination. Through a study of his six-volume security files and conversations with this
man, I attempt to situate the act of collaboration within the larger set of communication
practices that existed between the citizens and the party-state. In so doing, I aim to
understand how the unequal relations of power, social struggles, and popular grievances
and suspicions of betrayal played out vis-à-vis the communist-era state security.

Chapter 2 “Democracy Must Be Defended: Ethics of Forgiving, Solidarity, and
Capitalist State Building” continues my analysis of the normative framework of
lustration. It focuses more on the ‘other’ side: the dissidents or political oppositionists.
By tracing the shifting social and political-economic conditions of labor and human rights
activism from the 1960s onwards, I examine how the dissident activists’ ethical-political
reflections on betrayal, forgiveness, and social defense and solidarity have gained a different meaning, when those dissidents rehearsed them in the 1990s after occupying positions of authority and leading the drastic neoliberal policies. This chapter then offers an analysis of the two moments of democracy and human rights: one as an oppositional discourse and the other as a liberal ruling class ideology of state building. The gap between these two moments contradicts and overwhelms the meaning of ex-dissidents’ current positions on lustration, human rights, and democracy.

Chapter 3 “Equality, Liberty, Security: Lustration and Postsocialist Legal Transformations in the Periphery of Europe” develops further my analysis of the emergent ‘postsocialist’ legal and political-economic order. It examines how the discourse and practice of lustration mediate the ‘postsocialist’ contradictions of equality and liberty. By drawing on Etienne Balibar’s study of “equaliberty,” I situate lustration in the context of remaking of citizenship and human rights and the new constitution, and focus on the antagonisms around property transformation and the redefinition of national political community. The chapter offers a close analysis of the European Resolution no. 1096 on the dismantling of “totalitarian communism,” the landmark decision of Poland’s Constitutional Tribunal on the 2006-7 radical lustration bill, and a lustration case seen by the European Court of Human Rights. In doing so, I highlight the role of “Europeanization” in the legal transformations and underscore the contradictions of equality and liberty arising out of a particularly limited conceptualization and organization of rights integral to neoliberal democratization. These contradictions and the resulting antagonisms (the violence of neoliberal democratization) are ‘managed’ through
an expansive security mechanism that is ‘imported’ from Western European constitutionalism and has been decisive in the making of the lustration law.

Chapter 4 “A Biography of Law: Fear, Shame, and Responsibility” focuses on the lustration court case of a prominent Constitutional Tribunal judge to explore further the constitutive tensions of the legal and capitalist transformations from state communism. Through life history interviews with the judge, I will study not only the battles between the legislature and the Constitutional Tribunal on the issue of lustration, but also the subjective experience of the accusation of collaboration – the ‘dialectic of accusation.’ This then takes me to explore the relations between law, fear, and shame in the context of lustration. The chapter shows how the demands for justice concerning communist state violence and the structural violence of neoliberal capitalism overlap and become entangled in the lustration of the judge. By drawing on the works of Hannah Arendt and Iris M. Young, I will explore an alternative mode of moral and political responsibility that addresses or engages with this overdetermined violence.

Chapter 5 “The Politics of History, Victimhood, and Truth-Telling” focuses on the epistemic and truth-telling practices related to lustration. The chapter discusses how lustration operates through a judicial mode of historiography, embraced by young, anti-communist, nationalist historians of the new Republic. This discussion also involves a critical analysis of the political uses of the victimhood and transparency discourses in rightwing populist mobilization, as well as the 2006-7 radical lustration projects targeting the media and higher education institutions and the protests against those projects. Specifically, the chapter focuses on the sources of anxiety about the truth-telling practices involved in lustration and shows how the lustration procedure is expanded into an
elaborate national security mechanism by deploying the mechanisms of state power and the judicial mode of history writing.

Chapter 6 “Naming the Secret Agent: Law’s Suspicion, Archive, and Ambiguity” develops further my analysis of truth-making practices through an ethnographic study of a self-lustration court trial. My analysis of the micro-politics of the lustration court proceedings concentrates on the political and epistemological problems of using the security files as the main evidentiary source. By studying the evidentiary process and court testimonies, the chapter explores the different forms of suspicions that are in play in the lustration proceedings and the way these suspicions affect the social world of the lustrated persons and their families or close associates.

Finally, Chapter 7 “Facing History: Spectacles of Justice and the Body of the Accused” continues my analysis of naming and shaming practices. It focuses on the defacement practices related to lustration by studying the media accusations or revelations of collaboration with the communist-era secret service, the public exhibitions of the faces of the ex-security officers, as well as the exhumation of a young political oppositionist who was murdered by the communist-era secret service. I examine the process of figuring a person into a traitor or an abstract national symbol with a focus on the corporeal effects of that figuration. What does it mean to facialize history? How do the expositions of secrets from the IPN archives participate in remaking the new body politic, which is supposed to be transparent and accountable? I will investigate these questions by focusing on one case of accusation of collaboration, which has implicated all the family members. Drawing on the recent literature on Ernst Kantorowicz’s The King’s Two Bodies and my several years of conversations with the family members and
reading of the relevant secret service files, I will study the relationship between law and memory, courtroom and theater, knowing and judging, and nation building and personification of the enemy.
APPENDIX: HISTORICAL OVERVIEW OF THE LAWMAKING PROCESS OF LUSTRATION

The events of 1989 placed the communist-era security archives at the heart of a variety of moral and political claims and visions of democratization. One of the major problems of reckoning with the military dictatorships in Latin America has been the absence of documents about the forced disappearances and state violence (e.g., mass killings). By contrast, Eastern European countries inherited a massive amount of state documents. This situation shaped the particular form of ‘transitional justice’ employed there (Teitel 2000). East Germany offered a dramatic example. Noticing that the East German State Security (Stasi) officers had begun burning and shredding the files in early December of 1989, protesters stormed the Stasi headquarters in different cities with the slogans “Security for our records,” “I want my record,” and “Freedom for my file” (Vismann 2008, 151-152). The files came to occupy a peculiar position. On the one hand, they were obviously state records, but, on the other, the people who became the object of those files now claimed to be their real owner. Subsequently, the management of the security archives became a burning issue in the ‘transition to democracy’ and an object of heated social-political struggles.

In Poland, communist-era security officers also destroyed their archives, especially during the ‘regime change,’ from the second half of 1989 to the early 1990s. It is not possible to know precisely what portion of the archive was destroyed or what happened to the missing files (whether someone just destroyed them or took them away). Some groups, including veteran dissidents, called for the complete destruction of the archives. This was going to be both a ‘practical solution’ to the problems of uncertainty,
of managing half-destroyed archives, and redemption from the past. Other groups clung to the destroyed archives and claimed that they were sufficient sources to shed light on people’s lives and the recent past in general.

In a sense, Polish archival politics expressed the contradictory tendencies that may be traced back to the French Revolution and that Jacques Derrida (1996) calls “archive fever.” The revolutionary struggle, Cornelia Vismann (2008) suggests, was marked by the destructive tendency (the desire to destroy the files of the ancien regime to abolish its power) and a “conserving, and conservative treatment of files,” which aimed to preserve the old public records in order to institute a memory for the emerging nation-state and convey the kind of “reign of terror the French had overcome” (118). As is well known, the conservative tendency in the end prevailed. Later, the anarchist Mikhail Bakunin famously claimed that the French Revolution failed because it concentrated on destroying men rather than the things, positions, and institutions of power (the state). Max Weber responded to Bakunin by arguing that the destruction of public records was not enough. As long as the men’s (the civil servants’) ideas and norms of behavior did not change, the ancien regime’s bureaucratic power and the “system of files” that support it would outlive the regime change (Vismann 2008; Hull 2012a). In this sense, the Polish lustration law brought together Weber’s emphasis on norms and the ‘conservative’ treatment of the archives. It acted on men and used the former regimes’ security files to examine their moral orientation and sincerity.

How did the issue with the security files and the ‘secret communist agents’ first explode in public? How did lustration become the dominant form of settling account with the past? What were the turning points in the lawmaking process of lustration? Piotr
Grzelak’s comprehensive research War on Lustation (Wojna o Lustrację) (2005) suggests that it was only after the news in a German daily in spring 1990 about the existence of secret agents in the Polish parliament that the issue was first publicly debated in Poland. These debates also delineated the main contours of the moral discursive space of the field of what was going to be called ‘lustration’ in a few years.

At the time, the Interior Minister, Krzysztof Kozlowski, was dismantling and reforming the communist-era security apparatus, the “Security Service” (UB/SB) and the “Citizen’s Militia” (MO) into the “State Security Office” (Urząd Ochrony Państwa, UOP) and “Police” (Policja). This process entailed the “verification” (weryfikacja) of the security officers – the word lustration was not used then. While those who were identified to have participated in “criminal” activities (crime as was defined by the then existing law) were laid off, many other security officers were retired. Both Kozlowski and the then Prime Minister Tadeusz Mazowiecki were skeptical about publicly disclosing a list of agent names. In a media interview, Kozlowski said:

Throwing out that kind of material to the hunt of public opinion would be something inhumane (nieludzki), provoking the worst instincts of man. This is so clear to me because there is evidence in the registration records of a group of people – I do not want to give any number – who were destroyed or forced by the state security (bezpieka) into collaboration. Disclosing the links of these people with the state security would result in a wave of suicides (20).

Unlike the parliament, which did not show much interest in the issue at the time, observes Grzelak, several Polish media began describing the dangers of having secret agents in the state. A journalist from the liberal-conservative weekly Najwyższy Czas! wrote:

### Footnote

24 In other words, lustration, an archive and state-centered process of justice, is adopted partly due to the existence of the state security archives inherited from the past (unlike in Latin America) (see Teitel 2000). But it also partly derives from the dominance of the totalitarianism paradigm in approaching the socialist past. That made the state, its dismantling and transformation, the main focus (see Rumin 2007).
Moscow may possess compromising documents [on Poland], which it could use to blackmail those who occupy high state positions. Exposing (ujawnić) the truth is not simply a matter of a compassion (samopoczucie) for a few thousand hidden contacts (konfident) or dozens of thousands of suspected agents. It is a matter of the sovereignty of the Republic. That is why I urge Mr. Krzysztof Kozlowski to change his ‘humanistic’ decision about protecting the SB agents. If he doesn’t do that, I will consider him a friend of those agents (cited in ibid, 21-22, emphasis original).

This was a common style of argumentation in the early 1990s. Both state security and humanistic concerns were frequently invoked to justify conflicting positions on the issue of public exposition of agent names. For instance, Zbigniew Romaszewski, a veteran human rights activist, argued that the exposition of agents was necessary also to “protect” (ochronienie) them from blackmail. Besides, it also accorded with the citizens’ “right to know” about public people (cited in ibid, 35).

Let me note that in the early 1990s, the arguments for the public exposition of agents or their public ban rarely invoked the pursuit of justice for the victims of communism. Instead, most of the arguments were concerned with the sovereignty and security of the state and with humanistic considerations, especially the human rights, which were championed as the ethical horizon of the new democracy. Gradually, the public’s right to know and transparency moved to the center. Yet, all these arguments had to address one way or another the technical-evidentiary problems of identifying the agents by using the destroyed security archives. These problems, as I discuss in chapters 5 and 6, remained unsettled in the next years and even decades.

What are the main factors that determined the course of Polish lustration? Here, I want to briefly mention the impact of capitalist transformation, the agent list scandals and controversial accusations of collaboration, and Poland’s accession to NATO and the EU. As mentioned earlier, the Polish lustration law was initiated only in 1997. Since the early
1990s, two major political blocs have clashed over the issues of lustration: the secular liberals, including liberal ex-dissident intellectuals (Freedom Union, UW) and the members of the reformed party of the communist regime (Democratic Left Alliance, SLD), and the Catholic nationalists or rightwing groups. While both blocs were ‘anti-communist’ and ‘nationalist’ (anti-communism was the post-1989 state ideology), what they understood by them was different. The more dominant former bloc embraced a secular-civic vision of nationhood, based on the principles of rule of law, equal citizenship, and pluralist democracy. The latter espoused an ethnic-religious definition of nationhood, based on blood, descent, and Roman Catholicism. Besides the secular liberal bloc’s dominant ethical-political position on lustration, the particularly violent course of neoliberalization made unlikely the introduction of anti-communist purges that might provoke violent clashes and destabilize the ‘transition to democracy.’ Amid the brutal elimination of hundreds of thousands of workplaces, the sweeping privatization of state resources, the steep rise of unemployment, and the volatile social protests, the governments did not introduce anything like lustration. They did not want to open another front of struggle in the state. Building a free-market economy was a priority.

But the agent list scandals and controversial accusations were also important in the lawmaking process of Polish lustration. These scandals typically erupted at critical political moments and brought urgency to the issue of lustration. Lustration emerged as a key rallying point in the electoral competitions. At a moment when the political parties hardly differed from each other in terms of their economic program, the main political cleavage became their divergent approaches to lustration. This was so until the mid-2000s.
The word ‘lustration’ became widely used in Polish public discourse in summer 1992 with the agent list scandal that was called “the Macierewicz Lustration” (Lustracja Macierewicza) (Grzelak 73). A well-known Catholic nationalist and fervent anti-communist (from the Christian Democratic party, ZChN), Antoni Macierewicz served as the Minister of Interior during the rule of the rightwing coalition government from 1991 to 1992. He was given the mandate to present a list of secret communist agents sitting in the parliament. The list he prepared was strictly based on the SB’s registration records and included the names of the new President and the legendary leader of the “Solidarity” movement, Lech Wałęsa, eight deputy ministers, and tens of MPs. Macierewicz lost his seat, as his rightwing government collapsed. The opponents of the government called it a coup d’etat attempt and denounced him for violating the individual dignity of the listed persons and the other laws concerning state security and civil service (Śpiewak 2010, 228). It became clear that the people whose names were on the list had no legal means to clear their names. The proponents of the Macierewicz Lustration argued that such resistance to the list only proved the extent of collision of dark forces. In any event, the scandal left an indelible mark on the future public perception of lustration. As Adam Czarnota observed, it set the parameters in which the mass media were going to present lustration: either as “part of a conspiracy aimed at a coup d’etat by rightwing political parties,” or “as a conspiracy of political forces connected with the former communist regime and some elements of post-Solidarity parties,” or as “a totally discredited idea in whatever form” (2007, 229).

Furthermore, the scandal revealed that the facts ‘found’ in the archive never spoke for themselves as Macierewicz had claimed. It highlighted that the literal interpretation of
the facts could easily take on the force of accusation. This was not simply due to the fact itself (its indexicality), but largely resulted from the affective environment in which those facts were produced. The social environment was already so saturated with suspicions that even a shade of ambiguity about one’s name could produce the effect of the accusation of collaboration. That is why the so-called list of facts could easily turn into a “list of suspects,” \( \textit{lista podejrzewanych} \) as Grzelak observed. Certainly, the Macierewicz List, as I will discuss in the next chapters, was not going to be the last list of suspects.

Moreover, the scandal created an urgency to acknowledge the existence of the security archives and secret agents as a problem that required legal regulation. A number of lustration laws were drafted. But these drafts were shelved when the SLD won the next parliamentary election in 1993. It did so in spite of the growing popularity of the theme of lustration and smearing anti-communist campaigns. Scholars of Polish politics often pointed to the SLD’s social-democratic rhetoric to explain the ‘unexpectedly’ quick return of the ex-communists to government (Eyal et. al 2000; Osiatyński 1997). In the era of “shock therapy,” the SLD’s advocacy of a social state drew popular support. After the electoral victory of the SLD, Aleksander Kwaśniewski from the same party was even elected as the new president.

In 1995, another agent scandal broke out and lustration again became a popular topic. This time the SLD Minister of Interior accused a well-known rightwing politician, Józef Oleksy, of the crime of treason for spying for Moscow. Oleksy denied it, but the accusation was not settled, because the relevant documents were supposed to be in Russia. Oleksy was plunged into a peculiar situation where he could not prove that he
was innocent nor could he be proven guilty. Nevertheless, the accusation triggered a wave of heated public discussions about the possible dangers of the secret files and the Moscow agents. Since Poland was about to join NATO, those discussions brought an extra urgency to the question of loyalty: How could the ex-agents of the Warsaw Pact, the former enemy bloc, be trusted in the newly reorganized field of military and diplomatic alliances (Grzelak 108)? Lustration was crucial not only for national security, but also for the Polish state to appear internationally credible. That credibility was also important to attract foreign investment and collect loans from international organizations.

However, the lustration law was needed for other reasons as well: to provide legal means for those seeking to clear themselves of the accusation of collaboration – the Macierewicz List was the main reference point; and to install a legal oversight on the disclosure of security files by the Ministry of Interior and the new secret service (Grzelak 107). In other words, the lustration law was initiated not only to define and regulate the verification procedure and provide the individuals with the judicial means of defense, but also to prevent what is widely called “wild lustration” (dzika lustracja), meaning extra-legal accusations that were difficult to adjudicate.

As in the case of other laws, the Polish lustration law followed international or European legal standards. As part of its accession to the European Union, Poland was required to “harmonize” its laws. Thus, the special resolution (no. 1096) adopted in June 1996 by the European Parliamentary Assembly of the Council of Europe had a decisive impact on the conceptual framework of the lustration law. The resolution instructed the candidate “post-communist” countries about the “measures to dismantle the heritage of former communist totalitarian systems” and build democracy in a “civilized” and humane
manner. As I will discuss in detail in the next chapters, the resolution expressed a strong concern about the protection of private property. It also further securitized the space of lustration, employing the terms of the well-known “militant democracy” doctrine.

The Lustration Law came into force on April 18, 1997. It held that lustration was no longer simply a verification process led by the Ministry of Interior. It now operated in a network of courts and other state institutions. A special bureau called the “Public Interest Representative” (Rzecznik Interes Publiczny, RIP) was established to conduct the lustration examination. The law also designated a special Lustration Court to handle the disputes between the RIP and defendant or “lustrated person,” and an Appellate Court.25

Furthermore, the lustration examination rested on a confessional procedure. It required the people occupying or applying for a certain group of public positions (e.g., judiciary, high level state offices, including state media, university, national bank, and tax counselor) to fill out a statement disclosing their past links with the security apparatuses between 1944 and 1990. The private sector was excluded from lustration in accordance with the instructions of the aforementioned European resolution. The crucial point was that the lustrated person was supposed to tell the truth without knowing if there was any evidence against him or her in the archives. If the person “lied,” he or she would be morally disqualified and banned from exercising a profession or holding public office for ten years. As the eminent human rights activist involved in drafting the lustration law, Halina Bortnowska, (2010) suggested, the confession would offer the concerned person a chance to display sincerity and honesty. That confession would then count as moral evidence of self-transformation, something both her view of human nature and the vision of European resolution positively valued. However, as we will see in subsequent

25 Yet, it proved to be very difficult to find the judges who were willing to sit on the Lustration Court.
chapters, that transformative truth game, in practice, became a notorious poker game between the subject and state representative. In less than a decade, Bortnowska and her associates also had to take part in that game when they became suspected of collaboration.

The law was subjected to many criticisms. The most common ones concerned its sweeping conception of “collaboration,” its restriction of the citizens’ access to the archives, especially the files compiled on them, as well as its reliance on the Ministry of Interior, particularly the new secret service for the evidentiary process (they ran the security archives at the time). Even though the problem about public access was not going to be addressed any time soon, the criticism about the conception of collaboration was engaged by the Constitutional Tribunal’s ruling from November 10, 1998. According to the ruling, any act of collaboration must involve communication of information to the former secret service and must be secret, conscious, and willing (i.e., signing a loyalty letter and realizing the tasks given by the secret service), and must be materialized as reports (Grzelak 158). Yet, as we will see later in the dissertation, the definition of collaboration has continued to be a highly contested battleground in practice.

The new lustration law hardly stopped the ‘wild’ accusations of collaboration and suspicions of conspiracy, to which it partly responded. The legal practice, in fact, contributed to a new wave of suspicions about the political bias and dishonesty of the RIP’s lustration examination and the settlement of the disputes. Many people who found their names on the Macierewicz List applied to the Lustration Court to clear their names. But the court proceedings, especially the transfer of evidentiary material, took a long time.
Finally, in response to the problems concerning the security archives, a special state institution called the “Institute of National Remembrance” (*Instytut Pamięci Narodowej*, IPN) was established in December 1998. IPN was to manage and safeguard the archives against possible political interventions (Grzelak 169). The institution was also given the mandate to institute national memory, popularize Polish patriotism, and prosecute the “crimes against Polish nation.” As mentioned before, the IPN exercised a number of functions: archival, prosecutorial, and pedagogical. The Polish historian Dariusz Stola (2012) suggested that the IPN might be seen as a distant cousin of the socialist *kombinat* (state-owned, vertically integrated large industrial corporation), which combined the mines of raw materials (the archives), a large processing plant (research and editing), and distribution of the final product (knowledge in various forms).

Furthermore, in comparison to other state archives and research institutions in Poland, the IPN has been generously endowed with a yearly budget of $75 million. It has offered “salaries higher than in academia and much better prospects for young employees for upward mobility within the expanding organization” (Stola 53). Most of its staff, in fact, consisted of young people. Even though the IPN was designed to operate beyond party-politics by enjoying a special autonomous status, the fact that its head and board members were appointed by the parliament every five years had exposed the IPN to party-political struggles. Steering the institution was important, as Stola wrote, because the IPN was “Poland’s largest archive, biggest contemporary history research institute and publisher, a major educational institution, an independent part of public administration and a privileged part of the judiciary system, and the body responsible for the lustration” (52).
CHAPTER ONE  NEITHER IMMORAL OPPORTUNIST NOR PITIFUL VICTIM: THE SOCIALIST COLLABORATOR?

On 20 May 2007 Poland’s *Newsweek* edition revealed that the world-renowned Polish journalist and writer Ryszard Kapuściński had collaborated with the foreign intelligence department of the communist-era secret service of Poland (SB). During thirty years of work as a foreign correspondent of the Polish State News Agency, Kapuściński covered more than two dozen anti-colonial struggles, revolutions, and coups in the Third World, ranging from India, Iran, to Angola, Tanzania, to El Salvador and Honduras. “An oracle of the indeterminate,” *The Nation* once called him, Kapuściński cultivated a special interest in the powers of secrets, silences, and uncertainties that marked the despotic rulers and their fall.

The public debates around the posthumous revelation of Ryszard Kapuściński raised contentious questions about the relations between the citizen-subject and the party-state. How did a ‘normal’ life look during the communist era? What was the norm of relating oneself to the communist state and its security apparatus, and how did that norm shift in time and space? What was the value or effect of the information communicated by the citizens to the SB? What was the place of the political in the act of collaboration with the SB? To support their answers, the public debates constructed and mobilized different representations of ‘the collaborator.’

In what follows, I will focus on these representations to study the normative framework of the lustration discourse and practice. I argue that it is the premises of the

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global political discourse of post-ideology and the totalitarianism paradigm that underpin the dominant modes of representation of the collaborator. Specifically, I underscore two types of moral-psychological characterizations of the collaborator: one characterizes the collaborator as ‘immoral opportunist,’ some kind of ‘moral pervert,’ or ‘indoctrinated fanatic,’ culpable for the violence of the totalitarian communist state. The other characterizes the collaborator as ‘innocent victim’ or ‘survivor’ of a regime of pervasive repression, including the ‘true believer’ of socialism, who was betrayed by the dark realities of the political system. The former is the familiar vision of ‘evil communism’ while the latter is the liberal humanistic account of the moral drama of an innocent man with high ideals in dark times. One demonizes with the moral certainty of the evil, the other humanizes and individualizes the subject of collaboration, relying on the vision of ‘communism as religion’ and the so-called ethical-humanitarian turn of the 1990s. Both accounts, I argue, de-politicize and de-historicize past words and deeds in different ways.

In the second part of the chapter, I will depart from these approaches and attempt to develop an ethnographically grounded alternative framework to problematize the act of collaboration in its social-historical milieu, within the broader field of informational practices that existed between the citizens and party-state authorities. To do so, I will reconstruct a ‘case study’ of a certain socialist collaborator, who recently admitted to his collaboration during his lustration examination. Through a reading of his six thick security files and other related files, as well as conversations with him, I will explore the social life of information and the historically contingent and differential ways of relating oneself to the socialist state and ideology. I will analyze what citizen accusations, denunciations, and letters written to the party-state authorities reveal about the modality
of power and knowing (and secrecy) marking state socialism. As opposed to the totalitarianism paradigm that conceives the state as omnipotent and omniscient and the citizens as its passive, infantile and fearful subjects, I will highlight the forms of illegibility and indeterminacy that marked the social life of information and state-citizen relations. In this respect, I will focus on the unequal relations of power, suspicions of loyalty, and ‘marginal’ yet persistent social-political struggles. In doing so, this chapter will critically interrogate the main assumptions of the totalitarianism paradigm informing the lustration discourse and practice.

**BEYOND GOOD AND EVIL**

Poland’s *Newsweek* publication of the SB files on Ryszard Kapuściński dropped quickly into the highly charged field of accusations of collaboration. This was so in spite of the weekly’s precautions that the aim of the publication was “not to lustrate Kapuściński,” but to learn about the historical period, from the mid-1960s to the mid-1970s, during which he had collaborated. The weekly claimed to depart from the “pro-lustrators,” who considered the SB files “unambiguous evidence of unforgivable moral defilement” and from “anti-lustrators,” who considered them “worthless scraps.” Instead, the weekly ran an interview with Kapuściński’s colleague, Ernest Skalski to guide the reader through the published portion of the file. Drawing on his personal experience with the SB, Skalski tried to assure that Kapusciński’s few reports to the SB did not harm anyone or provide injurious information.

As was anticipated by the weekly, the revelation prompted different kinds of negative reactions. While some found it disgraceful, calling it lustration and considering
Kapuściński a victim of secret service blackmail and now the media, others found fault with Skalski’s commentary, considering that it terribly falsified the historical truth and caused “moral relativism.” The publication of the concerned files must have been sufficient, the well-known journalist Bronisław Wildstein asserted, because the reader could use his own faculty of reasoning to judge the truth residing there in the archives.  

At any rate, the interview with Skalski was not reliable, he claimed, because Skalski himself had “ambiguous” (dwuznaczne) relations with the secret service. As opposed to the weekly’s remark that Kapuściński did not wrong anyone and that it was the “price” he had to pay to become the fine author he is (to be able to travel and meet officials and militants thanks to his credentials from socialist Poland), Wildstein argued that there could be no “innocent denunciation.”

First, he claimed that Kapuściński was, in fact, a “Cold War warrior,” who worked for Moscow, not for Poland. He must have known that the SB’s foreign intelligence was subordinated to the K.G.B. and his reports served mainly for the Russians. Second, the information he communicated in his strategic political analyses of certain Third World countries and in his reports on foreigners he suspected of having ties with the C.I.A could have harmed those individuals, whether or not they lived in Poland or were Polish citizens. One could never be sure about the effect of any given information. Wildstein resorted to this common generalization shared by all proponents of lustration (journalists, historians and prosecutors): since it is not possible to know how exactly the SB might have used the reported information, any piece of information, even

29 However, the same Wildstein does not hesitate to call heroes the Polish citizens who cooperated with the CIA during the Cold War.
the most trivial-looking, must be treated as damaging. This is so regardless of the good or innocent intentions of the collaborator. The evil nature of the regime determines the effect of a particular piece of information, at least in the last instance.

The conflict over evaluating the effect of information is, in my view, also the conflict over how to define the norm of living an ordinary life and relating oneself to the state and security apparatuses in socialist Poland. It is a conflict over what constituted the ordinary. For Wildstein and like-minded rightwing anti-communist ideologues, the martial law of the 1980s was not a specific historical period or a particular phase of the socialist regime, but the unfolding of its true essence. Wildstein invoked an interrogation scene as the paradigmatic moment to determine the potential effect of any piece of information reported to the SB. During interrogation, he said, any information could be used against the prisoner to create the impression that he was being confronted by an omniscient state. Even the most innocent-looking information could be used in sinister ways.

In fact, the image of the normal Polish citizen as a captive of the socialist state is an overarching one shared by many anti-communist proponents of lustration. Unlike the normal citizen, Wildstein suggested, Kapuściński would not go abroad or pursue a career in order not to risk betraying friends, families, and the Polish nation. Socialist Poland was a ‘foreign occupation’ ruled by the ‘native collaborators’ of Moscow, and whoever in some ways supported or benefited from that regime, which lasted for more than four

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30 The liberal opponents of lustration also draw on the same image of ‘totalitarian communist Poland’ and claim that everyone was, in fact, in different ways a victim of communism.
31 While the ‘normal’ citizen is typically represented as a patriotic, heterosexual “family man,” the popular stories of betrayal are told through the figure of a woman who informs on her husband. Female collaborator as mother or wife plays a major role in the narratives of treason.
decades, is now suspected of treachery. Skalski departed remarkably from this view when he explained to the weekly why he “agreed to collaborate:”

The secret service was part of the state, which surrounded us completely. When a man worked, he was a state employee. When he was sick, he was a state patient. When he went on a holiday, he was a state boarder. It was natural then that one kept in contact with the state and its representatives. Obviously, we realized that the security service was not the same as the health service, but both institutions were state institutions. In the 1960s no one knew that one could refuse in principle to talk to not only the secret service but also any state institutions. Besides, though state functionaries were at that time more polite and nicer, one could still recall the menacing Stalinist years... It was only after the underground publication of the instruction brochure “Citizen and the Security Service” in 1977 that Poles realized they did not have to meet security officers in coffeehouses and did not have to sign anything unless the officers presented an official injunction in regards to the reasons of the meeting...

Note that the relation to the state was historically contingent just like what one knew one could do in the encounters with state representatives. The SB of the 1970s was not the same as that of the 1950s. In the interview, Skalski identified certain moments when his perception of the secret service and collaboration changed remarkably. The rise of the “Solidarity” movement and the martial law of the early 1980s was such a moment when it became clear that the secret service was reprehensible and collaboration could no longer be justified on the grounds that it was the “reality and standard of the epoch.” In fact, this was also the period when Kapuściński was very active in the emergent political opposition, reporting on numerous workers’ strikes and vocally supporting them.

Over the years, Kapuściński’s case has become fertile ground to articulate conflicting positions on issues of popular engagement with the party-state and socialist ideology. In early 2010, Artur Domosławski published a huge biography of Kapuściński. At stake were the latter’s lifelong political commitments. Wildstein’s response was as clear as ever: Kapuściński’s collaboration could be nothing but ‘cynical opportunism’
(there could be no sincere communists after Stalin) and no ‘leftist idealism’ could justify collaboration with what he called the “evil forces” that are also responsible for today’s global terrorism. During the Cold War, the East bloc countries supported “murderers” like Baader-Meinhof of the Red Army Faction and the Third World militants, and Kapuściński supported that terror by working for those countries. Domoslawski had a different view, however. In an interview with New York Times, he said:

Kapuściński was part of the Communist establishment as a true believer – that has never been a secret... [He was] a “witness to decolonization, and a tough critic of the dirty wars and businesses of the West in Africa, Asia, and Latin America — in the past and in the more recent years (including the war in Iraq).... Occasionally, he collaborated with the intelligence service while he was an international correspondent, just as many journalists in the U.S. collaborated with the C.I.A.... He considered Communist Poland his country, his fatherland. You can’t just say that he was compromised. What compromise is it for a Communist – a true believer – to collaborate closely with his state and its agencies? For him it was something obvious. He might have thought at the time that he was doing a good thing fighting Western or American imperialism in Africa or Latin America if, for example, he was writing an analysis of the dirty operations of the C.I.A.... My book is a defense of Kapuściński against strong attacks from the anti-Communist rightwing that considers Communist Poland hell, and collaborators with that intelligence service, traitors [emphasis added].

To be sure, the leading question and the political thrust of Domoslawski’s biography are very different from those of Wildstein. It is not how Kapuściński must have known that his reports were used (by Moscow) in ways that he could not know and thus, could produce horrible effects beyond his subjective intention. It is not the question of his what might be called objective guilt. Domoslawski’s question concerns subjective guilt: how could Kapuściński remain a convinced communist, a true believer, knowing that the Stalinist system was soaked in terror? How could he not know or pretend to not

know and even lie about the existence of the labor camps, deportations to Siberia, and mass killing of Polish military officers in Katyn by the Soviet security forces during the Second World War? Domoslawski seeks to examine Kapuscinski’s conscience, his “human,” that is, “private” self. Though he claims to conduct his moral-philosophical inquiry not in the abstract but in light of the concrete historical context, his inquiry ends up reiterating the familiar story of the betrayed romantic communist: a man of high ideals but certainly with weaknesses, who was gradually duped and alienated by the system. Like others of his generation who came of age during the Second World War, so Domoslawski suggests, Kapuscinski might have suffered a war trauma that could have made him susceptible to the totalitarian indoctrination and the belief in a new communist future.

Domoslawski’s eloquent biography resonates well with the recent liberal humanistic renderings of former disillusioned leftists or socialist dissidents in popular culture, which often absorb their life stories into an apolitical moral drama of the private individual. Given that the socialist ‘ideals’ are ‘beautiful but unrealizable dreams’ of the young, anyone who cherishes them or works toward them is infantilized in innocence (or credulity), or else is suspected of cynicism and imposture, always doing something else than what he or she actually does. The collaborator, in this sense, appears to be the majestic figure, an idealized screen, on which these images of innocence and cynicism are projected.

What I want to underline here is that it is the liberal totalitarianism paradigm that underpins those modes of representation of the collaborator. As is well known, that

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33 As in, for instance, the Oscar awarded German film, The Lives of Others (2006) directed by von Donnersmack, we are usually told the story of innocent men against the “backdrop” of the dark totalitarian regime symbolized by corrupt party bosses who drive around in the backseat of their jumbo limousines.
paradigm is largely developed by and for the liberal West in the first half of the twentieth century. It articulated the liberal West’s own fears of the state’s total ‘penetration’ of society and engineering of souls and minds, where there would be no possibility of individual autonomy or social relationships of trust and intimacy. In this regard, ideology almost always appears ‘imposed from above’ on individuals, but is never lived or engaged by them. While the public signifies state intrusion and lies, the private is supposedly the only authentic domain of truth and freedom (e.g., Arendt 1973; Brzeziński and Friedrich 1956).³⁴

In spite of the overt opposition between Domosławski’s and Wildstein’s views and political positions, they both agree on the general premises of totalitarianism articulated within a victim-perpetrator framework. Where Domosławski sees a good, pitiful victim of the oppressive political reality, the true believer of socialism of a ‘quasi-religious kind,’ Wildstein sees a cynical opportunist of the evil forces, a quasi-perpetrator, who gathered information that was used in unimaginably evil ways.³⁵ While Domosławski embraces the liberal assumption that it is Kapuściński’s private self that would tell the real truth about his political life, Wildstein embraces the totalitarian state’s self-presentation, treating state power as monolithic, omniscient and all rational, assuming that every piece of information had achieved a certain purpose and all projected

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³⁴ Instead, my research draws on the recent scholarship on the social history of state socialism and “Soviet subjectivity,” which attempts to write the history of socialism ‘from below,’ exploring how ideology, rather than being merely a “window-dressing for the sake of power” or “deception,” is constitutive of the socialist subject (Kotkin 1995; Hellbeck 2006) For a general critique of totalitarianism, especially of its liberal assumptions, see also Krylova (2000) and Fitzpatrick and Geyer (2009).

³⁵ Conceiving the communist as an individual believer, often a fanatic or brainwashed one, and political commitment as a matter of individual belief, I suggest, is akin to secular recasting of the space of “proper religion” as the apolitical, private sphere of individual belief, that is, the realm of internal conviction (see Asad 1993). If by doing that, secularism has sought to de-politicize, individualize and privatize religion, the same could be said for liberal humanistic representations of the communist as a quasi-religious figure, a believer of that kind.
plans had been successfully realized. Where one “humanizes” and individualizes the subject of collaboration, the other demonizes with the moral certainty of the evil. Both accounts, in effect, de-politicize and de-historicize in different ways the past lives lived before 1989. They do not offer much insight to how citizens differentially related to the state and the socialist ideology or the events that brought them into contact with the SB.

In what follows, I will explore the questions of state power, the circulation and effect of the information reported to the SB, and political aspects of collaboration that have arisen out of public discussions on Kapuściński’s case. To do so, I will reconstruct a case study around a certain (self-described) socialist informer, whom I call Jan. Why around a socialist collaborator? Though there may be similarities between activities undertaken by certain collaborators or circumstances of their recruitment, I do not want to suggest an ideal type like the socialist collaborator. However, I think that socialist collaborators (like Jan or Kapuściński) provide a crucial entry point to start thinking historically about the political in reporting practices, which is largely effaced from current public discourse. Certainly, in many ways, Jan’s story is not similar to Kapuściński’s. Nor are the stories of any other people alike – the stories that I will compose through Jan’s. Except the minor publicity Jan’s case had in a special historical bulletin and at his workplace, others are today publicly unknown and probably are too ‘minor’ to draw public attention. None of them are famous public figures or infamous for what they reported about. Every (collaboration) case, in my view, is singular but has general relevance for the discussion of collaboration with the Soviet-era secret services.

Furthermore, paying attention to this singularity is important, considering that

36 All names of persons and places that I use for the case study are pseudonyms. I also do not disclose the reference information concerning archival sources to prevent the identification of the persons mentioned.
lustration in its current form is notably reductive in approaching the files and the fragments of lives inscribed into them. It relies heavily on the ‘objective categories’ reworked from the secret service archives (the category in which one is registered by the SB) as its main evidentiary source. Drawing on the liberal contractual theory, lustration reduces the entire socio-historical conditions of collaboration into the fact of a “written consent” that is supposed to be materialized in one’s signature, a “contract” one made with the SB supposedly as an equal partner. This *fact without content*, in turn, has the power to qualify one as either a perpetrator (collaborator) or victim (the object of surveillance) (see Ginzburg 2002).

To counteract this clear-cut victim-perpetrator framework, reductive moralization and reification of collaboration into the former state’s categories, I will attempt to provide a rich description of the cases in hand to offer a sense of the social world in which one said things, did things (besides ‘collaborating’), encountered the secret service, and was variously registered into those documents (a life *more than* collaboration). This requires a particular type of reading the reports. I do not seek names to incriminate or chronicle the monolithic force of the totalitarian state. Nor do I intend to ‘police the national memory.’ The SB files are today read either too *literally* (whatever is said in them must be true) or too symbolically, always looking for *hidden* meanings behind the surface of the text (reading between the lines). Instead, I want to concentrate *on the lines* themselves, taking seriously the surface of the text, the world of which it was and has been a part.

Moreover, I want to read the reports not in isolation but horizontally, in light of other related reports written by different people in contact with the SB. Through an analysis of Jan’s case, I will reconstruct two other cases (of Ewa and Zygmunt) in order
to explore the exchanges between the reports, the singularity of lives lived, and the network of social relations interwoven around different types of informational practices between the citizens and the state. I will pay attention to the rhetoric of the reports and what these reports tell about rumors, suspicions, and information exchanges about politics (e.g., the Arab-Israeli war of June 1967), activities of security officers, as well as the people associated with them. I will explore the limits of what could be said in the reports and how that could be said by approaching them from the margins, focusing on security officers’ comments in the margins or the portions marked out. I read the reports not only for what we can gather from them, but also for what we cannot know from what is positively presented by them. The kind of ethical-political reading I suggest here would try to engage the unknown of the file as much as what could be known from it.

The files shed a fresh light on aspects of the social life of information, relations of power, and games of knowing and secrecy in which we, as researchers and readers of these files, are also implicated. Besides other things, the following is a certain experiment in studying, reading, and writing about the files, exploring what they might offer to understand the social strata that made possible and sustained the practice of reporting to the political authorities, the different ways accusations worked, and the contingencies in which the subjects encountered the SB in different ways, at different moments, and with different results. Where possible, I also seek to decentralize the main subject of the story in order to provide an alternative account for the same events narrated by different subjects. Not only does this help understand the limits of what we could know from the files and how reports worked through anxieties, uncertainties, and games of guessing. But
it also helps make sense of the ethical moment, which lies in the encounter of the words and worlds of multiple subjects.

**RESIGNING**

It had been more than half a year since his last contact with the SB, which was at any rate no more than a brief telephone conversation. Since his arrival in Poland in Spring 1981 from a twenty month research stay in the U.S.S.R., Jan did not write any more elaborate reports that ran tens of pages. He made clear his wish to resign from collaborating. Half a year later martial law was declared and thousands were detained, imprisoned, and brutally repressed. He stopped responding to the calls. “Recognizing my voice”, Stanisław wrote, “he hung up the phone.” Nor did he let the SB officer enter his apartment.37

They had been in touch for more than a decade. Sometimes at cafes, special conspiracy locations, but most of the time they met at Jan’s apartment that was located at the outskirts of the town. Jan’s first five years as a secret collaborator (from 1968 to 1973) were particularly “productive.” He wrote more than 1,200 pages on academic and intellectual circles. Stanislaw, the officer who recruited him, soon retired in his early 40s due to his deteriorating physical and psychological condition, passing Jan to other handlers.38 One of these was a certain Jarek, whose personal file like many others can no longer be found. It disappeared from the archives during the fall of the regime. Moreover,

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37 I gathered the following information from Jan and Stanislaw’s personal files. While the secret collaborator has two files (personal and work files), the security officer has only one, the personal.
38 The tone, length, and frequency of Jan’s reports notably changed after Stanislaw’s departure by mid-1970s. Jan also took a long break from collaboration between 1977 and 1981 to concentrate on his scientific research. It would be fair to say that he did not write much after 1975.
he allegedly changed his last name and joined the ‘democratic police force’ of new Poland.

By the mid-1970s, Stanisław was in East Germany, working for a Polish state enterprise involved in oil-plant construction. The working conditions were difficult, his health feeble, and soon he was going to be back to Poland (of deep economic recess), unemployed. He reapplied to the SB for employment. A worker by “social origin” (his father was a physical laborer in interwar Poland), he spoke Russian and Esperanto as a foreign language, as he put it in his personal file compiled by the SB. During the war he took a leave from elementary school and labored at a farm. Like many other SB functionaries of his generation he was an active member of socialist youth organizations in the 1950s and remained a member of the Polish United Worker’s Party (the Communist Party) until the end of the regime.

He had more to say about himself by the early 1980s, however. It seems that at that time it had become possible to say certain things more openly to the SB. In a survey he filled out for the job at the security, he wrote that he was a “Home Army” soldier during the Second World War, one of the soldiers whom the regime had called “bandits,” jailed, killed, rehabilitated, and traced through the postwar decades. This was the first time he ever put such information in a survey of that kind. It was also the first time when he identified himself officially as a “not-practicing Roman Catholic since 1947.”

He resumed his work at the SB in early 1981. In the face of ever more visible and expanding opposition, the security service seemed to have needed more human resources than ever. Stanisław attempted to contact Jan. Because Jan stopped responding, he

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39 The security officers regularly filled out surveys that include personal information, education and employment history, especially when they applied for a new post.
summoned him to his office on the 15th of May 1982, already 6 months into the martial law. Jan’s voice sounded remarkably nervous, inquiring impatiently into the reasons of the call, he observed. “Although we had been calling each other ‘you’ [ty] for the last 16 years,” wrote Stanisław, “he addressed me ‘sir’ [pan] and strove to have the conversation transcribed.” On the issue of collaboration, Jan wrote:

> For many years I have collaborated with the SB actively, in my entire capacity, but in spite of that I was destroyed at the university, facing many difficulties in my scientific life. I told your colleagues about this after you left the SB, but nothing has been done. Currently, I suffer from neurosis, sickness, and besides, I have problems at home, and still I aspire to acquire my habilitation degree and face constantly obstacles.... I do not see any possibility of further collaborating with the SB. I must recover, focus on my scientific work, and spend time with my family.

Stanisław did not confront him if we are to believe the SB officer’s account for what happened at the meeting. In the end, Jan calmed down and they had a warm farewell.

Stanisław:

> Since in this situation further collaboration does not seem possible there is no need for any disagreement. Our service, the SB, and I personally highly value the hard work… you put as a collaborator for many years. For all this we thank you cordially. Feel assured that if there is any possibility for help (pomóc) we will do it. I take your reason of resignation as a principle. With these words I observed that the secret collaborator calmed down....He asked me if that is all and with a little smile he shook my hand. I accompanied him to the gate of the building. Here we had another farewell...

Stanisław concluded his account of the meeting by underlining Jan’s hard work and the possible reasons for his psychological breakdown (the long period of collaboration, the possible mistakes that other SB officers might have committed in handling him and the unfortunate circumstances of his scientific life). He insisted that it was “their [the SB’s] moral obligation – when it is possible – to support the secret
collaborator against any attacks that might be attempted on him in his scientific vocation.”

18 months later in late 1983 Stanisław read carefully a review of a certain habilitation work that appeared in a popular weekly. The reviewer noted that Jan fruitfully criticized the view that advocated for the “death of the state” (its decentralization). Instead, Jan argued for the need to intensify the unity of the state and the nation. Stanislaw underlined many passages. Whether out of habit, moral obligation towards Jan’s scientific vocation, or a genuine interest in the topic, it is not possible to tell. The documents located in Stanislaw’s personal file indicate that his physical condition approached to its limit during the “stressful” years of the martial law – until another nervous breakdown forced him to resign. He wrote the last report placed in Jan’s personal file, informing his superiors about Jan’s “formal” breakup with the SB, who in any case was not responding to any re-recruitment efforts. \(^{40}\) It was 1985. He lived a block away from where I happened to stay during my fieldwork. I learned that he did not live much longer into the 1990s.

When I met Jan by his apartment, he told me that there was no possibility of intimacy between an SB officer and a secret collaborator. Stanislaw was only doing his job.

**THE ABUSIVE CLIQUE, WARRING ACCUSATIONS**

Jan was never granted the habilitation degree. He had written two habilitation works since the early 1970s, neither of which ever passed the review commission. He scarcely

\(^{40}\) Even though Jan resigned in 1982, his files seemed to be still around and used by the officers, who probably even tried to approach him. Stanislaw here ordered to send the files to SB’s archival department.
published. He retired as an adjunct instructor in 1998 thirty-five years after he had obtained his doctoral degree.

I first got to know about Jan in an article published in one of the bulletins of the Institute of National Remembrance. The author of the article wrote that his seven thick files were (unusually) complete, offering a great chance to learn about how collaboration looked. The author mentioned that before he formally worked as a secret collaborator, Jan was registered as a “figurant” for another case (object of surveillance) in early 1960s, the case which he did not elaborate and I could not get to learn more about either, because the relevant files never arrived in my desk at the archive. The article underlined that Jan went so far as to provide detailed analyses of the academic community and theoretical debates, and even offered strategic suggestions. The author often reminded the reader that any information given to the SB was of great importance, however trivial and impractically theoretical it might seem to us (e.g., his analysis of legal institutions and practices in socialist Poland, literature review). It was as if the entire secret service followed Jan’s instructions. It was as if all the names that appeared in these reports must be those of the innocent victims of the collaborator. The author included a paragraph-long list of names that figured in the files. It was clear. Jan had signed an obligation letter with the SB, which the author quoted in full, and in return, got money.\footnote{The SB rather called it reward or gift, avoiding defining the relationship in terms of monetary economy.}

This kind of inquiry tends to focus \textit{only} on the given collaborator’s files. Since the files are \textit{there} and the guilt is proven (the signed letter of obligation), what else do we need to know? When I checked with the archives the names that appear in his reports, I found out that some of those whom he reported about also turned out to be closely
engaged with or at times, officially collaborated with the security service. Jan was certainly not alone in writing reports.

I was particularly interested in the records of those whom he continuously and insistently targeted in his reports. Many of these people’s names also figure in Jan’s letter of explanation of collaboration and other documents related to his collaboration (complaint letters to party-state authorities from the 1960s) that he sent to the lustration prosecutor, whom I had been in close contact. In the letter of explanation he underlined that he collaborated for ideological convictions for truth and social justice. The prosecutor appeared surprised by that claim, because the usual trend among subjects of lustration, he told me, has been “first to deny any act of collaboration, then trivialize what they did.”

The documents Jan sent suggest that he undertook a great paperwork by the mid-1960s, initiating a few vocal cases in the academic community. One was about what he claimed to be the compromised prosecutorial investigation about a certain Julian, who was earlier sentenced to prison for bribery and fabricating false diplomas – the man who was known as an infamous, ruthless military judge of the Stalinist Poland (declared as such even by the SB), and was recently revealed as a former secret collaborator, who got high monetary rewards for providing information about men at top positions (especially, in the Roman Catholic Church hierarchy). The case is still recounted by the memoirs of the university more or less in the way Jan mentioned in his complaint letters. Jan also claimed that a certain Tadeusz, an influential party member with close connections to the

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42 A few years ago Jan was vetted by the lustration prosecutor. Jan sent the prosecutor a dossier of documents (letters he wrote to the party and state institutions in the 1960s) and a long explanation for why he collaborated.

43 At the time the prosecutor did not tell me Jan’s name or anything particular about the case. He only said with surprise, “today some collaborators claim that they even did it out of ideological reasons.”
security service – both formally and informally, I have found out – protected Julian and compromised the investigation by getting involved in a mysterious fire that happened to burn important departmental records. Moreover, this Tadeusz also allegedly confronted Jan when Jan accused an established Warsaw professor, editor in chief of a well-known scholarly journal and an influential party member, of plagiarism.

With a colleague, Jan sent letters with long attachments to a number of state institutions and Party commissions, where he denounced a certain clique (an entrenched network of favor and privilege that included Tadeusz, Julian, and the Warsaw professor), residing in the Party and state institutions. Accusation begot counter-accusations. Jan’s wife also became the object of accusations and display of power. One day a man from the Ministry of Education urged her to calm and persuade Jan not to stir this case at a national scale. If not, her husband could expect hardships in his scientific vocation. In a letter he wrote to the Central Party Control Commission, Jan also complained about a certain “manhunt” (nagonka) at him. He wrote that he and his associates, possible witnesses for his case, had become targets of anonymous denunciation letters.

At around the same time Jan published an article, “The Man with a Hook and the Clique” (człowiek z hakiem a klika) in a popular literary weekly on the psychology of the man of clique, who always had to fear of public exposition of the secrets he shared with other clique members. Feeling insecure, the man with a hook always had to suspect enemies. The article was certainly a subtle way of publicizing his case against what he claimed to be the clique at the university and party government. Curiously, the author of the article, Jan, after four decades, would be labeled much in the same way as a “man with a hook” (a secret collaborator) by the lustrators.
Neither the article nor the letters he sent produced the effect he had intended. The reviews of his case by the disciplinary committee of the university and Party commissions disputed Jan’s claims on all grounds. He was called paranoid and a Maoist aiming at Cultural Revolution. He was expelled from the Party for violating Party ethics, got a reprimand from the school, and later, a divorce. At that moment, so Jan’s letter of explanation stated, a certain officer from the Ministry of Interior approached him and said he knew about his problems. That was how Jan stepped into the agent network of the SB.

What was the distance between writing complaint letters or petitions and becoming a ‘secret collaborator’? What did it take for Jan to move from one field of informational practice to another? His case highlights the contingent and shifting course of informational practices and shows how denunciations operated in a complex field of social struggle, both as a weapon of offense and defense, and sometimes as a channel of criticism. However, it will be argued that the incident was, in fact, nothing more than a private fight between some Party members, as a result of which one lost the battle. Indeed, the author of the aforementioned article on Jan trivializes the matter in that way – in fact, he barely mentions it.

But Jan did not think that it was trivial if this is of any importance in today’s reassessment of his case. There were also other people who did not think so, either. Until his resignation from the SB, Jan had written a lot about the case, however, without accomplishing his goals. When I looked up the file compiled on the professor he accused of plagiarism, I indeed found a report on Jan’s accusation communicated by a certain “operational contact” (dated from 1966 when Jan was not formally in contact with the SB). However that piece of information was left out by the SB officer and did not make it
to the next information digest prepared on the professor. Curiously, the report underlined that Jan’s case expressed a certain social antagonism, irreducible to that particular case, between the province and the capital and the younger and the older generations of scientific workers. Jan had the support of many young scholars from the province, who came of age during the Stalinist period and took issue with the privileges enjoyed by the older established professors of the capital, the intelligentsia of the pre-socialist Poland. In this sense, it is important to underscore that his accusations whatever their truthfulness were articulated within the ideas and values of social equality and popular or class justice promised by state socialism. It was an ideological struggle waged by the people who thought the socialist Poland was their country. Even if 1960s Poland was already marked by increasing inequalities between the ruler and the ruled, the regime’s egalitarian language of social justice and ‘building a communist future’ did not seem to have lost its popular force yet.

“DO NOT WRITE THAT”

“They are good for nothing. You see…they are not the kind of papers that have an economic value today. The papers of the thieves left the archives. Where are they today? And mine? Who cares about mine?” Jan said when I asked how it is that ‘his files’ at the Institute of National Remembrance archives are not missing a single page. There is much rumor today about how certain files, often the most wanted, have disappeared. True, the secret file has always been inscribed in the relations of power. It materializes the power to know about others, the possibility of knowing what the others cannot, the secret
knowledge of things and persons. It is a generative power, not simply reflective of a reality that is supposed to lie outside of it.

Jan never saw the files compiled on him and probably, will not ever see them; he figures in the category of people who are not allowed to see them by the lustration law. He did not dispute that he had collaborated. Unlike in other lustration cases, there is no dispute about his past links with the SB, which is partly why I have chosen to concentrate on his case.

Jan has two sets of files: a personal file and a work file. The personal file includes basic data about him (his family, schooling, and employment); his autobiography; the information the secret service gathered on him (his “character”, that is, his personal qualities, his social relations, his standing in the community); and evaluations of his performance as a collaborator. His six work files include reports, texts, and different materials he communicated to the secret service, as well as the reports the contact officer provided.

He included the following information in the autobiography he penned for the SB: born in the early 1930s into a peasant family in a small town in today’s Lithuania (formerly Poland), Jan spent the major portion of the Second World War with his mother in the Soviet occupied territories. After the war like many others he first departed with his mother for the “newly gained territories” of western Poland (formerly German territories) and later to eastern Poland. In Stalinist Poland he went to school in Warsaw and became an active member of socialist youth organizations, some of which were of a paramilitary nature. Later he joined the Party during “the thaw” in 1956 and continued his study at the university. These were the significant events Jan singled out for his pre-1960 years. In the
latter part of his biography, as might be expected, he expanded on the cases he had been writing about for many years (plagiarism, the clique). He gathered positive evaluations from the secret service officers for his “character” and performance. He was noted for his self-discipline, sobriety (avoidance of drinking alcohol), his ability to keep secrets, willingness to realize given tasks, taking self-initiative at work, “free personality,” having enough free time to do the collaboration work, ability to make contacts, conduct a conversation and sort out the essential elements in it. The information he communicated was true and his political views accorded with the party line.

His main task was to provide reports on the political views of the academic intelligentsia, especially the “revisionist”, “Zionist” and “anti-state” positions. Certainly, it was the SB that determined the names, locations and activities that should interest him. It was not, however, rare that Jan himself identified the object of interest and collected clues about it. This was the case, for instance, in his numerous attempts to prompt an investigation concerning Julian by reporting on the widespread rumors that supposedly compromised the party’s authority.

From time to time Stanislaw instructed him about how to compile a good report: Jan was to provide more detail about the setting and mood of conversations, use more quotations, and not say things that would provoke negative attitudes towards the government. He told Jan to be as “objective” as possible, but not in the sense of the kind of objectivity that dismisses emotions as the stuff of subjectivity. He was to become a kind of recorder of words and moods. He was to collect them as they appear “independent” of him and write them up without shaping them too much in his own words. Words could be deceitful.
Not everything could be written in the reports. Today there is a common misconception that the SB wanted to collect just about any kind of information and everything interested them. It is believed that as a totalitarian system, state socialist Poland was interested in “total” information. True, information planning, gathering, processing, storing, reproducing, and redistributing is central to the mechanisms of the socialist state (not only for surveillance but also for economic management), as studies cogently argue (Holquist 1997; Horváth and Szakolczai 1992). However as my discussion suggests, there were certain rules that exclude the possibility of writing certain kinds of reports. There were certain themes and aspects of life that were deemed more sensitive than others, and information about them could be marked out from the reports. For instance, Stanisław and his superiors who checked the reports seem very consistent in marking out the passages that inform about the internal relations in the Ministry of Interior Affairs (MSW), the central Party committees, and the SB. Many rumors about the political struggles and anti-Semitic purges within the Party, the MSW and the SB are marked with the following in the margins: “secret collaborator, do not write that information.” This is as if to mean that the collaborator and the people around him were not expected to speak out about certain topics, at least at that critical time in the late 1960s when there really was a vocal battle at the top of the political leadership.

Likewise, the SB was not supposed to collect information about that struggle, record it on paper, and distribute it in information bulletins to the political authorities. It was as if nothing was happening. The secret service pretended not to hear about it just like it did not want to hear about the notorious “anti-Zionist purges,” which applied to many state institutions and party cadre at the time. Perhaps these issues were too closely
and internally related to the secret service itself and officers sensed a certain trap, if not a
danger about collecting such information on it. Stanislaw wrote the following at the end of one of Jan’s reports:

[Jan] in our conversation…recalled a certain SB officer who approached him…He told [Jan] about…the expulsion of some officers…and pointed to their Jewish origins…. The SB officer also told about…the personal connections between officers….The talk of the officer clearly suggests entrenched relationships of favor and privilege in the MO [citizen’s militia\textsuperscript{44}] and the SB….Hearing these I told the secret collaborator that he should not personally engage with these issues; the issues concerning the MO or the SB officers do not interest us. I think that the SB officer made a mistake by telling [Jan] about these issues…The secret collaborator agreed with me and underlined that what he said interested him because it was harming the SB.

Could Jan really be concerned with the well-being and good reputation of the SB? Or did he merely try to improve his image as a loyal citizen in order to strengthen his case against the clique on which he had been reporting? Obviously, the answer does not have to be either-or. One does not need to invoke a single, coherent individual motivation to account for a given action.

What is more intriguing is Jan’s perception of the SB, indeed, his very gesture or audacity to report on the SB to the SB. What was it of the social presence of the SB that made possible such action? How did Jan know what he could report? I think we can detect a considerable uncertainty or confusion on his part concerning what exactly the SB took seriously, a gap between what the SB stood for as an institution and who and what represented it in the everyday. It may be that it was this uncertainty about the SB that made the secret service \textit{appear} both powerful and competent, to the extent that one may call upon it for popular justice, and yet, fragile (it had to be protected from within) (see

\textsuperscript{44} Note that none of the East bloc countries called their security forces “police,” which was rather associated with bourgeois democracies.
also Berdahl 1999; Petryna 2002; Vatulescu 2010).\textsuperscript{45} In fact, the secret service and those associated with it were popular objects of citizen denunciations and rumors.

**ANOTHER COLLABORATOR**

Jan’s early reports are full of information about what people thought about the advantages of having connections with the SB or how they tried to use these connections for self-interest. State socialist informational practices are commonly considered in one direction. It is either a question of how the state imposed propaganda, employed censorship and silenced its citizens, or a concern with how the state through collaborators gathered information about the private lives of its citizens. However, the citizens were also engaged with trading and exchanging information with each other; they gossiped about news and sometimes tried to obtain some clues or pieces of information from state officers, including the secret service. I suggest that the secret collaborator is located precisely at the intersections of the information network that runs at two levels. One is the vertical network between state institutions and citizens and it functions in both ways, though to be sure, asymmetrically. The other functions horizontally between citizens. Rather than being a system of unconditional silencing of words, as is commonly held, state socialist power rests on its capacity to make its subjects speak and write. There was just so much to learn and interpret, an excess of things. This was true for both the socialist citizens and state institutions. No one knew exactly. Hence, the general information craving, boasting about and threatening others with how much one knew.

\textsuperscript{45} Both Daphne Berdahl and Adriana Petryna in their insightful ethnographies of East Germany/Germany and the Soviet Union/Ukraine, respectively, reflect on the ambiguity of the power exercised by the socialist state, specially the security apparatus. It is this ambiguity and open secrecy that partly sustain its power. See also Vatulescu (2010).
In Jan’s reports Ewa appeared as a gossiper of the most subterranean type. She knew all the secrets (public or private) and even more. She often spoke about how she already knew who denounced her to the SB, pointing to possible secret collaborators. She had insiders in state ministries and speculated much about the SB officers. She gossiped about people’s illicit material possessions and connections in the Party. In Jan’s reports she made her first appearance as someone who embraced a bourgeois life style, spending time at the coffeehouses, unemployed, and making extravagant expenditures. Some of Jan’s interlocutors suggested that she had a great talent to seduce and gather secrets of influential men, later blackmail and even denounce them to the security service when their relationship began to fail. Ewa also had the file of a secret collaborator, though it is not clear how the SB first approached her. Here is how her male contact officer described their first meetings and her “character:”

[S]o far I have had four meetings with [her] through which I understood better her personality, qualities of her character, and her operational use. The first two meetings were rather stiff, where she was not sure if I was from the counter-intelligence or MO and my aim was to see how she was going to react to this. Although in the next conversation I did not invoke any private issues concerning her, she started speaking about them, underlining that I had won her trust at the last meeting. She spoke a lot about her private life (o swoim prywatnym życiu) and even recounted her various intimate affairs. She spoke about her relationship with a certain Wojtek…who was, she said, a mean villain, ruining her private life. Assuring me that she did not aim for revenge, she continued to talk about his financial crimes and how he committed these with the help of government officials.

…she said she comes from a poor family. She was raised…by her aunt. After the end of the war she finished middle school and later a course in journalism. However, she did not make a career in journalism because it was, as she put it, too harsh a language for her and she did not want to tolerate bad things at the time [Stalinist Poland]….In the last two years…she wanted to work at the radio but she lost the job. Finding employment [at that institution] is extremely difficult. Mentioning this, she turned to me and said “if you could do something for me, you will definitely
have something in return as ‘consolation’. I must start working since my marriage does not work well for me.”

At the end of the report her contact officer commented the following:

…it should be pointed out that she is very lively and intelligent. In spite of her education level she is well read and likes detective novels…. For a woman of her age she is attractive. She said “she still has good luck with men,” but certainly she does not want to be used by them. It is she who decides whom to like. Her marriage failures make her nervous. During the conversation a mention of them caused anger and bursts, which passed away quickly, however. Considering herself as our future collaborator, she said I will need to work on her a lot because she has much caprice and little discipline. Personally, I think she is rather sincere; she knows how to segregate the useful information from the general.

Her handler did not evaluate her reports positively. The reports demanded considerable rewriting and editing. In her reports she mainly wrote about some people’s illicit possessions or abuses of state firm managers or officials, including the SB officers. In Poland, there were many fewer women collaborators in comparison to men, just was there were many fewer women SB officers. Most women were recruited to inform on their partners, husbands, or other men of public importance. This certainly tells something about the gendered distribution of power. Once, the SB officer Stanislaw observed her. He wrote that she showed him a box full of jewelry and wanted to make him understand that “she is not a poor girl, she does not go for property, which she already has”. She then denounced her ex-husband, who owned a villa, by pointing to his criminal activities, and asked “if [he] knows anyone in the prosecutorial office.”

Stanislaw wrote:

This is a very strange woman, who likes to show off and recall how she has a big chance with some professor….She stays in the villa with her ex-husband, Jurek. She does not work anywhere. She pursues a life of coffeehouses…. She is a free woman, got divorced around one and half a
years ago. At the moment she has some case at the District Court…about sharing the villa or something like that.”

It might be worth noting that none of the SB officers ever moralized about her extra-marital relationships – at least, not on paper. There also seems a certain hesitation or silence on the part of the SB officers when it comes to matters considered private. When she started talking about her love affairs, the SB officer mentioned his surprise as if he was not supposed to know about them, at least that quickly. Perhaps this was rather a technical matter in “character analysis” to see if and how quickly the interlocutor reveals information about herself and in what detail. At any rate, after a few months of formal collaboration period, Ewa was ousted from the agent network. She was considered to collaborate out of self-interest and uncontrolled fury. The SB received a signal ‘from below’ that she publicly had been speaking about her relations with the SB. According to the report, first she denied this and later broke into tears:

Crying, she said she did something stupid, but this is not a great mistake and she can correct everything. She started saying that she has great possibility, but this did not come to fruition in her life… An analysis of her behavior and the information gathered on her from different sources indicate that she is not serious at all, has a lot of imagination, loves to gossip a lot and shows off unnecessarily. She has had a number of failures in life and any trouble, even the tiniest, makes her angry. Not knowing her life troubles closely, which are essential to her, I erred by recruiting her….we must expel her from the active agent network. Future possibility of refreshing contact with her however is not excluded when she resolves her troubles, and concentrates on her inner world…

One of the information sources about Ewa was a certain letter sent to the SB by Jola. It described how Ewa reassured her that Jola’s illegal expulsion from the university should interest the SB, referring to a few officers who might be helpful. But Jola was to write a good letter. In the meantime, Ewa, however, changed her mind, became
aggressive, and wanted to see the content of the letter. Later, Ewa advised her to meet Jan, presenting him as someone who was also in conflict with the university government. At a meeting Jan told Jola that Ewa might be doing her more harm than good. She really might have contact with the security, but for whom was she working? She was a good friend of the rector and especially his wife, and informed them about all she gathered. Jola wrote in her letter that she lost her trust in Ewa when the latter denied knowing the rector’s wife. “That is why I turned to the SB,” Jola wrote:

[b]ecause I fear that Ewa may be communicating to [the SB]…things against me in order to improve her own image….I fear Ewa because she once told me that she never acts against her friends, even when she realizes that they hide the truth. I am worried that my enemies may be her friends and in the meantime in the guise of helping me, she might have been collecting information about my case for the benefit of my adversaries.

True, Ewa submitted her letter to her contact officer, but without uttering any damaging words. Quite the contrary, according to the SB officer’s report of the meeting, Ewa even suggested adding more on her own to make the case look stronger.

In another report, Ewa provided an overview of the social relations at the university. She wrote about the abusive clique (i.e., Tadeusz and Julian) and mentioned Jan’s case in the following way:

[This case] is widely considered at the university as a vivid example of how promising young scientific workers and fervent ideologues of the party were eliminated by the clique even at the expense of violating the law…. Unfortunately, all about the case was trivialized by people who care foremost about their own reputation and interest: like the rector [who was considered her ally, as is mentioned above]. The question then arises: why young, energetic people with high civic courage and social responsibility could not win in such a battle? The answer is simple: even the least criticism and appeal like the one above means the end of scientific career, expulsion from work, and is called ‘trouble making’ or damaging the authority of the old professorial cadre. As a result, the people prefer to keep silent.
Ewa reported this case only a few days after Jan had written a report about how greatly she loved to gossip and show off in public about her connections with the SB. Jan continued to suspect where Ewa supported him. It is in this misreading or misrecognition of the other in relation to the state (the SB) that we might understand the kind of power that operated through reports, accusations, denunciations, and complaint letters. It is not so much the field of legibility constructed by the state with its categories as the very illegibility of what it does exactly (despite the virtual presence of the state in every aspect of life: as Skalski said, one is a state employee, state patient, or state pensioner) that might provide fresh insight into what constituted state power. It is also that very power that scrutinizes one’s loyalties and sincerity with different intensities depending on the political conjuncture, in relation to which one had to strategize. It is to this that I turn now.

OUT FROM POLAND

As elsewhere, the 1960s in Poland were marked by particularly volatile national and international developments: the Vietnam War, the newly decolonized states ridden with political conflict, the Warsaw Pact occupation of Czechoslovakia of 1968, the Arab-Israeli war of June 1967, and at the scale of national politics, the Polish government’s infamous anti-Zionist campaign, economic austerity policies, and student protests.

The loyalties were to be proven, socialist and national. Like many others, Zygmunt was blacklisted. He was distantly familiar to Jan. According to his university employee file, Zygmunt worked as a physical laborer in the then USSR territories during the Second World War; joined the Soviet youth organization, Komsomol, and later the
Party in Poland; and in the 1950s, occupied high positions in district party cells. By the mid-1960s, he was a frequent traveler, visiting many “western capitalist countries” (unlike Jan, who had never been to a western country before 1989). Like other East Bloc citizens, he did not keep his passport at home but had to get it from the SB each time before travel, which guaranteed at least a conversation with a security officer. Zygmunt had his interview in 1965 concerning his research stay in the US. It was Stanisław who interviewed him. In the report, Zygmunt appeared familiar with the procedure of obtaining a passport to visit a western country. He knew he should expect to be contacted by western intelligence services, which might try to recruit him or gather information about certain issues of the socialist East. He was told to be vigilant about the US education institutions and was advised to keep a “travel chronicle where he would write down his observations in order to better recall them when he gets back.”

Recently, many people have felt uneasy when they realized that their past would be subjected to the scrutiny of special lustration prosecutors who will analyze their past contacts with state security apparatuses of socialist Poland. Many in one way or another (had to) put a signature on different papers and for different reasons, for instance, to get a passport, find employment, keep state secrets or their contact with the state (the SB) authorities confidential. Many are worried about the category in which their contact or signature might have been registered by the SB. Might one be registered as a “candidate” for collaboration, “operational contact” (for specific operations, like in the case of Kapuściński), or “secret collaborator” without one’s knowledge? There have been vocal Polish lustration cases that underlined that possibility (e.g., “unconscious collaboration”
or “fabricated collaboration”). Might a travel report be also considered a form of collaboration, as many proponents of lustration claim it is?

Zygmunt submitted a four page hand-written report to the SB about his contacts with certain scholars. In December 1966, shortly after coming back to Poland, he stirred a notable controversy at a party meeting for his views on the Vietnam War. His comrades accused him of pro-Americanism. Zygmunt’s controversial remarks on international politics coincided with a letter from the Secretariat of the Central Committee (CC) of the Party and Jan’s complaint letters about the shady deals at the university that I discussed earlier. While Jan’s letter did not produce the results he intended, the Secretariat’s letter produced a special dossier with a long title “The Realization of the Letter of Secretariat of CC from December 1966 concerning the ideological-moral cultivation of party members and activists.” The control of party discipline was at the time intensified. The positions taken toward the June 1967 war in the Middle East, the 1968 student protests, and the Warsaw Pact occupation of Prague were among the events singled out to evaluate one’s political line and ideological-moral conduct.

It was early 1967 when Zygmunt was first mentioned, though in passing, by a secret service report as someone of Jewish descent. The report associated him with other influential Jewish academics in Poland in order to account for his quick advance in his scientific career. In another report prepared by Stanisław, he was also associated with those who embraced a pro-Israeli state stance, celebrating silently the Israeli victory and blaming the guilt of the war on “aggressive” Arabs, calling it Israel’s self-defense war. Stanislaw contrasted this group of silent suspects with those who voiced loudly their
support for the Arabs. But “this decline of trust in Jewish people”, Stanisław felt the need to underline, “does not transform into anti-Semitism.”

In early 1968, the SB started monitoring Zygmunt closely, compiling an individual surveillance file on him with the pseudonym “Romeo.” He was suspected of having dubious views about socialism, party work, and the anti-imperialist struggle in Vietnam and other Third World countries. In May 1968, he was denounced by a letter sent to a newspaper for his undeserving academic position, his critical stance towards the state, and his pro-Israeli and pro-Western views. The denunciation that called for his disqualification from teaching “young students” was quickly added to his SB file. At around the same time, Zygmunt came into conflict with another party member from his department, as a result of which he was reprimanded. To the pile of reports collected on him, Jan made a minor contribution, one that testified to his distant familiarity with him, however. He only made general references to Zygmunt’s critical views on socialism and his relationship with the “revisionists.”

In September 1968, when Ewa and Jan were just formally recruited as secret collaborators, Zygmunt resigned from the party. He penned a letter to the party, a fragment of which figures in his SB file. He disagreed with the party line concerning the Warsaw Pact occupation of Czechoslovakia. Stanislaw, the SB officer, made a note in handwriting on the text of the letter. He doubted Zygmunt’s heroic resignation, indicating that the latter probably resigned because he recently got a reprimand from the party that disqualified him from teaching. He recommended that he should not be given the opportunity to make himself a hero and thus, should be allowed to immigrate to Israel if he applied for it.
Zygmunt did not leave Poland immediately after resigning from the party and losing his position at the university. In the meantime, many renowned thinkers such as Zygmunt Bauman emigrated (which allegedly made Zygmunt embrace more the idea of leaving). The final destination was not clear. Some reported it was Israel as if to prove his hidden loyalties for the Israeli state, others Canada. Zygmunt departed for Vienna by mid-1969, leaving his wife and children in Poland. Before that, he was to meet Stanisław to obtain his emigration passport. The first meeting took place in March 1969 at a cafeteria where Zygmunt made clear, so Stanisław reported, that his academic career came to an irrevocable end in Poland but he had a big chance in Austria. He was going to go there alone and later bring his family. Stanislaw inquired how he with his “newly revealed” Jewish identity related to Poland and socialism:

[Zygmunt] underlined that in spite of his Jewish origin…he feels Polish, because this is how his parents also felt. He provided a short biography of his parents and relatives and agreed to communicate that information to us in writing…..Speaking of his father’s sisters he said they are orthodox Jews and he is not in contact with them.

Stanisław wanted to see if he will be of any “help” to Poland when he is abroad. Zygmunt answered that “besides scientific work which he will undertake for the good of Poland, he does not see any other possible form of activity – he does not like to engage in ‘political work,’ as he called it.” Stanislaw insisted (according to the report), emphasizing that “a real Pole, a patriot, would see things differently and consider undertaking different actions for the Fatherland, Poland.” To which Zygmunt replied that he had been suffering from a nervous breakdown and all he desired was tranquility. And if for some reason he could not obtain his passport, this might lead to tragic consequences: once he already
attempted to take his life and he hoped the present situation would not again drive him to the edge. Stanisław concluded the meeting in the following way:

During the entire conversation I had the impression that Zygmunt when talking about certain issues appears rather sincere (szczery), but this is because his own interest (getting travel permission) was at stake… He considers departing from Poland as the only way out of the situation he is currently in. This fact should be taken into consideration in further contacts with him. His statement that he aims to become an ‘apolitical scientist,’ in my view, does not carry substance and could have been said in order to achieve his own ends.

The report Zygmunt wrote for the SB about his family history indicates that both of his parents disappeared during the Second World War. They were arrested and murdered by the Nazis. He suspected that the immediate cause for their arrest was a certain denunciation that informed about his escape to join the ranks of the Red Army (in the Polish section). He came back to Poland from the U.S.S.R. as a repatriate and joined the Party as early as 1945. By then, some of his relatives had already changed their names secretly some time during the war. He changed his later, shortly after the war officially ended, when he was 22, following the advice of a certain comrade from the Party.

Around a month later, in April 1969, Zygmunt had another meeting with Stanisław. He was ten minutes late to the meeting and was very sorry for that, Stanisław indicated. Zygmunt had already learned that he was issued a passport. He expressed sorrow for having to leave Poland, his family and friends. When he said he had always felt Polish and would be forever loyal to Poland, Stanisław tried once again:

I am happy to hear about your patriotic feelings and declarations… these statements should express themselves in action as well… Doctor, as a scientist who feels Polish, you could serve for Poland even beyond the Polish territories. In order to discuss this matter we are meeting today.

At this moment [Zygmunt] stated: ‘I know what kind of a service is at issue, but I am not good for it, for I am a chatterbox and cannot keep secrets.’
I responded that the facts suggest otherwise. I said that he has been keeping his change of name a secret. For 25 years, he did not reveal that fact even though there was no reason to hide it since no one threatened him. He agreed with my argument but showed another ‘obstacle’: his political views….He said he was deeply frustrated because his vision of socialism is not realized. The leading kind of socialism actually existing in the world is not the kind he desired. None of the socialist countries are following the path of socialism. They are following the path of nationalist socialism or nationalist capitalism. He spoke very negatively about the USSR politics, stating that that country only aspires to become a superpower and embrace a state-capitalist form. There is no guarantee that the USSR one day could see its interests lying with the capitalist countries and cooperate with the US, West Germany, and France, betraying the rest of the socialist countries. Doctor Zygmunt added that the socialist countries (except the USSR) should form a federation and in this way, they will free their economy and politics from the USSR, which rules over these countries’…

Later in the conversation doctor Zygmunt said that if there were a Third World War he would support neither the capitalist side nor the actual socialists, for they do not follow the true path of socialism. He thinks that the future of the world lies with socialism but not the kind created by the USSR.

He quickly added that he felt Polish and will always remain loyal, fighting anti-Polish activities wherever he would see them. This time Stanislaw proposed a specific task for him. He was to gather information about some émigré scholars with well-known “anti-Polish tendencies.” If he happened to gather information about any anti-Polish activities, Zygmunt replied vaguely, he will surely let the Polish authorities know. The meeting ended. Stanislaw assigned a contact SB officer for Zygmunt, who was going to give him a call before his departure from the country. In the file, “Romeo,” there was no report concerning that telephone conversation, however. Nor was there any material suggesting that he ever reported back to the SB after leaving Poland.

Zygmunt first went to Austria. For a number of years the letters he sent to his family and acquaintances were strictly intercepted and photographed by the SB –a fact that he seemed to know. In one of his letters he complained at length about the difficulty
he faced in Austria: by some he was condemned as a Communist, by Communists he was called a traitor, and by Zionists he was called a “fake Jew.” Eventually, he migrated to the US and taught at various universities, one of which was in Brooklyn. He died in the late 1970s in his mid-fifties.

CONCLUSION

Jan told me that he never reported about his family to the SB. He suggested ironically that some of today’s anti-Communist historians do not hesitate to denounce their father’s Communist past in their historical research. Somewhat reminiscent of Zygmunt’s labor on his family biography, Jan too is engaged in writing his family history. He said he cheated the socialist authorities when he described his family’s social class “peasant.” His mother was actually a high school teacher and his father a small landowner, he whispered, appearing proud of this fact. He has never been an anti-Semite, he wanted to say, and added that his father actually saved a few Jews during the Second World War. He did not collaborate for money. It was his ideological conviction, he insisted. He struggled for social justice and truth by collaborating with Stanislaw, but it was all a fiasco just like the regime itself, he said bitterly. Today the new addressee of his family history, it seems, is the Institute of National Remembrance that runs the former SB archives and the lustration department. He has been sending to the Institution documents to “supplement” his files, so that one day there will be a more accurate “scientific research” on his case.

I do not suggest that Jan’s statements are too well composed or rehearsed to be true. They are certainly symptomatic of the contemporary hegemonic discourses in which
they are articulated, except perhaps the ideological claim for his collaboration, which puzzled the lustration prosecutor, as mentioned earlier. In today’s Poland as elsewhere, “saving Jews” or property ownership is a powerful trope with moral-pragmatic implications – after all, the new citizen is defined as a private property owner. That his statements are constructed in relation to something like a ‘postsocialist truth regime’ does not imply that then they are lies, just as his reports were written in a certain political universe, within a certain temporal horizon of expectations, which held in view particular kinds of past and future that had vanished from today’s space of intelligibility. Dissecting that future from “the socialist past,” this new regime of truth has reloaded the totalitarian paradigm to reconstruct and redistribute the possible subject positions one could have occupied before 1989. The regime fell but the people have lived on, however with lives suddenly ‘outdated’ and subject to examination in the midst of new certainties. In this sense, the SB files are not only remnants of a bygone past, but the documents of a history in the process of being remade. They reveal certain truths as they conceal others.

In this chapter, I wanted to gesture to another kind of framework, one that aims not to individualize the subject or moralize the act of collaboration (from our comfortable viewpoint), but that explores what the cases under study might tell about the social life of information, different engagements with the state, in brief, the modality of power that marked state socialism. I have tried to locate collaboration within the larger context of informational practices of citizens. Socialist authorities consider public letter writing and reporting practices crucial manifestation of popular support for the regime. This is also the way to control the conduct of state and party officials from below and make them publicly accountable in the one party-state. It is sometimes a channel of criticism (to
voice critical views) and almost always a weapon of offense and defense, and of social struggle. There are, however, certain rules of writing, as I have discussed. Not everything could be written, such as the relations between the SB and the Party. Besides, the authorities are well aware of the fact that citizens may try to take personal advantage of these mechanisms of control just as they may sincerely struggle for social justice and the well-being of the state. Indeed, in almost all of the cases (Jan, Ewa, and Zygmunt) the sustained question, if not suspicion of one’s sincerity and loyalty, is apparent. How much of what one said was sincere? Where did one’s loyalty lie? What did one do with secrets? Curiously, the same questions inform much of the current public discourse on the SB files and collaborators, as Kapuściński’s case suggests.

I have argued that the state (socialist) power rests on its capacity to make citizens speak and write without knowing exactly what kinds of effects the conveyed information may produce. It is not certainty or omnipotence that marks this mode of power, but the uncertainty it weaves around itself – the illegibility of what the state exactly does, how much of what it is supposed to do it actually does, and what else it does besides what it is supposed to do (see Das and Poole 2004). A microanalysis of the social life of citizen reports, letters, and denunciations shows that these documents produce various effects, which are not necessarily the intended ones. There is indeed a certain negativity or failure that brings together all the cases I have discussed (the failed Jan, the failed Ewa, the ousted Zygmunt, the failed Stanislaw). As opposed to the current reifications and subjectivations of the collaborator, I have reflected on the contingent and shifting relations of one to the SB and state socialist ideology, and the social struggles, in which one’s life unfolds. It is not that Jan was destined to become the collaborator he had
become just as it was not clear from the beginning that he was going to evade the SB and eventually resign. It is not that Ewa was to experience her “life troubles” the way she did, which pushed her on the one hand, to the SB (regardless of the question of whether she sought to use her connection for her self-interest) and led her, on the other, to “fail” as a collaborator. The implications of Zygmunt’s political position, close to Trotskyism, would be different if the late 1960s had not developed the way they did in Poland. But it would also be different if he were not in the position of refusing to collaborate with the SB – not everyone was able to say “no” and make living arrangements abroad. Zygmunt’s socialist orientation, though different from the Soviet state type, also allowed him to say confidently his criticism of the actually existing socialism. They all met Stanisław – and Stanisław, too, met them – in the social world they shared and in the singularity of lives they lived. They all met him at different moments and with different interests, passions, fears, and hesitations, none of which would make them merely an immoral opportunist or an innocent victim.
CHAPTER TWO  DEMOCRACY MUST BE DEFENDED:  
ETHICS OF FORGIVING, SOLIDARITY, AND CAPITALIST  
STATE BUILDING

In the last chapter, I focused on the totalitarianism paradigm and post-ideological 
discourse that inform the normative framework of the lustration discourse and practice.  
As part of this, I have highlighted the so-called post-1989 ‘ethical turn,’ which is also 
referred as the age of global human rights and humanitarianism. In this chapter, I will  
continue my analysis of the moral economy of lustration, investigating the way moral  
ideas, values, and sentiments are articulated and contested around the issues of lustration.  
As in the last chapter, I will be concerned with the informational practices between the  
citizens and party-state authorities, but this time I will focus on the practices of the  
dissident or “political oppositionist” groups.46

Let me clarify at the outset the main stakes of this chapter. As mentioned in my  
Introduction, public commentators and scholars often invoke the terms of rational choice  
theory to explain the conflicting positions on lustration. This theory builds on the  
assumption that each individual actor seeks to maximize self-interest by making  
‘reasonable’ choices following the rules of the game. Thus, the proponents of lustration  
often argue that those people who oppose lustration, in fact, have something to fear or  
hide about their own or their close circles’ past entanglement with the communist-era  
security services. They consider one’s opposition or skepticism to lustration as a sign of  
his or her secret guilt, or in any case, something countering their political and economic  
self-interests (Nalepa 2010; Staniszkis 1991).

46 The eminent Polish historian Andrzej Friszke (1994) uses the term “political opposition” to refer to the  
oppositionist groups during communism. However, the oppositionists are also referred as “dissidents,”  
especially by Western scholarship. That term has gained currency in Eastern Europe in dialogue with the  
West. See Jonathan Bolton (2010), Barbara Falk (2003), and Michal Kopeček (2009) for useful discussion  
on the subject.
However, more skeptical analysts of lustration also invoke the terms of rational choice theory. They suggest that lustration, in practice, largely functions as a window-dressing for the rightwing groups to pursue their own political interests (see Szczerbiak 2002; Walicki 1997), supposing it to be a political instrument to repress and silence their opponents. While self-interest is an important motive informing some of the positions taken toward lustration or the political alliances formed between certain groups, these explanations, in my view, do not sufficiently explain the way conflicting interests and I would add, passions, have been constituted socio-politically and historically at a particular moment. Nor do they account for what it is that has made lustration particularly instrumentable or useful for political struggles.

Instead, this chapter asks: What constellation of social-historical forces, ideas, experiences, and sentiments have constituted the theoretical-practical field of hegemony and collective action, in which different positions are articulated vis-à-vis the issues of lustration? How have those forces, ideas, and sentiments shifted across time and become entangled in the contradictions of the ‘postsocialist’ project of building a capitalist state and a rule of law democracy? How do those contradictions affect the moral-political engagements with the themes of lustration, including violence, betrayal, solidarity, and forgiveness?

In what follows, I will discuss the shifting social and political economic conditions of labor and human rights activism in Poland from the 1960s to the 1990s. This discussion will help understand the historical trajectory of the two major groups that have been vocally critical of anti-communist lustration, particularly its radical nationalist version. One of these groups speaks the language of human rights, the European
standards of law, and the normative values enshrined by the Polish Constitution of 1997. Attuned to the issues of law and human rights, this group often seeks to shelter individual citizenship rights against the encroachment of the ‘ex-totalitarian’ state. The other group is more disposed toward traditional leftwing sensibilities, opposing lustration in the name of defending the autonomy of education and media institutions and advocating for the right to disobedience or protest. In comparison to the former, the latter is smaller and more scattered. These two groups are by no means mutually exclusive.

In the first part of the chapter, I will reconstruct the historical ethical-political world in which those groups articulate their current critical positions toward the issues of lustration. To this end, I will focus on the “ethos of the opposition,” particularly the dissident activists’ or oppositionists’ discussions on the themes of betrayal, forgiveness, social defense, and solidarity that they developed in the course of their labor and human rights activism. In the second part of the chapter, I will explore how those discussions have gained a different meaning when those dissidents rehearsed them in the 1990s after occupying positions of authority and leading the violent neoliberal policies that they were so keen to promote and secure against ‘dangers.’ In this respect, I will concentrate on the passage from the popular struggle for workers’ democracy to a ‘democracy that must be defended,’ that is, the tragic absorption of the massive “Solidarity” (Solidarność) trade union movement into the project of building a capitalist democracy by the end of the 1980s and the ensuing antagonisms and suspicions of betrayal. These antagonisms and suspicions are, I suggest, integral to the social-political life of lustration.

Drawing on the works of Talal Asad and Michel Foucault, I will focus on the two moments of democracy and human rights: one as an oppositional discourse against the
party-state authorities and the other as a ruling class ideology of liberal state building. The tension or gap between these two moments, which poses crucial questions about the state, contradicts and overwhelms the meaning of ex-dissidents’ current positions on lustration, human rights, and democracy. This tension has given way to a growing criticism of ex-dissident intellectuals and, eventually, to the rise of rightwing populist parties, which then have recast the meaning of social equality and justice through their radical lustration projects in the 2000s.

**THE “WORKERS’ DEFENSE COMMITTEE” AND LABOR AND HUMAN RIGHTS ACTIVISM**

It is not possible to disentangle the social history of human rights and political opposition from that of labor protests in postwar Poland. This history was not made by a handful of dissident intellectuals that ‘led the masses.’ Nor could it be reconstructed on the basis of these dissidents’ political biographies. Thus, my focus on the biographies of several oppositionists has certain limitations, but I think it still offers an important vantage point to understand the current contentions around the ‘legacy’ of the opposition.

Each protagonist embodies a history that reverberates today. Tadeusz Mazowiecki is a well-known Catholic, socialist, and humanist intellectual, who became the first non-communist prime minister of postwar Poland in 1989. Adam Michnik has been one of the most popular and influential ex-dissident intellectuals today and used to be the chief international spokesperson of the opposition. Like Mazowiecki, Michnik aspired to form a dialogue between leftwing and Catholic groups and vitalize the civil, political, and human rights activism in communist Poland. If Mazowiecki’s government has been today
associated with the “thick line” policy that promoted a ‘forgetting’ of the communist-era state violence, Michnik has been a common target of the rightwing nationalists for his persistent criticism of lustration in the name of peaceful coexistence, pluralism, and forgiving.

While these two figures have supported the process of neoliberalization, it is with Jacek Kuroń and Karol Modzelewski that the question of capitalism has most forcefully posed itself. Both Kuroń and Modzelewski are renowned socialists who offered a radical Marxist critique of the communist state in the 1960s, took part in workers struggles in the following decades, and after 1989 pursued a different political vocation. Kuroń became the Labor Minister in Mazowiecki’s government while Modzelewski remained in the opposition as one of the sharpest critics of the capitalist transformation and the ex-dissidents’ role in it. Except Mazowiecki, they all served more than five years of jail during communism. Unlike Michnik who is the youngest of them, all three came of age in the 1950s. Since the 1990s, they all have been vocal critics of anti-communist nationalism and lustration. I will weave the complex history of the political opposition and its ‘postsocialist’ ramifications by focusing on the political biographies of these four eminent ex-dissidents: Tadeusz Mazowiecki, Adam Michnik, Jacek Kuroń, and Karol Modzelewski. Certainly, my account will not be exhaustive of either those biographies or the history of the opposition.

Arguably, one of the key documents of the thriving political opposition in the 1960s has been the “Open Letter” (1964-5) penned by Kuroń and Modzelewski. Addressed to Poland’s United Workers Party (the Party), the Letter was part a revolutionary program, part a Marxist critique of the fundamental characteristics of the
party-state. In brief, the Letter analyzed how the bureaucrats and technocrats of the party-state came to monopolize power and appropriated through the state the surplus produced by workers. This class rule, Kuroń and Modzelewski argued, was defined by its systematic exploitation of the working people who had no control over their labor and its product, had no means of self-defense, and had no say in running the state or deciding the social goals of production, investment, and consumption (1972, 20).

The Letter did not draw much support from the main circles of the Party even though it sparked some important discussions participated in by such scholars as Zygmunt Bauman and Leszek Kołakowski. After a secret trial, both Kuroń and Modzelewski were sentenced to prison (the former three years, the latter three and a half). But part of the Letter’s vision and critical elań made its way to the next decades. Its focus on the self-defense of workers against the state was to be put into practice by the forthcoming labor struggles and movements. Yet, the idea of defense would be reinterpreted under the new conditions of political action.

From the mid-1960s to the mid-1970s, a number of developments, including the violent suppression of worker strikes on the Baltic coast, the student protests, the purges of critical political voices from the Party, as well as the Warsaw Pact invasion of Czechoslovakia, had caused the decimation of the burgeoning organized opposition in Poland. Moreover, the 1970s were also marked by a new international and national political economic conjuncture. Edward Gierek’s government introduced new economic policies to ‘open Poland to the West’ and initiate market reforms to boost consumption. Economic development was supposed to be achieved through the loans collected from the Bretton Woods institutions. This new policy also reoriented the government’s approach
to the themes of equality. During the 1960s when the Open Letter was conceived, both the opposition and the government were deeply concerned with egalitarianism; where the opposition underlined class disparities, the government underlined the upward mobility of unskilled workers and low educated people. However in the 1970s, as Maciej Gdula (2014) observes, this egalitarian tendency was largely replaced by the promotion of ideas of individual self-realization (samorealizacja), innovation, and entrepreneurship.

The Party was no longer the main addressee of critique, as was the case with the Open Letter. The oppositionists, whatever remained of them, sought for new forms and platforms for collective action. Many of them like Jacek Kuroń became closer to certain left-leaning or ‘progressive’ Catholic circles that offered a new critical space for dissent.47 A prominent dissident activist, Kuroń began to advocate for creating an alternative self-governing society and networks of solidarity beyond the reach of the monolithic party-state. It was a vision of social change ‘from below.’ The opposition was no longer to be confined to the ‘underground,’ but it should organize itself in the open. The opposition was also to combine the new fronts of struggle, such as law and human rights, with its more traditional focus on labor.

It was not until the workers took to the streets in June 1976 in the cities of Ursus and Radom that such opposition gained a popular force and articulated its new orientation. To defend the workers against state repression, Kuroń and his comrades founded the Workers Defense Committee (Komitet Obrony Robotników, KOR). Most of the members were already established public figures, involved in the 1968 protests.

47 Both the communist government and the Roman Catholic Church, and agnostic Marxists and Catholic intellectuals started establishing a dialogue with the onset of de-Stalinization in the 1950s. The meetings of the Second Vatican Council, which addressed the ‘social question,’ contributed to the formation of this discursive space for the lay Catholic intellectuals and clergy to engage with the critical Left.
Initially, KOR sought to identify the cases of state repression (e.g., those who were injured or laid off because of their links with the protests), provide medical aid and legal counseling to workers and their families affected by state violence, arrange for lawyers who were capable of defending them in the court, make public via reports and bulletins the cases of repression that were often silenced or concealed by the media, and provide financial help to the workers’ families by allocating the resources they gathered through domestic and international advocacy (e.g., the money sent to KOR by Western European trade unions). One of the main goals of KOR was to establish an open information and communication network. This was, indeed, the first example of a legal and open opposition group that was formed in Poland and the East bloc. But the Committee was also important in its efforts to bridge the gap between workers and intellectuals and students, which had been the case in the previous protests and, in fact, since the 19th century uprisings (see Kubik 1994; Lipski 1985).

I want to underline that the establishment of KOR was preceded by certain national campaigns and international developments that greatly contributed to the growing popularity of legal activism and human rights discourse in Poland and across the world. As Irena Grudzinska-Gross (1997) has suggested, since the Warsaw Pact “self-invasion” of Czechoslovakia in 1968, the socialist ideology rehearsed by the Soviet bloc regimes notably had lost its popular appeal, leaving law as the main terrain of struggle between the government and the emergent opposition in Eastern Europe in the 1970s. In this respect, the protest letter (Letter of 59) against the Gierek government’s proposed constitutional amendments in 1975 was noteworthy in signaling the legalistic orientation of the opposition (Dehnert 2014). The amendments sought to reinforce the party’s
authority by underlining the “duties” of the citizens and the party’s relationship with the USSR, as they also reinforced the punitive measures that had been employed by the seemingly more liberal rule of Gierek (Lipski 1985, 25-26). To counter the amendments, the protests led by the Polish intellectuals ended up defending the 1952 Stalinist constitution against the amendments. Jacek Kuroń and other signatories later became the founding members of KOR.

The amendments were advised by Moscow to ensure the unity of the East Bloc at a time when the Helsinki Accord was signed. A chief outcome of the geopolitical détente between the competing ideologies of the Cold War, the Helsinki agreements were intended to secure national borders and promote scientific, cultural, and economic cooperation across Europe. The initial reception of these agreements by the oppositionists was at best skeptical because the Helsinki Accord actually recognized and consolidated the division between the West and the East (Lipski 24-25). The Accord also demanded the communist government’s compliance with the international norms of human rights, a fact that scholars often highlight as the major factor contributing to the growing human rights-oriented opposition in Eastern Europe (e.g., Thomas 2002). While this may be partly true, as Dehnert (2014) noted, it was not simply out of respect for the human rights norms that the Polish government tolerated that opposition. Such toleration, in his view, also revealed the degree to which the Polish government depended on foreign loans and credit for the stability of its rule.

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48 In his well-known study, Daniel Thomas (2002) even argues that it was chiefly the international human rights norms that contributed to the demise of communism in the late 1980s. He argues that while communist governments signed the Helsinki Accord to pursue their own strategic interests, they were in the end trapped by it.
Certainly, the growing popularity of human rights language in Eastern Europe may well be considered as part of the global ascendency of human rights discourse in the 1970s, following the widely shared disillusionment with the maximalist vision or utopia of revolutionary socialist, anti-colonialist, or emancipatory movements (Moyn 2012; Hoffman 2011). It is in that decade that Latin American (ex-Marxist) activists also began framing the violence of military dictatorships as human rights violations to win international recognition (Arthur 2009). Jimmy Carter’s inaugural speech in 1977 at Notre Dame University had generous references to the importance of human rights to initiate a national recovery after the Vietnam War (Moyn 2012). Carter also visited Gierek in early 1977 when the opposition groups in Poland were gaining some ground. During Ronald Reagan’s presidency in the 1980s, human rights even played a more decisive role as a foreign policy instrument, namely, an “anticommunist containment policy.” (Eckel 2014) In Eastern Europe, the Moscow Helsinki Committee was established in 1976, the Czechoslovak dissident group Charter 77 in 1977, and various opposition groups in Poland that referred to the human rights appeared in the second half of the 1970s.

However I want to underline that this did not simply mean a direct importation or application of the international human rights for most of the groups. Nor was it only a local “translation” of those rights. The sociopolitical practice of human rights in Poland (if not all Eastern Europe) may be better understood as a process of “vernacularization,” to use the term coined by Sally Engle Merry (2006, 218-230). As in other places, social movements in Poland also made use of the international human rights norms and doctrines in concrete struggles and particular local or national contexts, interpreting them
within their normative understandings of justice and horizon of expectations. Thus, for instance, as Jonathan Bolton (2010) argues, Charter 77’s references to human rights need to be understood within the particular lifeworld of the dissidents. As such, instead of calling Charter 77 a human rights organization, one needs to grasp how its members made sense of human rights in their search for moral and political identity and within their engagements with existential humanism, phenomenology, and later Eurocommunism.

KOR’s usage of human rights needs to be understood in the same way. Unlike how scholars of human rights often assume today, it was neither a human rights organization *per se* nor some *prototype* of what has come of human rights activism in Poland in the 1990s. In fact, even when some activists initially proposed the name, “The Committee in Defense of Human and Civil Rights,” as Jan Jozef Lipski wrote in his masterful account of KOR, their reference point was not only the “United Nations Charter, the Final Act of Helsinki, the appeals of the US President Jimmy Carter,” but “an older tradition: the League for the Defense of Human and Civil Rights that had been active in Poland during the 1930s” (50). In the end, however, KOR activists refused to stand under the banner of human rights. Instead, the Committee called itself a social defense organization, more in the spirit of the kind of “defense” that Jacek Kuroń and Karol Modzelewski had described in their Open Letter a decade before. Workers’ rights and their living conditions, as well as their subjection to state repression and coercion, were of paramount importance to the Committee, as the eminent Polish historian Andrzej Friszke suggested (1994, 415-417). However, this did not stand for a catchall political identity for the entire group. KOR self-consciously avoided identifying with any
available political ideology in order to emerge as a common platform for oppositional work. But this also did not mean that all political tendencies had equal force. As Friszke noted, even though it was the social democratic and liberal ideas that dominated the profile of the individual members, a handful of leftist activists, especially Jacek Kuroń, were very influential in cultivating the political orientation of the collective (416).

Furthermore, it was not only the secular groups that contributed to KOR; the moral and political universe of KOR was largely carved by the dialogue between the secular groups and left-leaning Catholic intellectuals. In this regard, human rights, as mentioned earlier, served as a common framework for that dialogue.

Like Jacek Kuroń, Adam Michnik, another influential KOR member, engaged in establishing a dialogue between the left and Catholic intellectuals in the 1970s.49 Similarly, he called for rebuilding a society from below against the “totalitarian” state, in which alternative networks of cooperation and solidarity may be formed, the idea, which was later celebrated as “civil society” advocacy, especially in the Western world. He had been one of the leading student activists in the 1968 protests, affiliated with a group that became famous for its militant leftist activism. But what made Michnik particularly important was also his being the main spokesperson in the West for the so-called “democratic opposition.” In the 1970s, Michnik was well connected to Western Europe, especially West Germany and France. While raising funds and spreading the word of the opposition, he also closely followed the post-1968 debates in France on Marx, met the exiled Soviet dissidents (e.g., Solzhenitsyn), and exchanged views about human rights and Eurocommunism. As Robert Brier (2011) suggests, his interactions with eminent ex-

49 See, for instance, his well-known work, The Church and the Left (1993).
Marxist, liberal-left, and rightwing intellectuals at a time when the violence of Soviet communism was heatedly denounced made Michnik an ardent advocate of an anti-totalitarian, non-violent, and individual human rights-oriented position. He embraced ideas of pluralism, toleration of difference, and civil liberties. While establishing himself in the West as the authentic witness of ‘totalitarian repression’ (at a time when Gierek ‘detotalized’ it) and, thus, of the oppressive failure of Soviet communism, Michnik brought to Poland the ideas of the disillusioned ex-leftists like Francois Furet on the French Revolution. Like other post-1968 ex-communists in Poland and the West, Michnik expressed a strong skepticism about any revolutionary vision, which he mainly equated with bloodbath and totalitarianism. As we will see, such skepticism also has informed his unwavering criticism of nationalist lustration politics and the kind of revolutionary violence envisioned by it in the name of national and moral purity.

Another well-known critic of anti-communist lustration and a close affiliate of KOR, Tadeusz Mazowiecki had been a key figure both in the dialogue between the leftwing and Catholic intellectuals and in the career of human rights politics in Poland. He was first actively involved in pro-communist government Catholic organizations and journals (e.g., PAX), which took seriously the promises of socialism, especially in regards to the social advancement of poor peasants and workers. Known to be a “socialist Catholic,” Mazowiecki was particularly influenced by the “personalism” of the French Emmanuel Moulane that highlighted the central place of human action and responsibility in history.50 As an “internal critic” of the communist regime (Graczyk 2007), he occupied a seat in the parliament that was reserved to the group of Catholic intellectuals after 1956.

50 While Mazowiecki was critical of dogmatic Marxism represented by Stalinism, his position was not one of categorical rejection of socialism as viral atheism, as most other Catholic intellectuals did. Yet, he also departed from the clergy and Catholic circles partly promoted by the regime.
However his socialist humanism and his criticism of anti-Semitism and nationalism soon made him unpopular and dangerous for the regime. So he joined the ranks of the political opposition in the 1970s.

In 1977, as an editor of an important Catholic journal, “The Link” (Więź), where some of Michnik’s and Kuroń’s articles were published, Mazowiecki organized a human rights conference in Poland. Like Poland’s other secular and Catholic intellectuals, his approach to human rights—the human of human rights—was shaped less by liberal individualism than by the continental philosophical anthropology of man, existential philosophy of humanism, and social “personalism” of Moulane.\(^{51}\) Certainly, Mazowiecki was not alone holding these views. In fact, Poland was germane to this group of Catholic engagement that was ‘open’ to dialogue with Marxism. Many Catholic thinkers, activists, and clergy embraced the ethics of work, solidarity, and emancipation, and sought to relate them to the concrete problems of the working people. Father Karol Wojtyła, the prospective Pope John Paul II, was one of them.

Just as the Christian groups varied in relation to the socialist ideology, KOR was also not the only opposition group against the communist regime even though it was the most vocal and effective.\(^{52}\) Nor was it the only group that referred to human rights. Versatile as it is as a political strategy, the human rights framework in fact appealed to many groups that opposed the regime, both on the left and on the right. KOR was often denounced by more conservative opposition groups for its lack of enthusiasm for anti-

\(^{51}\) See also Samuel Moyn’s stimulating discussion of the relationship between personalism and human rights (2011). He also underlines that the personalism of Moulane should not be confused with liberal individualism.

\(^{52}\) This was partly due to the fact that while the communist state still tolerated shades of left critique, it was more repressive against the nationalist conservative criticism of the anti-communist right.
communist nationalist ideas. As Friszke (1994) suggested, there was some truth to this “rightist” criticism. KOR had always been explicitly against xenophobia, anti-Semitism, nationalist chauvinism, and anti-Russian hatred.

Human rights largely functioned as part of the more legalistic forms of action undertaken by KOR. They were almost always uttered with the civil, political, and social-economic rights and framed in the language of solidarity of citizens against state coercion and repression. KOR made only occasional references to the Helsinki Accords and international human rights doctrines, especially when the Committee addressed the Polish public. But even then, the reference was often accompanied by an emphasis on workers’ rights. It was only in that context that human rights made sense in socialist Poland. Just as the concrete struggles of the working people were the main focus, the constitution of the Polish People’s Republic (PRL) was no less a relevant legal framework for social action than the international human rights laws. The worker was both the worker and the citizen of the Republic, as well as the subject of international human rights. Here, for instance, is an appeal that KOR made “To the Public” in August 1979 during the heat of the struggles against increasing state repression. I quote at length, as it reveals how KOR activists invoked the PRL constitution and human rights:

> We do not and cannot agree to a situation in which our nation is deprived of independence; human and civil rights are violated despite the

53 Note that this type of denunciation of KOR was expressed by a group that called itself “The Movement in Defense of Civil and Human Rights” (ROPciO). The group saw no contradiction between advocating for civil and human rights and identifying with anti-communist and anti-Russian nationalism. Perhaps this is less surprising when we recall the usage of human rights as anti-communist containment policy by American conservatives like Ronald Reagan. However, it is important to note that KOR’s usage of human rights was different from other groups’ usage and came to dominate the human rights practice in Poland in the next decades.

54 In 1977, KOR underwent a transformation to broaden its social base. Some activists wanted to rename it as a civil and human rights organization. In the end, KOR retained its original name and foundational principle by calling itself “The Committee of Social Self-Defense ‘KOR’” (KSS “KOR”).
recognition of these rights in the law of the PRL; the principles of political democracy, which serve as the basis for life in civilized societies, and which constitute an achievement of our national development, are not being realized; the laws of the PRL are simply empty words; all forms of defense of citizens’ rights are only illusions; all representative institutions are a fiction; the independence of the courts has been forgotten; the justice system is depraved; the values of human dignity and personal freedom have been erased; fundamental guarantees of the freedom of conscience, religion, and opinion are not respected…; the moral state of society is being constantly degraded [due to careerism, alcoholism]; the inefficiency of the national economy is deepening [the attack on individual farming continues, inertia and bureaucratic parasitism are replacing economic policy, while corruption is becoming more and more dangerously widespread…]; the material situation of significant strata in society is worsening, social services are being painfully reduced, and the inefficiency of the health services and day care for children casts deep shadows over the lives of families. In contrast to this, one can observe the sumptuous life of certain groups, which is especially revolting when it concerns members of the power apparatus” (Lipski 1985, 484-485).

Notice that in this elaborate and trenchant criticism of Gierek’s government from every possible direction (social, economic, political, legal, and moral), the reference to anything approaching ‘inalienable human rights’ or their violations is at best meager. Instead of invoking some universal natural rights of the human, the criticism expresses a deep concern for social inequality, economic breakdown, dysfunctional law of the PRL, and the fiction of democracy. It is a frontal criticism of the communist government, but one that speaks its language, referring to its ideals. Indeed, the force of the criticism lies in confronting the communist regime in its own terms.

I want to draw two main conclusions from this discussion. The first one concerns socialist legality and the constitution. The lack of ‘rule of law’ and law as paying lip service to political power has been a commonplace criticism of Soviet-type communism. In this regard, it is often assumed that talking about legal activism did not make any sense since no one took law seriously in these regimes. Thus, the Helsinki-inspired human
rights activism, the so-called ‘prototypes of western liberalism,’ was supposed to bring civilized concepts and manners to the wild territories of Eastern Europe. However this widely shared view overlooks the historical national and local context of human rights practice (see also Nathans 2011). It is impossible to ignore KOR’s calling out to those in power to implement the law in Poland. The legal activists of KOR did not seek to ridicule and thrash the entire law of the PRL but demanded that the state authorities must realize what was written in the constitution. As I will discuss more in detail in the next section, socialist legality became another important front of political struggle especially in the 1980s when the government installed judicial review mechanisms.

Second, the meager reference to international human rights doctrines in KOR’s appeal “To the Public” does not mean that the Committee did not take moral and humanistic values seriously. On the contrary, as Jan Jozef Lipski underlined, moral and humanistic orientation had always been central to KOR’s self-description and social practices. The meager reference rather suggests that the Committee did not need to consult the norms of human rights codified in international agreements to articulate its humanism. As I discussed earlier, KOR drew heavily on different historical, political, and moral sources (e.g., socialist humanism, existentialism and Christianity) and expressed its social humanistic orientation through diligent support for working class struggle and a holistic approach to the field of socioeconomic, legal, and political problems. Issues of social inequality and living and working conditions were central to what it considered human dignity. The stark separation between labor rights and human rights was not yet there, at least as far as KOR was concerned.
THE ETHOS OF THE POLITICAL OPPOSITION

Besides its combination of labor and human rights activism, KOR was also one of the major oppositional groups engaging in the work of moral cultivation. The collective’s ethical-political discussions, brilliantly described by Jan Jozef Lipski, help understand how the problems concerning secret service agents, revenge, forgiveness, and social defense were discussed then, the problems that emerged as concrete realities in the 1990s after the disintegration of the East bloc. Perhaps what came out of the conflicting positions around the questions of lustration or de-communization was already signaled in these discussions.

Lipski wrote that even if KOR refused to declare a particular political program, it expressed an unwavering “desire for sovereignty and democracy in Poland” (62). This desire did not only mean, however, the juridical recognition of national sovereignty or the defeat of communist authorities and, as it were, the subsequent emergence of a free Polish nation from repression. Patriotism and the memory of the Second World War, the Home Army and the Underground State played a big role in shaping the ethos of KOR,55 but KOR’s most important concern was “national reintegration and solidarity, renewal of social ties both on a micro- and a macro-scale, and educational work in all social strata [that would]…deepen the knowledge of national, European, and world history” (ibid). It aimed to “reprogram society” through expanding forms of “social work.” The social work was needed to cultivate a form of patriotism that was not nationalistic, but that was

55 But unlike other oppositional groups, KOR did not promote “patriotic pronouncements,” or “patriotic exhibitionism.” Overall, it disliked the “overuse of symbols” such as “Polish crowned eagles, signs of Fighting Poland, or calendars of oppositional work which went from one glorious anniversary to the next” (Lipski, 77).
informed by a democratic sensibility expressing the values of pluralism, openness, solidarity, and human dignity.

As mentioned before, the social work was going to be done legally and in the open. This was important to encourage people to join and benefit from the work of the Committee. Under every public document KOR members typically wrote their names, addresses, and telephone numbers, risking the reprisal of the security police forces. In principle, KOR did not refuse anyone who wanted to join even if this highly increased the risk of infiltration by secret agents. This rule of openness was more important in order to overcome the widespread ‘barriers of fear’ and social distrust. Thus, the issue of what to do with the secret agents and the security service, as Lipski suggested, was pertinent in the formation of the Committee’s ethos: “KOR’s doctrine was to trust everyone within the bounds of common sense. Apart from those instances of house searches and arrests in which the hand of an agent could clearly be discerned, any consideration of possible links between a KOR associate and the Security Service was inadmissible.” This position was articulated most clearly by Jacek Kuroń and gained the full approval of the Committee.

“[I]n a movement such as KOR,” Lipski wrote, “an atmosphere in which everyone suspected everyone else would ultimately be more dangerous than the possibility of overlooking a few agents” (64). Thus, overcoming the atmosphere of suspicion, sometimes deliberately created by the state security, was a priority for the opposition to become effective. This view was going to be articulated in a similar way decades after the fall of communism in the debates on lustration (see Bortnowska 2010).

If suspicion and fear were detrimental to the development of social solidarity, untruthful public statements and exposition of secret agents or security officers by the
opposition were no less damaging. Many KOR members, in principle, renounced hatred and violence in their fight against government forces. This resulted not only from ethical concerns but also from pragmatic tactics such as preventing possible provocations. For instance, when one of the meetings at Jacek Kuroń’s apartment was interrupted by some thugs and karate experts, KOR activists decided not to fight back. Hatred and retaliation through violence, Lipski suggested, would only result in the eventual self-destruction of the opposition itself. But the question of hatred and violence was also intimately related to the ethos of the movement. For instance, KOR made the following announcement after realizing that it misidentified the security officer that it held responsible for the murder of the young student oppositionist Stanisław Pyjas:

In one of its statements, KOR made public the name of a functionary of the Security Service whose description was thought to match that of the person escorting Pyjas when he was last seen alive. This functionary sued the editors of the Information Bulletin for libel. A verdict of guilty was pronounced, and KOR was required among other things to publish a correction in the press. At the same time, KOR decided that its publications would also print an apology…It was necessary to do this if the struggle for human dignity was not to become a hollow phrase (emphases added, Lipski 69).

The struggle for truth and human dignity was central to the ethos of KOR. Many heated discussions among KOR members tried to articulate the boundaries of human dignity and truth to decide if the concern for truth and human dignity must also be extended to the security officers.

Finally, I want to refer to the following passage written by Lipski on the question of what to do with the communists and how to ascribe responsibility for the regime’s abuse of power:

In KOR and among its young associates one would almost never hear threats against the security men or the police, or meet with “speculation”
about their fate when the communist system would collapse. On the contrary, one found an awareness that there might yet come a time of great testing, when one would have to take great risks in order to save a man, to protect him from revenge or even from lynching. This was a topic of many conversations, and I never encountered a single case in which a KOR associate expressed the belief that his place should be among those doing the lynching. At most, some believed that in such a situation they could allow themselves to remain passive from fear and to refrain from defending the person actively. There was no doubt that among the members of such a lynch mob there would be not one of those who today have the courage to fight for others who have been beaten (emphases added, 71-72).

Whether Lipski’s observation was correct or not about the ethical outlook of KOR associates, the time of great testing seemed to have come after 1989. How strangely illuminating, yet unwarrantedly self-confident this passage seems from our postsocialist present. Has lustration not been discussed in the same terms of revenge or lynching by influential veteran KOR members in the 1990s? In the midst of the transformations from socialism, what has indeed come of the courage of those who once had defended others?

Perhaps it is not by chance that Lipski referred to that discussion as part of his broader discussion on the virtues of rejecting hatred. The real question, he perceptively observed, was the problem of “attitudes of trust or suspicion,” “the limits of forgiveness,” and “the right to judge others.” Yet this question, he intimated, raised another difficult one: what was the responsibility of those who had been involved in the Stalinist government? He wrote, “KOR was criticized for the fact that among its members and associates were people who at some point in their lives had collaborated to various degrees with the Communist party… Conflicts and disagreements over this issue also occurred within KOR. Issues of ethical and political judgments were mixed here with disagreements about the interpretation of historical events, and with fundamental
questions about the ability to alter one’s views, or even one’s mentality, about the limits of responsibility, about the subjectivity and objectivity of guilt” (72).

Lipski did not offer any definitive answers to these questions. He only highlighted the centrality of Christian ethics of confession and forgiving and trust in one’s “honest decision to reform” to the milieu of KOR.56 “Penance was not difficult to find in KOR,” he noted, and KOR tried hard to encourage a public discussion on this issue, however without insisting on any single judgment. “When two comrades-in-arms are being beaten,” wrote Lipski, “it is difficult to say that for one it is a penance, the payment of a debt, and at the same time a credit or merit to another” (ibid). Another difficulty was the problem of determining what an “honest admission of guilt” looked like. “To whom should this guilt be confessed?” How to confess it? What to make of those who “did not want to get into trouble with the authorities (for a variety of reasons, not always out of opportunism), and who, in their search for an explanation to justify their attitudes … constructed intricate and twisted justifications compounded with a mixture of criticisms of KOR and of the opposition in general”? Were these critics any less guilty? (73) And how about those who did not oppose the regime, but contributed to the development of art and science? KOR engaged these questions not only in light of the Christian ethics. As Lipski suggested, secular leftist ethics of pluralism, freedom, equality, and brotherhood were also important sources of the Committee’s moral universe. Some of the values like “social work” were common to both secular leftists and Christians. It was through the social work that activists thought they could “become better persons than they were

56 On forgiving, Lipski wrote the following: “If the milieu [of Polish society] was indeed fundamentally conditioned by Christian ethics, then there was probably some shared memory of the joy of finding one’s lost sheep; or that Peter denied Christ three times out of fear; or that Saul, the oppressor of Christians, was rightly forgiven when he came to join them; or that only those who are themselves without sin have the right to cast the first stone” (73).
individually.” However, none of the above-mentioned questions about responsibility, hatred, and distrust were going to be settled any time soon. That much Lipski already saw in the early 1980s when he wrote his book on KOR at the peak of the “Solidarity” movement and massive state repression. What is more, these problems were going to recur after 1989, moving to the center of contentious political struggles around de-communization and lustration after 1989, but under the remarkably different conditions of capitalist democratization. Before discussing how those ethical-political problems were reconstructed in the 1990s, however, we need to consider the drastic transformation that the political opposition underwent in the 1980s, especially as a result of martial law or literally, the “state of war” (stan wojenny) that officially lasted from 1981 to 1984. This period had pertinent consequences for the contingent theoretical-practical field in which the questions once again were posed in the 1990s.

**THE “STATE OF WAR” AND THE ENDS OF “SOLIDARITY”**

The late 1970s witnessed a proliferation of worker strikes and committees, which culminated in the establishment of an independent (non-state) trade union, “Solidarity,” in August 1980, the first of its kind in the East bloc. KOR activists played a major role in the leadership of the union. Karol Modzelewski, who had not been active earlier, joined “Solidarity” and even became the ‘name-father’ of the trade union. If “Solidarity” had an explicit legalistic orientation (struggling for legal recognition of an independent trade union), it was also an egalitarian social movement toward political and economic emancipation, partly drawing on the program envisioned by the Open Letter. It aimed for both workplace self-management and political and cultural pluralism (the freedom of
association and expression), all of which were perceived as intertwined at the time (Ost 1991).

From the start, there were disagreements about the course of action to be followed. Some radical anti-communist groups criticized KOR for accepting to negotiate with the communist authorities. Some of these criticisms, indeed, well survived 1989 and became part of the rhetoric of rightwing parties. Meanwhile, the government played the card of nationalism and formed a handful of nationalist fronts to polarize society as “us” versus “them” and isolate “Solidarity.” On December 13, 1981 General Wojciech Jaruzelski declared martial law to allegedly ‘save’ Poland from the looming Soviet invasion. The effects of the militarization of the party-state and society were longstanding. The massive “Solidarity” movement of ten million members was dismantled or pushed underground. The opposition leaders became cut off from their social base. Many workers faced brutal physical violence, lost employment, or jail sentences or penalties because of their participation in (illegal) protests. In the meantime, Karol Modzelewski spent another three years in jail from 1981 to 1984. Other oppositionist leaders like Jacek Kuroń, Adam Michnik, and Lech Wałęsa also served time or were interned.

Under the leadership of General Jaruzelski, the party disappeared into insignificance. It was the state institutions of defense that began to rule the country. The public domain was overwhelmed with the appearance of military figures and nationalist manifestations. In some places, different underground committees were formed, which claimed the legacy of “Solidarity.” However, there was great confusion about where true
“Solidarity” was, what true “Solidarity” was, or who actually represented it (Ost 1991, 153). When there were too many solidarities, there was, in fact, no solidarity.

In the 1980s, law stood out as an arena of both overt repression and subtle political strategy. If the government responded to the emergence of a strong opposition by establishing judicial review institutions associated with the Western liberal democracy, the legal activists pursued further their monitoring of state violations of national law and human rights. In 1980, the government established the Supreme Administrative Court, the first institution of that kind ever introduced in the East Bloc. As the prominent legal scholar and judge Ewa Łętowska noted, that institution was won by the struggle of the opposition as a “compromise” given by the government. In 1982, another legal institution was introduced: the Constitutional Tribunal. Until then, the courts, Łętowska observed, had no say on the constitutionality of law and could not oversee the legislature. The establishment of the Constitutional Tribunal signaled an important change even though it took about four years for the Tribunal to begin functioning. Lastly, the ‘post-martial law’ government founded the Ombudsperson’s Office in 1986, also the first of its kind in the East Bloc. Ewa Łętowska was nominated as the first ombudsperson. The main reason for her nomination, Łętowska suggested, was her independence from both the government and the opposition. However, she soon gained the name “babka” as the tough old woman fighting obstinately for citizenship rights. She regularly wrote articles for the dailies to raise consciousness about citizenship rights.

57 Conversation with Ewa Łętowska, May 20, 2011. Regulating citizen-state relations, administrative law was a crucial body of law in socialist legality. As in other legal arenas, administrative law, in practice, privileged the interests of state institutions over those of the citizens. While the government established the Supreme Administrative Court for “cosmetic” reasons, Łętowska suggested, it was surprising to see that a Polish citizen in 1982 during martial law could win a legal dispute against the state, something that had not happened before in the history of the PRL.
rights, participated in street actions against the security forces’ unlawful suppression of worker strikes, and supervised the notorious incarceration conditions.

The 1980s also witnessed a prolific legal oppositional activism.\(^\text{58}\) In 1980, a group of KOR associates established the Polish Helsinki Committee of Human Rights. Building on the work of KOR’s “Intervention Bureau,” the Helsinki Committee continued to monitor and document the legal abuses of the party-state for the Polish public and international media. Here I want to highlight the underground journal called the “Rule of Law” (Praworządność). Published from 1984 to 1989, it was one of the leading publications of legal activists, but has so far received little attention from scholars. One of its chief editors was the well-known human rights activist Marek A. Nowicki, who later founded the Helsinki Foundation for Human Rights in 1989. Let me focus on a single issue, May 1986, to offer a sense of how this legal activism looked. The issue concentrates on the famous “Gdańsk process,” which involved the “Solidarity” activists Adam Michnik, Bogdan Lis, and Władysław Frasyniuk.\(^\text{59}\) As the concerned article described in detail, the proceedings violated a number of criminal justice principles: the right to public hearing (zasada jawności); the presumption of innocence of the accused (zasada domniemania niewinności oskarżonego); impartiality and fair trial (zasada bezstronności); the right to see the evidence and the right to defense (zasada swobodnej oceny dowodów i nade wszystko prawa oskarżonych do obrony) (Jesion 1986, 76).

Furthermore, the defendants objected that almost the entire evidence presented to the

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\(^{58}\) For instance, well-known film directors such as Krzysztof Kieslowski began collaborating with the defense attorney Krzysztof Pieszewicz. He made the film “No End” (Bez Koncu) about a legal trial concerning an oppositionist. Curiously, Pieszewicz later participated in making the lustration law in 1997.

court was gathered by the secret service through unreliable and unethical methods (e.g.,
listening devices installed in the houses). Besides, more than half of the witnesses
summoned by the prosecutors were SB functionaries, whom the judges took as expert
witnesses and main evidentiary sources. The defendants were not allowed to see the
evidence, because some important pieces were classified as “state secrets.”

Perhaps the underground journal’s documentation of this sort of rights violation is
not so novel. The more unsettling question, as I will discuss below, might be what other
issues found voice in the “Rule of Law.” As far as the report on the Gdańsk process is
concerned, what is most striking for our discussion is the fact that it was precisely the
same legal principles that lustration proceedings would be seen to violate. Almost two
decades later, the Helsinki Foundation for Human Rights in Warsaw was to monitor and
document the violation of the same rights: this time, the rights of the people who were
accused of collaboration with the secret service. The lustration law will be considered to
operate on the same dubious evidentiary ground. Veteran dissidents like Adam Michnik
who went through the Gdańsk process would criticize the lustration law for privileging
the testimony of secret service officers and the files they compiled as the chief
evidentiary source.

What else did the “Rule of Law” issue cover besides the Gdańsk process? The
same issue included information digests about individual political prisoners from all over
the world that were compiled by Amnesty International. It ran an article called
“Geography of Human Rights” that endorsed Western liberal democracy as the norm for
all developing countries from the East Bloc to the Third World. The issue also published
testimonies about the PRL prisons that highlighted in some detail the violations of the
political prisoners’ citizenship rights. In addition to this more common type of reporting on the abuses of political power (prison conditions, coercion, and other state violations of individual rights), the “Rule of Law” was also concerned about labor rights and trade union laws. For instance, Henryk Wujec, ex-KOR member, discussed at length the secret amendment project regarding the existing labor code. These amendments, he wrote, aimed to discipline the labor force and bring limitations to the workers’ self-organization capacity, wages, and mobility (the change of workplace) (82-84). Along the same line, Dariusz Fikus, writing under a pseudonym in his article “The Plague of Unemployment,” described in detail the devastating effects of the rise of unemployment, especially among the youth in capitalist Western Europe in the 1980s as a result of dismantling the welfare state. He was deeply critical of Margaret Thatcher’s policies that sought to cover the “public deficit” through tax reduction and public spending cuts.

I have referred to these articles at some length, because I want to underline that the type of frontal criticism of what is nowadays called ‘neoliberal’ policies launched in a rule of law and human rights journal seems almost exotic today. But, apparently, that was the case in the Polish opposition discourse as late as 1986. However, I also want to note the following that Fikus wrote in passing as if sensing the growing tension between labor and human rights:

Our official press never misses a chance to point out the problems [of unemployment] with satisfaction. Whenever one writes about the suppression of freedom and violation of human rights in socialist countries, one is reminded of unemployment and new wave of poverty [in Western capitalist societies]. Tired of the French journalists in Paris, Gorbachev preferred to speak about unemployment in the West than the fate of Jews in the USSR (126-127).
The separation between labor rights and human rights was already there. It was not possible to overlook the decades-long tension between the social, cultural, and economic rights vocally endorsed by the U.S.S.R. and the civil and political rights endorsed by the U.S.A. (see Donnelly 2003). However, in my view, the separation of those rights was not fully complete at the time in Poland. Part of this may result from the particular conjuncture, in view of which the opposition articulated its position. The hegemonic discourse was still tilted toward some socialist language of labor and working class struggle. It was not possible to articulate an effective political position without engaging in one way or another with labor in the so-called workers state. However, it is also important to underline that the majority of the founders of the Polish Helsinki Committee were socialists or ex-socialists, having had the vivid experience of the Polish Socialist Party in their past (e.g., Ludwik Cohn and Aniela Steinsbergowa). One may reasonably assume that this history also should have shaped their understanding of human rights activism. Moreover, as mentioned before, many Catholic activists who embraced the moral language of human rights were also deeply involved in workers’ struggles. At the time, thinking the human without an ethics of work and solidarity was not possible.

In a short time, this situation changed remarkably, however. Many perceptive observers noticed the palpable pull toward rightwing neoconservative and neoliberal ideas of Friedrich Hayek, Ronald Reagan, and Margaret Thatcher among both the oppositionists and party-state authorities in the second half of the 1980s (e.g., Kowalik 2012). Indeed, one may also observe the general liberalization of the socialist command economy in the early 1980s, especially during the “state of war.” The liberalization was partly to manage the economic crisis and partly to crush the opposition of the workers.
The introduction of judicial review institutions, then, coincided with the promotion of private entrepreneurship and condoning of black market activities, which became the chief domain of survival for many people. At this time, ideas of marketization (urynkowanie) became particularly powerful in government circles. It was not that the ideas of market reform were not in circulation before, but the conditions of the martial law significantly contributed to the growing popularity of the ideas of free market and private property. As Ost (1991) suggested, this coincided with the increasingly powerful liberal and conservative groups’ trenchant criticism of the leftist ideas of the KOR for the weakness and dissolution of “Solidarity.” Labor politics earned a bad name, as the Left became rapidly unpopular. Unlike in 1980, economic reform started to be prioritized over political reform. The new liberal “Solidarity” leaders and reform communists from the Party agreed on the necessity of undertaking market reforms and privatization, most of which were conducted in secret and “spontaneously” (Ost 2005). The oppositionists and reformist government authorities became even closer under the so-called “anti-crisis pact,” named by the oppositionist Bronisław Geremek.

Such market reforms met a wave of combative factory occupations and strikes of young workers, however, in 1988. The workers of the Gdańsk shipyards, where the famous “Solidarity” protests started, were deeply disillusioned by the ‘reforms,’ for which they were to bear the cost. The government was helpless in the face of the strikes except to ask the national “Solidarity” leadership to talk out the young workers. Lech Wałęsa barely succeeded in that task. For many workers and rank-and-file “Solidarity”

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60 They found fault with the “Solidarity” movement’s trade union orientation, support for working class action, and concern for working conditions.
61 The so-called “spontaneous” or “covert privatization” remarkably empowered the state firms’ managers to decide what and how they want to privatize the firm resources.
activists, Wałęsa’s intervention once again revealed that the national leadership of “Solidarity” had turned into a new ‘opposition elite,’ standing next to government officials and technocrats and speaking the same language of the free market. The growing antagonism within “Solidarity,” and the tension between the young workers and newly formed radical opposition groups, and the senior “Solidarity” leaders revealed the fragile position of those leaders who claimed to speak for the entire opposition and nation.

The round-table agreements between “Solidarity” leaders and party-state authorities took place in this environment. Only a handful of “Solidarity” activists including Wałęsa, Mazowiecki, Michnik, and Kuroń attended. Most of the workers who had made “Solidarity” such a powerful social force were interpellated as spectators. The agreements concluded with the decision to hold a limited “free election.” For some oppositionists this was a great success, something unimaginable before. For other more conservative oppositionists, it was a treacherous compromise, a ‘secret pact.’ And for those who identified with radical anarchist and socialist politics, it was the cooptation of the democratic revolutionary struggle. The turnout for the historic June 4, 1989 elections was about 60%. Ten million out of 27 million eligible voters did not go to the ballot box. Political apathy, fatalism, and nihilism seemed to rule the day. Such was the so-called victorious “end of communism” (see Wielgosz 2005).

THE TRAGEDY OF JACEK KUROŃ OR THE “GREAT TRANSFORMATION”

Lech Wałęsa alone must have been thinking about capitalism [in the 1980s]. I certainly wasn’t. I wouldn’t have spent a week or a month, let alone eight and half years, in jail for capitalism.

Karol Modzelewski on the 25th anniversary of “Solidarity,” 2005
Let me briefly recapitulate what we have so far identified as the major sociopolitical and economic shifts. These shifts largely set the parameters of the emergent theoretical-practical field of hegemony and praxis, which determined what seemed possible and acceptable in the 1990s. They influenced the course of lustration, human rights activism, and oppositional politics in post-1989 Poland. We have seen how by the late 1980s, the massive labor movement of “Solidarity” was absorbed by the ideology of building capitalism, largely as a result of martial law and the ensuing militarization of the party-state. While the political opposition had been mainly oriented toward political reform (e.g., the establishment of self-governing trade unions and institutions of political pluralism) before the military crackdown in 1981, the ends of “Solidarity” came to be dominated by a top-down economic liberalization supported by many liberal party members and technocrats, as well as the leading oppositionists who had been increasingly detached from the masses. What started as the defense of workers and social self-defense from below against state power had transformed into an economic reform policy imposed from above, which deprived many working people of livelihood and the means to participate in political and economic government. While the economic increasingly became a field of expert calculation isolated from social consideration, the political was reduced to the project of building capitalism and multi-party electoral democracy, following the dominant Euro-American norms.

In the same vein, the sanctification of private property and privatization of the ‘national-social state’ was accompanied by the dissolution of the former unison between labor and human rights activism, which implied a new definition of what constituted the “human” of human rights. The subject of human rights was no longer ordinary workers
and their struggle at work or outside work, but the individual or private citizen with inalienable rights. This shift was to have important consequences for what human rights have done in post-1989 Poland. While the individual-centered civil and political rights have moved to the center of legal and human rights activism, the activism around social and economic rights has become marginalized or cut to a minimum, focusing only on drastic cases (e.g., extreme poverty). The ethos of the political opposition has also been recast, this time within the dominant normative framework of civil society and liberal state building and rule of law ideology. Certainly, this has brought a new dimension to the ethical and political questions discussed earlier, especially among the KOR activists about what to do with the communists, their secret agents, and the state security.

All these shifts shape the way lustration has become an issue of political struggles for hegemony and the way it has been publicly perceived. The shifts have prepared the conditions that allow for the instrumentalization of lustration by various political actors for their own ends. As a result, lustration has become a particularly contentious discourse and legal process, through which the fundamental contradictions of postsocialist Poland are mediated. Instead of embracing the sweeping premises of rational choice theory, we need to examine these social-historical shifts and contradictions that constitute the subject of action and mark his or her self-understanding.

Since 1989, Karol Modzelewski has found many occasions to reflect on what he recently called “The Great Transformation” (Wielka Transformacja), alluding to Karl Polanyi’s well-known work with the same title (2013). Tadeusz Mazowiecki’s government established after the bargained “free elections” employed the notorious neoliberal “shock therapy” measures that liberalized trade and ‘opened up’ the market for
foreign investment, rapidly exposed Polish firms to market competition, abolished central price controls (e.g., food prices), and imposed draconian cuts in public spending and the money supply (Hardy 2009, 31-32; Modzelewski 2013; Shields 2006). These measures eliminated hundreds of thousands of ‘uncompetitive’ workplaces and sold (privatized) the profitable firms at cheap prices. They stripped many people of their prior investments, safety nets, and essential needs, including their daily food. It was not that state communism was a golden age or there were no shortages or chronic problems about the social benefits. Yet, even a glance at the newspapers from the early 1990s would give a sense of the violence exercised by the “shock therapy.” The streets quickly became flooded with the disabled, unemployed, and elderly people, who were worried about their lives. In three years, the recorded unemployment rate rose from almost none to 16.4%. The unemployment hit agriculture, heavy industry, and manufacturing particularly hard. In the new ‘masculine’ economy of finance and private entrepreneurship, female workers were disproportionately affected, categorized as redundant labor and pushed back to the home (Gal and Kligman 2000; Hardy 2009). Clearly, the so-called ‘jump to the market’ was not free of inflicting suffering and demanding sacrifice (Eyal 2000). But it also became clear that the jump had no end; the so-called ‘second wave’ of neoliberalization, initiated in the late 1990s as part of Europeanization, also imposed drastic cuts on public employment and spending, especially the health sector and telecommunications.

In his recent autobiography, Modzelewski wrote that he often faced the following question in his foreign trips: how was the egalitarian “Solidarity” movement so rapidly absorbed by the project of building capitalism that took away the livelihood of the people who not long ago constituted the social base of the movement? What came of the ‘social
dialogue’ between the intellectuals and working people that was initiated by KOR and institutionalized with “Solidarity”? Once Lionel Jospin asked him that question, recalled Modzelewski. A few years later he became the prime minister of France and Modzelewski wondered “how Jospin managed the tension between his principles and the neoliberal regulations, which bent down the neck of the socialist prime minister of one of the biggest countries of Europe?” (2013, 122) At another time, he met the Italian unionist Emilio Gabaglio. He wrote: “We had known each other for more than ten years. Emilio started the conversation with the same question. Emilio was still a unionist with leftist orientation – though he was more a Christian than a “Red” descent. He also read the Open Letter when he was young… Shortly after our meeting he became the chairman of the European Trade Union Confederation. To his luck (na jego szczęście), that was not a social role (rola społeczna) which forced him to change his position on neoliberalism” (ibid).

It is not possible to overlook the tragic sense in which Modzelewski reflects on the dilemma of inhabiting a position of authority designated by the contingent course of events. In a way, Modzelewski was also ‘lucky,’ not occupying such a position as other “Solidarity” activists did. He remained in the opposition, criticizing the post-Solidarity government for not having any political and economic program and for discounting the plight of the working people to pursue the interests of foreign capital-led development that was prescribed by the Washington Consensus (Modzelewski 1993). Unlike him, his comrade Jacek Kuroń took the risk to act as Labor Minister in Mazowiecki’s government and until his death, remained preoccupied by his involvement in the infamous neoliberal shock therapy. Unlike other government officials, however, he undertook public self-
criticism on different occasions. While Kuroń has been widely cited for his tragic statement ‘we need to build capitalism in order to smash it,’ the dispossessed workers whom I spoke with during my fieldwork still remembered him for the soup (Zupa Kuronia) he instituted to alleviate their suffering.

How to make sense of this tragedy of Kuroń and, indeed, the Great Transformation? The answer to this question, I think, would also throw light on the ongoing contentions around the well-known veteran oppositionists’ moral and political positions vis-à-vis such heated issues as lustration. Part of the answer, in my view, lies with the space of politics authorized by the modern state. It is concerned with the dynamic of state power, specifically what it does to the persons, values, ideas, and social movements that come to be enveloped by that modality of power. Today it is not possible to disentangle the legacy of the “democratic opposition” from its later involvement in the contradictions of building a capitalist state and liberal democracy in the periphery of global economy. In the same vein, that dynamic of state power, as we will discuss in the next chapters, has generated immutable effects on the social perception and practice of lustration and human rights in postsocialist Poland. To clarify this point, let me briefly consider the following passage by Talal Asad on the meanings of democracy:

How does democratic sensibility as an ethos (whether “religious” or “secular”) accord with democracy as a state system? The former, after all, involves the desire for mutual care, distress at the infliction of pain and indignity, concern for truth more than for immutable subjective rights, the ability to listen and not merely to tell, and the willingness to evaluate behavior without being judgmental toward others; it tends toward greater inclusivity. The latter – democracy as a state system – is jealous of its sovereignty, defines and protects the subjective rights of its citizens (including their right to “religious freedom”), infuses them with nationalist fervor, and invokes bureaucratic rationality in governing them justly; it is fundamentally exclusive (emphases original) (2012, 56-57).
It is striking to observe how similar the democratic ethos Asad describes is to the ethos of the Workers Defense Committee that we have discussed earlier: the desire for mutual care, concern for truth and the ability to listen, and the non-judgmental approach to other persons, echoing the ethos of the opposition. May we not observe that what Asad calls “democracy as a state system” also applies to the sort of democracy that many veteran oppositionists found themselves building in the early 1990s? Asad’s distinction is helpful to identify these two moments of democracy, as it were, articulated in the passage from being on the opposition to being subsumed into a state system. These two moments generate a variety of effects, contingent upon their specific articulation with the social-political and economic processes and struggles that constitute the state. We may ask: What happens to the ethos of democratic opposition when the oppositionists like Jacek Kuroń who propagated it took seats in state ministries at that particular conjuncture? What happens to the human rights opposition when the new democratic state and centers of authority (including civil society organizations) build their legitimacy on ‘promoting’ those rights? What comes of human rights when they become the governing ideology of new state building and democratic transition? What comes of the ‘freedom’ that millions of workers chanted during the protests after this word had become the motto of liberal state-building and capitalist democratization?

The state or state building is often treated instrumentally as a transparent means that leads to a preconceived end.62 Rational actors ‘seize’ the state, so we are told, and conveniently ‘use’ it to achieve certain results, be it socialism, Islam, or democracy. This view of the state as a transparent instrument is, indeed, widely shared by activists, policy-

62 See, for instance, the insightful debate between Ralph Miliband and Nikos Poulantzas on the state and class in the 1970s (see Aronowitz 2002). See also David Nugent’s (1994) useful review on state building.
makers, experts, and scholars, including the ideologues of state socialism, who identified the state with the working people and the state’s appropriation of the surplus with the socialization of production. As may be recalled, Jacek Kuroń’s and Karol Modzelewski’s Open Letter precisely problematized this claim. They highlighted the increasing etatization of socialism, which expressed itself as the reification of socialism and the reproduction of the power of the bureaucratic ruling class, shielded from the mechanisms of popular accountability and participation in government. Likewise, regarding the “Islamic state,” Talal Asad (2013) suggests that this idea needs careful consideration because:

The modern state is a structure distinct from rulers and ruled, and its constitutional duty is to maintain itself as a state by any means necessary; it does not have any space within its territory that is independent of its absolute authority. Debate in the public sphere may crucially influence the formation of authoritative norms, but it is the modern state, through its various agencies, that authorizes them.

Along the same line, we may recall Nicos Poulantzas’s notion of the “relative autonomy of the state” (1980), which highlights the irreducibility of the state to the class relations of power and production. The state is a material condensation of those relations, but is never a mere ‘tool’ or ‘reflection’ of class rule as the instrumentalist Marxist accounts hold.

Let me underline, then, two major points concerning the state. First of all, as Asad suggests, the state not only aspires to be the absolute authority over its territory by monopolizing the means of violence (coercion) and by deploying various technological,

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63 In a different vein, Max Weber (2009) in “Politics as a Vocation” also makes the point about the Soviet state and its uncritical usage of the “instruments” they criticize in capitalist societies. Similarly, Michel Foucault criticized the Soviets’ instrumentalist treatment of the government technologies or apparatuses for proletarian ends.

64 [http://www.islaminteractive.info/content/muhammad-asad-between-religion-and-politics](http://www.islaminteractive.info/content/muhammad-asad-between-religion-and-politics) (last accessed 15 August 2015)
bureaucratic, and informational agencies, but it also authorizes the discursive field in which ideas and moral arguments can become effective. If this is true, then we may observe that the ideas, values, or philosophies expressed by the political opposition in socialist Poland have taken on a new effect or force because of their newly gained proximity to the centers of power. There is a sea of difference between the word ‘democracy’ uttered by the oppositionists and the same word uttered as part of a governing ideology that is armed with the force of law and security apparatuses.

Second, the modern state, Asad notes, is a “human construction” with a specific rationale of “fear of external and internal enemies” (2013). It is jealous of its sovereignty and demands “absolute loyalty” from its subjects. Hence, “security” has been a fundamental concern for the state. In fact, the well-known “reason of state” discourse precisely underlines this: the interests of the status quo, that is, the continuity of the state’s existence must be defended at all costs. In his Society Must Be Defended lectures, Michel Foucault (2003) reflects on a related problem. There, he examines, among other things, how the oppositional “race war” discourse invented by the ruled against the Roman sovereign has been paradoxically transformed into a phenomenon of what he called “State racism.” What began as the strategic discourse of the powerless turned into a “biological-racist” discourse of “degeneracy” that was centered on the idea of “good” and “bad” race within a single race. The pluralistic discourse of races became a discourse of race in the singular and turned against those who initially had invented it. The strategic discourse of the subjugated was subtly appropriated as a complex state mechanism of segregation and exclusion. “Society,” then, came to be seen as needing a “defense,” not only against “outside enemies,” but also against the biological threats from within, the so-
called lower or sub-races, that is, the impure breed. This internal racism, the drive for permanent purification, Foucault suggests, later became “one of the basic dimensions of social normalization,” (81) a “global strategy of social conservatism” and “State racism” (61-62).

What is striking in this account is not merely the transformation of an originally oppositional discourse into the discourse of the ruling power, but its particular transformation into a state discourse that justifies the state’s exclusionary power by claiming to defend society against enemies. Even though this point may at first sight seem far removed from our discussion, it sheds important light on what happened to KOR’s social self-defense discourse after it became an integral component of capitalist state building that was so keen on defending the newly emerging democratic system against the dangers of, e.g., Moscow agents, rebellious workers, old mentality and habit, or any group that stood as an obstacle on the road to a radiant capitalist democracy. Lustration, as I will discuss in detail in the next chapter, has become inextricably articulated in that national security language.

Let me underline that in arguing for the importance of the state, I do not simply mean that “power corrupts” or the Polish oppositionists became alienated as a result of holding a state office. Nor do I mean that the state is something inherently wicked and poisons every noble project. But rising to a position of authority, I suggest, needs to be seen in the broader context of state building and social-political and economic shifts that we have already described earlier. This is all the more important because the state has been playing a central role in the process of neoliberalization in Poland (as elsewhere) unlike what the neoliberal technocrats often say. The state has been key to the regulation
of market competition, arbitrating between foreign and domestic capital, and reassigning and guaranteeing property rights (Hardy 2009, 45; Harvey 2014; Verdery 1996, 2003). As is well-known, “extraction from the state” or appropriation of state assets has been cardinal to the way state privatization proceeded (Busse and Luong 2002; Ganev 2007). Hence, the state emerged as one of the main foci for uneven accumulation and political struggles.

The emerging capitalist class rested on its exclusive relation to the state to become what it was. As Karol Modzelewski (1993) observed, the former “Solidarity” activists, occupying public offices, quickly formed exclusive circles by drawing on the old binary of “us” versus “them.” This binary, which had been commonly invoked to pit society against the state during the communist era, now transformed into the discourse of “our” people (nasi) in the government versus “their” people (wasi) in the government. These narrow, personalistic relations had become so prevalent that the rank-and-file workers who fought the communist state in the 1980s seemed like disposable, anonymous strangers. The rising inequalities, accompanied by the triumphalist ideological narrative of freedom and liberation from communism, generated a series of contradictions, the effects of which not only called for more security for the state, nation, and democratization process, but also indelibly marked the critical moral engagements of the former “Solidarity” leaders, who came to occupy positions of authority in the new order. The old questions they had engaged in opposition, which Jan Jozef Lipski articulated so well, returned, but by gaining a renewed significance under the new conditions of transformations: What should be done to the people and the institutions associated with the former regime? How should one deal with the problem of revolution,
violence, and popular justice? Would one be on the side of those who do the lynching, or stand up in defense of those who fell to the ground? Considering the widespread social participation in the communist regime, who would need to ask for forgiveness, for what, and to whom? How could one confess in an environment of rampant ostracism? To explore how these questions became entangled with the problems of capitalist transformation and state power, below, in the final section, I turn to a discussion of one of the most influential ex-dissidents in Poland, Adam Michnik.

FORGIVING BUT IN WHOSE NAME?

In an eloquently written essay, Ken Jowitt associated Michnik with the qualities Max Weber ascribed to the modern politician: Michnik had the required “passion, a feeling of responsibility, and a sense of proportion,” and accumulated much “knowledge of the tragedy” with which “political action [was] truly interwoven.” (1998, xiii)

In his writings, Adam Michnik has consistently highlighted the dangers of nationalism, the return of interwar fascism, anti-Semitism, and intolerance to pluralism. The early 1990s seemed particularly alarming to him, as “the phantoms from the past awaken” in “all post-Communist countries.” (163) He was particularly concerned about the “movements that combine populism, xenophobia, personality cults, and a vision of the world ruled by a conspiracy of Freemasons and Jews. A great danger to the democratic order,” he said, “comes from this direction. We all must take care of democracy” (163). Even though Michnik seemed ready to do that, who else “would defend democracy if it were endangered”? (Jowitt, xv). As the editor-in-chief of the most popular daily, Gazeta Wyborcza, he wanted to use it for civic education and cultivation of
autonomous individuals who were capable of making their own decision. As opposed to the Roman Catholic Church’s government of conscience, these so-called “protestant” Polish Catholics would listen to their own conscience (Jowitt, xix). Instead of acting like the children of the “paternal” communist state, the esteemed individuals of the new democratic state would act like “adult” citizens of a “civil society” (ibid).

Furthermore, the new society, Michnik passionately argued, was not going to be born out of a bloodbath, violent revolution, or political utopia that seeks to create a “perfect society.” Working toward utopia was dangerous, as it often ended up creating a “concentration camp.”65 The time for revolution was gone and the past had to be dismantled. Yet, many Solidarity activists, he argued, were infected by the habits of the ancien regime. In a conversation with Jürgen Habermas in 1993, Michnik said:

There was a point at which I, who had been for six years a prisoner of the Communists, and twenty-five years in active opposition, could read each day in the Solidarity papers that I was a crypto Communist. And this for the sole and simple reason that I did not believe in hanging former state president Jaruzelski or in introducing anti-Communist legislation. Many active Solidarity people succumbed to the temptation to go from Communism with a Bolshevik face to anti-Communism with a Bolshevik face. This was mental blackmail (1994, 12).

Michnik considered this mental blackmail more dangerous than the former communists who supported the post-1989 transformations. The real enemy of the new liberal democracy was not the failed communism, but the populist Catholic nationalists who employed the “rhetoric of de-communization” to “solve all the problems of Poland” and provoked hatred, animosity, and intolerance towards “difference” by using an explosive

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65 Michnik preferred “civil society” over “perfect society” and described his views on violence as follows: “Do I want a repetition of the trials of Stalin’s time? I repeated this question to myself, and answered that violence consumes and demoralizes the person who uses it….Whoever is taught to use violence cannot relinquish it. In our century, the struggle for freedom has been fixed on power, instead of the creation of civil society. It has therefore always ended up in the concentration camp” (1998, 197). Michnik’s conversation with a foreign journalist in 1988.
anti-communist language (1998, 236; 243). As Michnik stated in a conversation with the famous Czech dissident and later president Vaclav Havel, “The attitude towards Communists is also a question of the attitude towards people who are different, whose history and experience are different” (1998, 243). The call for de-communization was then supposed to be inseparably linked with the xenophobic and racist calls for ethno-nationalist purity of the new state.

To counteract this vision, Michnik called for a new state ruled by law, a civic individualism and pedagogy, and a politics of “mercy” (Jowitt xx). Since the 1970s Michnik had been a proponent of peaceful democratic transition from dictatorship. He had drawn much inspiration from the Spanish transition from the Fascist dictatorship through political and economic reform. For him, any dictatorship, whether Right or Left, was the same, so was the struggle for democracy and human rights under dictatorship (1998, 124). The current cooperation of the former regime’s functionaries with the democratic reforms was more important than what they did in the past. Thus, Michnik wanted to forgive those people who jailed him for oppositional activity or denounced him as a Jew. However, on a closer inspection, his act of forgiving posed crucial problems. Consider the following passage where he eloquently responds to the Romanian intellectual Andrei Plesu’s question about forgiveness. I quote it at length so as to give you a sense of Michnik’s often-noted rhetorical skills and his justification for forgiving:

The problem of forgiveness can be posited in various ways. Can you forgive a machine which does not work properly? People should be forgiven not for what they think about the Central Committee or communism, but for what they have done. If they have committed a crime, it no longer matters what they think about the Central Committee or communism. The act of forgiving is always an individual one. [The Polish poet] Zbigniew Herbert wrote, "It is not within your power to forgive in the name of those who were betrayed at dawn." I agree with him. You can
only forgive the things that concern you and not others. This would be a fundamental condition. When the director Krzysztof Zanussi, who is a good friend of mine, criticized me in the media by asking, "Why does Adam Michnik forgive in my name?" I told him: "Krzysztof, I only forgive *my* years in prison, I don't forgive anyone for your years in prison, only you can do that. And the fact that you did not spend one minute in prison is your problem."

[It is one thing to forgive a dictator who keeps people in prison, and another to forgive a dictator who tried to lead Poland out of dictatorship through non-violent means. If it hadn't been for Jaruzelski and Kiszczak we would not have had the "round table," we would have had another Bucharest – with the Securitate, the snipers and everything else. When I went to take part in that round table, my legs were shaking with fear. It was taking place in a palace and we had to go to a room upstairs. General Kiszczak was waiting at the top of the stairs and was shaking hands with everybody: Wałęsa, Geremek, Mazowiecki, Kuroń... I got scared and hid in the toilet downstairs. I was afraid that, if my wife saw me on TV shaking hands with Kiszczak, she would throw me out. After three minutes I came out of the toilet and had a look; Kiszczak was still there, waiting for me. So I decided to be a hero and went up the stairs. He said: "Hello, sir!" and I replied: "Hello, general!"

...In Spain, after a few years of transition, the Spanish secret services staged a coup led by Colonel Tejero. To this day you can see the holes in the ceiling of the Spanish parliament made by the bullets back in 1981. There is not one bullet hole in the ceiling of the Polish parliament. Kiszczak and Jaruzelski made sure there would not be any secret service revolt against the changes in Poland. Things were different in Romania. There, the Communist Party gained sovereignty from the USSR fairly quickly, during Gheorghiu-Dej's regime. In Poland, this was impossible, because Poland represented the Soviets' access to Europe. We had their troops permanently stationed in our country. At one point, the Polish communists had to think about their margin of freedom, what they could and could not do without permission from Moscow. In short, they were not sovereign. For me, 1989 was the moment of truth for communism. I asked myself what the communists would do. Would they go to Moscow or act like Polish patriots? And they acted like Polish patriots. At that point it was obvious to me that we had to put a stop to the logic of revenge.

Certainly, someone who has committed a crime has to suffer the consequences. But this must be a legal decision, not a political one. Politicians must never administer justice. When politics enters the courtroom, justice leaves by the back door. It is always like this. I would make another observation. Poland is obviously a Christian country. We are
all to a certain extent moulded by Christian culture and morality. In the Gospels it says that you will not forgive seven times but seventy-seven. But maybe my copy of the Gospels was forged by the Masons and Trotskyites.

This would be the first perspective. The second is that of a Warsaw gangster. There is a gangster's code of honour: if someone is on the ground, you don't kick him. We the gangsters, the hoodlums of Warsaw, do not kick someone on the ground – we left that to the communists. So if I speak of forgiveness, I do so in relation to selfishness and not selflessness. If I do not forgive, I do myself an injustice, I become a more evil and stupid man. But if I forgive, it is one of those rare moments when I can see myself in a favourable light (emphasis added). 66

In describing his views on forgiving, Michnik covers much of the moral-political ground of the debates on lustration. This long passage also poses the following fundamental and, in my view, unanswered question, however: what is *in effect* the capacity of Adam Michnik to forgive his perpetrators as a *public figure*? Are they *his* perpetrators? How can Michnik forgive them *publicly* in his *own* name? He said he cannot forgive for others, but can he do that for himself as someone occupying an influential position of authority as the editor-in-chief of the most popular daily that claims to inherit, in Ken Jowitt’s term, the “spirit” of “Solidarity”? (1998, xiv) Can he claim to forgive *personally* as someone who has been highly influential in shaping the course of transformations and involved in many heated political battles, including those concerning the Round-Table agreements, which he attended? He may consider himself as exercising his *mere* individual ‘civic responsibility’ as an editor of a private media institution, but can he deny the political force that his daily and his public speech exercises? After all, it is not by chance that Jowitt ascribed to Michnik the qualities Max Weber famously attributed to a politician.

Let me emphasize that I do not suspect ‘bad faith’ in Michnik’s act of forgiving. Nor do I suggest that he had to avoid speaking about forgiving as a public person. But I think that the tension between the personal and the public or political – the distinction he implies – is not resolved here, and moreover, has serious consequences. I suggest that this largely results from the fact that Michnik is inescapably enveloped in a position of authority as someone intimately involved in capitalist state building. His words take on a new force that may be well beyond his subjective intention. This has become acute for me, for instance, in my interview with the Constitutional Tribunal’s presiding judge and human rights activist, Andrzej Rzepliński. When I said that many veteran dissidents like Adam Michnik are critical of lustration, Rzepliński mentioned the existence of other groups of victims. Some victims like Michnik, he suggested, could afford to forgive or forget, because they are satisfied with where they currently are in the new order. Enjoying much power and prestige, they do not need lustration. But there are others, he said, who still feel marginalized and abandoned, pushed to the fringes of society; their suffering has not been recognized or compensated. For these people, he claimed, lustration is important.67

“Betrayal presupposes a shared experience,” a “We relationship,” which, as Vincent Crapanzano notes, is often asymmetrical and “fraught with tension and suspicion” (Turnaturi, cited in Crapanzano 2011, 171). It almost always involves abandonment not only of the person, but perhaps more important, the social relationship of exchange and reciprocity. This brings me back to what Karol Modzelewski suggested when he bitterly pointed to the dissolution of social solidarity in the 1990s. The dissidents, as it were, did not return the ‘gift’ given to them by the working people after

67 Conversation with Andrzej Rzepliński from June 16, 2011.
overtaking state institutions and ‘sharing power’ with the ex-communists. It is in this moral economy that lustration has been operating.

Adam Michnik has been one of the symbols of the post-1989 Third Republic. His views of inclusive democracy, citizenship rights, and rule of law have been widely shared by many other government and legal officials and human rights activists. It is striking, however, that while Michnik is so concerned with political and civil rights, he hardly ever expressed solidarity with the workers and peasants or the dispossessed of the transformations. He well knew about the social consequences of neoliberalization, but this was not where he sharpened his critical views about civic pedagogy and civil society. In the end, he came to be associated with the powerful few of the new order against the powerless majority of anonymous “strangers,” as Modzelewski (1993) called them. These masses of strangers, who feel betrayed by the new liberal establishment, have been stalking Michnik’s public actions. His ‘personal’ statements never fail to arouse antagonism and resentment.68

Finally, I want to underscore in the long passage that I quoted above Adam Michnik’s humorous invocation of the morality of the common Warsaw gangster, which in my view, resonates well with Jan Józef Lipski’s statement, “not beating the fallen,” that hinted at the non-violent ethos of the KOR. Similar to his gesture of forgiving, Michnik’s argument also takes on the terms of the new order. Not only are they inescapably harnessed by the force of the state and political authority, but Michnik also consciously identifies with the new liberal state-building. Often with an alarming tone, he calls for democracy’s protection against danger. He fears the masses, who failed to

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68 For instance, the sociologist Andrzej Zybertowicz publicly claimed that Michnik regularly sought to justify his views by emphasizing his victimhood. In return, Michnik brought a civil law suit for public slander.
change their old minds and habits. He fears the anti-intellectual populism that has the potential to lead the transformation into a civil war or bloody conflict. He fears the former security service, which may attempt a violent *coup d’etat*. He celebrates social peace and political and economic stability against the ‘background’ of the structural violence of capitalist accumulation and dispossession. He is adamantly critical of revolutionary violence, but at the same time does not acknowledge the violence of the drastic changes neoliberal economic policies brought about. He appears to be an esteemed civil and human rights activist, but does not have much to say when it comes to the suffering of people who had to go through the necessary violence of capitalist transformation. He is an enemy of political violence, but he also has supported the U.S. “war on terror” against Saddam Hussein’s Iraq. Clearly, Michnik’s vision of democracy does not exclude *any* exercise of violence *in principle*.

To conclude, let me underscore that these views are not his peculiar musings. Most of the contradictions he has expressed are widely shared by the political establishment and some of the constitutive elements of the hegemonic ideology of capitalist democratization in Poland. His anti-revolutionary stance, influenced in great part by a rereading of the French Revolution (inspired by Francois Furet’s interpretation), his advocacy for legalistic, non-violent transition under the flag of civil and human rights, and yet, his proclivity to undertake security measures to protect democracy from the uncivilized and resentful masses contaminated by totalitarian communism and manipulated by populist demagogues, all these views are common to the dominant bloc of the new Republic. What we have seen in this chapter is the great passage from social self-defense against the communist state power to refashion a popular democracy to the
new regime’s directive, ‘democracy must be defended.’ In the next chapter, we will
discuss what this defense consists of and how lustration relates to it.
It is good that there was the Belgrade Conference and talk about human rights across the world. But above all, we must count on ourselves: the decisive question is what is and will become of Polish society. The answer to that question starts from everyone and follows what Zbigniew Herbert lucidly expressed in his [poem] “Mr. Cogito”: “Rise and go straight. Feel Free. Be faithful. Go.”

Tadeusz Mazowiecki

In his reflections on the events of 1989, Étienne Balibar aptly observed that the following three words had quickly become the motto of 1989: Europe, market, and democracy. The unexpected implosion of the communist states of the East left behind a void, into which new non-communist rulers like Tadeusz Mazowiecki went straight ahead without a well-conceived political and economic program in hand, except a fervent desire to “return to Europe.” For Balibar, this void was already signaled by the exhaustion and suppression of the critical force of historical communism in the long “1968 decade,” stretching from worldwide movements of 1968 to the military coup d’etat of 1981 in Poland.

Specifically, he referred to the defeat of the initiatives of labor autonomy in Italy and struggles of the “Workers’ Defense Committee” (KOR) and “Solidarity” movement in Poland (2003, 92-3). Yet, the “struggles for democracy in so-called socialist countries,” as well as “anti-racist movements” in Western Europe and Africa, he observed, brought into focus one of the key elements of political modernity: the interdependent relationship between the ideas and practices of equality and those of liberty (2014, 37-8). As opposed to the Cold War ideological competition between Western liberalism and Soviet socialism that incessantly pitted liberty and equality against each other, those struggles,

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69 Quoted in Roman Graczyk (2007, 64).
Balibar suggested, made clear that, in practice, there was no equality without liberty just as there was no liberty without equality. This was so not because the identity of equality and liberty was the same, but because the two notions’ extensions were identical, meaning that the “situations in which both are present or absent are necessarily the same” (48). He wrote,

Consider the history of capitalist exploitation, which by negating in practice the equality proclaimed in the labor contract ends up in the practical negation of freedom of speech and expression, or the history of socialist regimes that by suppressing public freedoms, end up constituting a society of privileges and reinforced inequalities. […] There are no examples of restrictions or suppressions of freedoms without social inequalities nor of inequalities without restrictions or suppressions of freedoms (49).

To refer to this interdependent, yet increasingly discarded and obscured relationship between equality and liberty in today’s world, Balibar coined the term “equaliberty,” derived from the French égalité and liberté.

In this chapter, I want to engage this “proposition of equaliberty” to think through the way the discourse and legal practice of lustration mediate the contradictions of the emergent postsocialist legal, political, and economic order in Poland. I think that Balibar’s account of equaliberty is particularly useful to make sense of some of the fundamental problems of the newly constituted legal-political space that have important implications for the course of Polish lustration. Let me briefly describe how his account is relevant to our study of lustration. Balibar suggested that because equality and liberty are manifestly indeterminate and abstract universals, they require an institutional mediation, a third term to convey a concrete meaning and become intelligible in a particular historical framework. In this respect, property and community, he observed, have been the central notions and institutions invoked to define and stabilize the meaning
of those universals in modern history. They never really achieved that, however, as
evident in the history of longstanding social struggles and emancipatory movements (e.g.,
civil rights movements, women’s movements, and anti-colonial national liberation
movements) aspiring for a richer or different understanding and practice of equality and
liberty. While those ideas’ indeterminate abstractness has contributed to their popular
appeal and insurrectionary force, it also has contributed to the fragility of their
institutionalization and inscription into a particular symbolic and material order.
Specifically, Balibar focused on the French Declaration of the Rights of Man and the
Citizen, which acknowledged the revolutionary principle of equality and liberty, but
failed to institutionalize or stabilize it in any of the following well-known combinations:
“liberty-equality-fraternity” and “liberty-equality-property.”
70 The history of the French
Revolution showed that the meaning of liberty and equality and their complements,
property and fraternity, remained highly contested, becoming an object of class struggle
and other social-political struggles of the dominated in the next decades and perhaps
centuries. It set in motion a restless dialectic between insurrection and constitution.

In this sense, the “Solidarity” movement, in my view, may well be considered as
an “equalibertarian” movement, aspiring to both equality and liberty. 71 What followed the
events of 1989 seemed to be an attempt at a particular type of institutionalizing and
constitutionalizing the insurrectionary movement. The French Revolution and the rights
of man and the citizen drew much reflection in Poland, especially that of veteran

70 Balibar refers to the article “all men are equal and free” of the Declaration. This identification of equality
and freedom, he suggests, in great part resulted from the revolutionary struggle against two enemies at
once: the monarchy (absolutism and tyranny) and aristocracy (privilege and injustice). It is a struggle
against “equality in submission” and a “freedom identified with privilege” (2014, 47).
the program of “Solidarity” (1998).
dissidents. Similarly, the ideas and institutions of property and community were invoked and reworked to define and institutionalize the new order. Yet, the *postsocialist* order, as we will see, is also marked by the fragilities and contradictions that give way to explosive antagonisms and a ceaseless replay of insurrection and constitution. The last chapter, it will be recalled, discussed part of that history of insurrection and constitution, focusing on the passage from the popular struggle for democracy to a capitalist democracy that must be defended through state apparatuses. We have identified an emerging security discourse of ‘defense of democracy’ against dangers (e.g., social protests, rebellious workers, dislocated remnants of the past etc.) that silently accompanied the loud slogans of freedom and return to Europe.

This chapter will continue that line of inquiry by examining the nexus of equality, liberty, security, and lustration within the context of postsocialist legal transformations that are remarkably shaped by the Europeanization process. I will begin by investigating how citizenship and human rights are reconceived, property relations are transformed, and national community is reimagined in Poland after 1989. The constitution-making process and the public debates around it will be our focus. Throughout the chapter, I will be particularly concerned with the following contradiction, which, in my view, has been the driving force of major social-political antagonisms: the contradiction between the juridical-formal and institutional political and civil equality promoted by democratization in the name of freedom, and the popular experience of social and economic inequality structured by neoliberalization in the name of prosperity. These intermingled processes of democratization and neoliberalization do not cease to forge antagonisms that call into
question the very foundation of the new republic. Lustration, indeed, has been integral to these antagonisms.

The third part will show how the legal-institutional ‘management’ of the antagonisms has taken the form of securitization, an installation of an expansive security mechanism against the ‘dangers’ of democracy. In the legal construction of this space of security, the influence of Western European constitutionalism, especially the doctrine of “militant democracy,” has been decisive. The lustration law has been mainly conceived in this space of security of liberal democracy. Yet, ironically, lustration, in its expanded form, will be considered to challenge democracy itself, illuminating the often-noted paradox: democracy undermines its own foundations while defending them. The following sections will bring together all the themes by a close analysis of two cases: one is the landmark ruling of the Constitutional Tribunal (May 2007) on the radical lustration project and the other, a lustration case seen by the European Court of Human Rights (ECtHR). These two cases will help understand, in practice, how issues of property have been fundamental to the public-private organization of the field of lustration (e.g., the distribution of liability and loyalty to the state) and to claims of a material and moral nature. They also show the way lustration has been inscribed in the competing claims about national community and the issues of state sovereignty, especially before ECtHR.

**HUMAN RIGHTS AND CONSTITUTION-MAKING IN THE PERIPHERY OF EUROPE**

Unlike equality, freedom has been one of the buzzwords of the legalistic ‘revolutions’ of 1989. In the discourse of veteran dissidents, it often has been associated with individual human rights, constitutional democracy, free market economy, or in general a
“normality” that Europe was supposed to represent. Both international human rights and rule of law principles were considered part of the “civilizational standards” of Europe, to which Poland historically belonged (Ciemniewski 2007, 27). Given the violence of capitalist transition and uncertainties of democratization, the Polish state quickly ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in early 1993 and adopted legal procedures to protect individual rights against their possible violation by elected governments (Kurczewski and Sullivan 2002). Legal scholars often lamented that Poland confronted the longstanding problem of “backwardness” due to the legacy of communism. Not only were most Polish people considered to lack the required democratic legal consciousness, which valued individual rights, but there were also few native legal experts and know-how in the country (Wieruszewski 2007, 36).

It was under these conditions that Tadeusz Mazowiecki’s government in the early 1990s aspired to build what he recently called the “spiritual infrastructure of democracy” (duchowe infrastruktury demokracji) on human rights and rule of law principles (2007, 87-8). Mazowiecki was concerned with articulating the “rights of the citizen” with the “rights of man,” espousing the idea that all citizens must be fundamentally conceived as human beings with natural and inalienable dignity. Defining the future of “which Poland” (jaka Polska), in his view, was more important than determining “whose Poland” (czyja Polska) the new republic will be. Regardless of who they were in the past or currently are, all citizens including those who (previously) violated the law (e.g., security officers) were to be treated equally by the law. This inclusive approach to citizenship, the former Constitutional Tribunal judge Jerzy Ciemniewski noted, expressed the real ethos of the
opposition (2007, 25). Such then, was, the normative justification for Mazowiecki’s widely noted skeptical views on “settling accounts” (rozliczenie) with the communists.72

Like Mazowiecki, Ewa Łętowska, the first Ombudsperson of Poland and a veteran human rights activist and scholar, also has been critical of radical anti-communist procedures. Similarly, she became a target of rightwing nationalist groups who accused her of protecting and even advocating for the rights of former security officers. In her career, she also had had ample opportunity to observe the asymmetrical East-West relations with respect to human rights and constitution making. In a talk she gave at the Central European University in 2012, she observed,

In Western countries, human rights are an integral part of a political system, and part and parcel of their democratic constitutions….In Central Europe, human rights have been promoted politically by the West to bring about democratic changes….While in Western Europe it is the constitution that paved the way for human rights laws and politics, in Central Europe it was the other way around…. [It was largely] international acts, that is, the Covenant of Political, Civil, and Personal Rights, later the European Convention on Human Rights…through which the individual rights entered the Polish constitution. Human rights were the instruments of political struggle between the West and the so-called socialist camp. That is why the promotion of human rights in the West enjoyed much popular support. After the breakup of the socialist camp, however, the promotion of human rights stopped, as it was not politically useful any more for the West. The West had its own established institutions and well-functioning framework for human rights. But it was a catastrophe for human rights advocacy in Central and Eastern Europe. The constitution and some laws changed, but there was no investment in human rights during the transformations (emphases added).73

When we recall the general celebratory mood of the 1990s as the triumph of human rights (e.g., Clarke and Goodale 2010; Goodale 2009), Łętowska’s comment seems to suggest a

72 During the mid-1990s, Mazowiecki also took part in the United Nations Human Rights Commission for the war in former Yugoslavia; the devastating war experience reportedly had a profound impact on his concern for social peace and stability in drafting the new Polish constitution (Wieruszewski 2007, 41).
73 Ewa Łętowska at Central European University’s annual Marek A. Nowicki Memorial Lecture, September 11, 2012. See http://www.youtube.com/watch?v=fU1Kk5vRc4g (last accessed January 30, 2014)
curious paradox: How is it that in the alleged global age of human rights and humanitarianism, Polish human rights activists, involved in making the new constitution and reconstituting the new legal field, could lack financial and other types of support both at home and abroad?

We may assume that the overlap between the end of Western political or strategic promotion of human rights and the uncertain economic situation of Poland may well have shaped the form and content of human rights practice. However, the new era also clearly designated a crucial role to human rights in liberal state building and citizenship. The question is, then, how these ambivalent conditions shaped the way human rights were reconstructed and reformulated as the constitutional principles of the new republic; how the legacy of the Cold War competition over rights (civil-political rights and social-economic rights) underpinned the new framework of human rights; and what became of the concepts of equality and liberty in this new framework. To explore these questions, I want to briefly consider the views of well known human rights activists and scholars who played a key role in the legal transformations and establishment of the Helsinki Foundation for Human Rights in Warsaw (HFHR) in 1989, Marek A. Nowicki and Wiktor Osiatyński.

In his short paper “What are Human Rights?” which he prepared for pedagogical purposes, Marek A. Nowicki offered an overview of human rights to prospective activists, including those from former Eastern bloc and Soviet republics. Even if “its roots can be sought in ancient times,” he underscored at the outset, “[h]uman rights were neither studied nor taught in the communist world.” When the name appeared in the

1970s and 1980s, he wrote, it was supplemented with the adjective “socialist” to “obliterate and dim the forceful ideas coming from the West which were called ‘bourgeois human rights’ within the bloc.” Nowicki invoked the well-known rhetoric of catching up: “In the 1990s, the conception of human rights spread rapidly in Poland. Yet the nearly half a century of lagging behind can hardly be made up for in several years, all the more so as many misunderstandings arise as in the case of other related terms such as, democracy, the left and right wing etc.” The aim of his paper was then to salvage human rights from this confusion. Throughout the text, Nowicki highlighted that “Human rights are individual and not collective rights.” The main purpose of human rights was to “protect the dignity of each individual against an assault by the authorities” (2).

In his view, freedom and equality were essential to human rights. Freedom had two meanings: “freedom from the state” where freedom was pitted against the state as in the US (so-called “negative liberty”); and “freedom through the state” where the “state was to make each individual citizen happy” as in Europe (expressed with the French Revolution). The latter attributed a positive role to state provision in the practice of freedom. According to Nowicki, “equality” also had several meanings: by that term the communists understood “equality of living conditions,” socialists “equal opportunities,” and liberals “equality of rights and equality before the law” (3-6). He identified most strongly with the liberal position, highlighting the key importance of civil and political rights and the legal instruments that would defend individuals against the state. This usage of “defense” also revealed what came of the kind of “social defense” that KOR had envisaged in the 1970s: it was now notably individualized, isolated, and pitted against the state, which stood as the antithesis of both equality and freedom.
This brief discussion of Marek A. Nowicki’s view of human rights would have been inconsequential, had it not been shared by other scholars and government officials, including those who took part in drafting the constitution and different parliamentary committees. Certainly, the emphasis on the defense of the individual against state power was widely shared, partly because of the legacy of the struggle against the communist state. But this view was particularly appealing to the legal elite, which embraced the U.S. legal system and was critical of state provision. This had notable implications for the conception and organization of citizenship, especially social and economic rights. Wiktor Osiatyński, another influential legal and HFHR scholar, insightfully suggested that one’s position on those rights largely depended on how one viewed the role of the state in society. The state’s social functions were particularly important, because unlike political and civil rights, social rights (e.g., the right to employment, just and favorable conditions of work and remuneration, the right to rest and leisure, equal pay for equal work, and social security like healthcare) were not justiciable or enforceable by the courts; they required explicit state regulation (2006, 12). However, amid the painful de-industrialization and deregulation of the market, downsizing of the state, and outsourcing of social services to private enterprises, he suggested, it would be unrealistic to expect the enforcement of those rights (see also Sadurski 2008). “Many practical problems with social rights,” observed Osiatyński, “result from the fact that they originated in a period dominated by a factory-based market economy” (2006, 16). When those factories became extinct and post-Fordism and flexible labor processes became the new norm, demanding social rights appeared like wishing for the impossible. It became associated with the so-

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75 Osiatyński does not consider “economic rights” as a separate category, so he uses “social rights” to imply issues related to economic conditions of work and life.
called ‘backward’ mentality or ‘nostalgia’ of the people who claimed those rights and the work and life standards that came with them.

That was not exactly the position of Osiatyński, however. As often suggested, it was not possible to completely ignore social rights in a society where such rights became part of common sense largely because of the legacy of communism (Sadurski 2008).

Thus, while acknowledging the criticisms of social rights as unfeasible and redundant, Osiatyński argued that those rights must still be respected and even considered as human rights, because

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\text{[t]hey are indispensable for the dignity of a person. Dignity cannot exist without basic social security; without security people cannot have or claim other rights. Similarly, a person cannot benefit from other rights without having her basic needs met. In short, while there is no bread without freedom, there is also no freedom without bread. (2006, 13, emphases added)}
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At first sight, this may seem a radical argument against the widespread downplaying of social rights. Notice, however, Osiatyński’s minimalistic understanding of social rights as basic needs and security of the person. Reduced to the bread for survival, the social, as it were, has become merely the infrastructure for political and civil rights. Social equality, if that is the horizon of social rights, then means no more than the minimum condition for the exercise of other rights. In another passage, Osiatyński explicated what he meant by social rights:

Social rights are not about well-being and prosperity; they are also not about material or economic equality. All rights and freedoms protect the security of a person; social and economic rights are about protecting socio-economic security. This means that a minimum should be established on the level of basic socio-economic security beneath which a fair and just society should not slide. More affluent societies can set social policies and benefits above this minimum if such be the will of the majority reflected through the political process (16).
It is then in this passage from “social equality” to individualized “security” that one needs to explore how law and economy, along with human rights and the political, were reconfigured after state socialism. “Well-being” and “prosperity” had nothing to do with law, Osiatyński wrote; they were “earned” by individuals through their own efforts. (18) In a similar vein, “excessive” constitutionalization of rights, especially social and economic rights, in his view, would only trump the political process, which had the legitimate authority to set a public policy about allocation of resources and provision of rights, such as the right to housing and healthcare (see also Osiatyński 2009).

Certainly, Osiatyński’s views are neither unique nor novel. Many scholars have criticized human rights for their “negative” and “minimalistic” approach to liberty, conceiving human rights as little more than the protection of the individual from political power and the human as the subject in need of rescue (Badiou 2001; Douzinas 2000). The rights of man and the citizen are today mainly seen as a matter of “defense,” brushing aside the history of popular struggles that actually “conquered” those rights against the ruling classes (Balibar 2014). In a similar vein, human rights often have been criticized for their apolitical and de-politicizing approach toward social-political issues (e.g., Brown 2004; Feldman and Ticktin 2010). However, what I also want to highlight is that Osiatyński’s treatment of social inequality as a “security” matter must be seen in light of the global trend of securitization of all sorts of problems (e.g., social protests, unemployment, famine, epidemics, and climate change). Perhaps much of this trend is hardly new, as security arguably has been the supreme organizing principle of
liberalism. The philosophical canon associated with liberalism (from Hobbes, Locke, Smith, to Bentham and Mill) has placed great emphasis on security, making it the precondition of liberty and the justification for the suspension of legal rights and freedoms, as in exceptional emergency situations (see Neocleous 2007). As we will discuss below, the language of socio-economic security also has been reproducing the power of capital and state, translating the social demands of welfare, income distribution, and old age pensions as (private) security matters to be dealt with by the market and social workers, as in the New Deal in the US (Neocleous 2006). However, Osiatyński’s views about social and economic rights are also important, because he was precisely the person who led the Polish constitution-drafting committee responsible for the section on social and economic rights.

What resulted from the Polish constitution-making process was largely a list of unenforceable social and economic rights. Ewa Łętowska (1997) noted that the 1997 Polish Constitution explicitly privileged a judicial approach, underscoring that “rights and freedoms of citizens were to be defended and fought for in the courts.” What this practically meant was that “[c]itizens’ political and civil rights were at the heart of this concept, [while] economic rights, unenforceable in courts, were emphasized much less.” For political and civil rights the constitution offered a range of “protective devices” (e.g., the right of judicial protection, the right to appeal a court decision, the right to address the ombudsman, and the right of constitutional complaint) (Osiatyński 1997).77 The violation

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76 Karl Marx long ago noted the intricate links between equality, liberty, security, and property in his famous reflections on the Declaration of the Rights of Man and the Citizen (1793), where he noted that security was the supreme concept of bourgeois democracy (1978 [1843], 42-43).

77 Most of the civil and political rights followed two international treaties ratified by Poland, the International Covenant on Civil and Political Rights and the European Convention on Human Rights (Cholewinski 1998, 261).
of economic rights did not allow for constitutional complaint, however. Indeed, the understanding of constitutional complaint by the new constitution, observed Łętowska (1997), was too narrow and individualized, unable to address systemic problems. Moreover, human rights language pervaded the entire Constitution. It was not that earlier Polish constitutions had not referred to human rights, e.g., the 1952 Constitution and the 1921 Constitution. But before, those rights had not been at the center of the Constitution. Nor had they been ascribed special protections. As far as the principle of equality was concerned, it was also reconceived in a new way by the new Constitution. Chapter II Article 32 stated, “All persons are equal before the law. All persons have the right to equal treatment by public authorities.” “Clearly,” wrote Ryszard Cholewinski, “the second sentence circumscribes the equality principle to treatment by public bodies with the result that horizontal equality in the private sphere is not constitutionally protected.” (1998, 253) Human rights protection, focusing on the state, left out the “private” sphere of life. This was then in a nutshell how the legal organization of rights and principles of equality and liberty looked in postsocialist Poland. As in other capitalist democracies, “the law in Poland,” Łętowska (2013) later reflected, “served only the powerful.”

**TRANSFORMING PROPERTY AND LOCAL ADMINISTRATION**

In his influential work, T. H. Marshall (1992 [1950]) discussed how citizenship related to class inequality in modern capitalist societies, specifically England. Writing amid the postwar debates around the welfare state and social class, Marshall proposed a well-known sequence of the historical development of rights, according to which civil rights (“the rights necessary for individual freedom,” including freedom of speech, property
rights, and the right to justice, i.e., the right to defense and due process) came first, political rights (“the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body”) followed, and finally, social rights were instituted (ranging from “the right to a modicum of economic welfare and security” to the right to “live the life of a civilized being”) (8). In fact, the U.N. Declaration of Human Rights (1948) mainly followed this categorization of rights (Asad 2000). While Marshall thought that citizenship rights, particularly social rights would undermine class inequality in the long run, at least to a certain degree, he was also skeptical. The core of citizenship, he noted, comprised civil rights, and these rights were not in conflict with the inequalities of capitalist society; on the contrary, they could be, in his view, even necessary for the maintenance and reproduction of those inequalities essential to a “competitive market economy” (20).

Whether one fully agreed or not with Marshall’s account of citizenship or sequence of rights, postsocialist transformation clearly mounted a big challenge for many people, including the ruling classes: how was it possible to institute and *effectively* practice civil and political rights, while dismantling social rights (e.g., the right to employment, low-cost housing, public transport, leisure facilities, and healthcare)? How to manage the violence of capitalist accumulation under the conditions of the newly emerging electoral democracy and rule of law? How to govern the contradictions of the postsocialist organization of equality and liberty, in Partha Chatterjee’s words, which proclaims “equal citizenship and majority rule on the one hand” and reproduces “the dominance of property and privilege on the other” (2011, 140)? In this regard, the security language and mechanisms, of which lustration is a part, have been central to
silencing and displacing these contradictions. To gather a richer sense of those contradictions and the antagonisms they foment, I want to focus on how the notions and institutions of property and community were remade and imagined, and anchored the principles of equality and liberty.

Caroline Humphrey and Katherine Verdery (2004) suggested that notions of property have been central, particularly in the West, to thinking about a nexus of themes including “civil government, forms of economy, gender, morality, individuality or personhood, entitlement, and conquest” (3). While liberal ideas of private property enjoyed some popularity among the dissidents and party circles in Poland, particularly in the 1980s, postsocialist transformations further reinforced their hold in society (see Hann 1996; Verdery 2003, 4-5). As Elizabeth Dunn (2004) showed in her ethnography Privatizing Poland, the goals of the privatization process were both monetary and moral. While instituting a new system of assessing value and calculating cost-benefit, privatization also aimed to transform personhood and community.

State socialist organization of property structured a certain kind of relationship between the person and the community. As is widely known, property has been central to the way sociopolitical and economic life was organized during socialism. In the hierarchy of property forms, state property and collective or cooperative property were most valued, “encompassing most of the social wealth and the means for generating it,” such as raw materials, mines, factories, forests, banks, energy companies, and means of communication and public transport (Verdery 2003, 50). State property, in principle, belonged to the whole people. The socialist citizen was supposed to be empowered through laboring at a state enterprise and participating in its management. This
participation also meant “access to political power” (Wyrzykowski 1993, 171). As we saw in the previous chapter, one of the main claims of “Solidarity” was to ensure workers’ *real* or *effective* participation in workplace management. In exchange for their labor and loyalty, citizens expected from the party-state an equal redistribution of goods and services. Whether this is an accurate depiction of state socialism or not, it certainly had important repercussions in the 1990s. Such organization of property and state-citizen relations were considered by the Western and national elite as evidence of the individual’s subordination to the state, or to the communal or public interest. Allegedly, it created a specific mentality called “homo sovieticus,” marked by a distinct “claim attitude” ingrained in socialist citizens. In these accounts, citizens were mainly conceived as needy petitioners or supplicants, the infantilized citizen of the paternalistic socialist state (Wyrzykowski 171; see also Verdery 1996). The dominant legal and political elite in Poland (as elsewhere in the former Soviet bloc) largely portrayed the transition to democracy as a reversal or undoing of this structure of institutions, ideas, and feelings. Thus, they identified the transition with the ‘restoration’ of individual autonomy (“freedom”) and the creation of civil society (“free society”). It quickly became evident, however, that civil society, which many dissidents had invoked in their oppositional discourse, but which curiously received little reflection after 1989 (as many took the end of communism as freedom by default), could not emerge by itself (Wyrzykowski 166). Nor did private property ‘resurge’ naturally, as assumed (Verdery 2003). It turned out that there was nothing natural about private property or civil society. Both had to be *created* by targeted legal acts and state intervention. Such was the “paradoxical secret of newly emerging democracies in Eastern Central Europe,” Miroslaw Wyrzykowski (1993,
observed. “The most important tasks of the parliaments at the time [1989-1993] were to constitutionalize the concept of the individual and to secure economic freedom” (1993, 172).

On December 29, 1989 a number of amendments were made to the 1952 Constitution. The national emblem was changed and the old preamble was abolished. The Polish state was no longer the “state of people’s democracy,” as the first article used to have it, but it “shall be a democratic state ruled by law and implementing principles of social justice.” Rejecting the idea of “socialist democracy,” the parliament adopted the German concept of rule of law (Rechtsstaat) as “an element of European political, historical, and cultural heritage” (Wyrzykowski 173). The parliament still retained the principle of social justice as the goal of state activity (ibid). But it was going to be interpreted within the new framework of the rule of law that focused on the protection of human rights from the “excesses” of state power (Cholewinski 1998, 252, 274).

Moreover, the amendments indicated that the sovereign power of the state was no longer vested with “the working people of town and country,” but with the “Nation,” defined as a collective of citizens living within common political boundaries (ibid). The amendments also introduced the principles of multiparty electoral democracy, modified local government administration (samorząd terytorialny), and sought to “safeguard the freedom of economic initiative and the full protection of ownership.” The protection of individual rights of ownership and inheritance, Wyrzykowski underscored, was pertinent since “collective state ownership” was one of socialism’s defining features (174).

I want to consider the last two amendments in more detail, because they had not only material and symbolic importance, but also pedagogical and practical relevance to
postsocialist transformation. The new parliamentary democracy developed a new notion of local government to implement the decentralization, deregulation, and democratization of the state (Wyryzkowski 1993). While subjected to central state authority, local government was envisaged as a relatively self-sufficient administrative unit, responsible for making its own decisions and organizing the “public life in the commune to satisfy the collective needs of the local population.” This required the designation of a certain type of legal subjectivity to the commune (a unit of local government). To this effect, the commune became vested with ownership rights and other property rights (“communal property”), so that it could engage in economic activity to finance itself and realize the delegated tasks of governmental administration (174). By “socializing” public administration in this way, so it was claimed, citizens would be given the incentive to take responsibility for and be creative about undertaking public tasks in their locality. The citizens would create a community, acting as the commune, which was defined with respect to property rights and a certain territory (175). This legal arrangement would help foster civil society by overcoming “the social passivity of the last two generations” and making them “participate in the political, social, and economic processes of transforming both society and the state” (174). Local administration has been one of the main subject groups of lustration.

Privatization of state enterprises shared the same goals and employed similar tactics. While during the communist regime the idea of workers’ democracy or self-management had been dominant, in the 1990s ownership became the main issue. I cannot describe the complex procedures of privatization here. Suffice it to say that the state in all

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78 Reforming public administration seemed particularly urgent, given that administration was the central mechanism of power in state socialism (Verdery 2003).
cases was involved as the main actor. A special “Privatization Ministry” was established to liquidate inefficient and unprofitable enterprises, dismantle enterprises into separate assets and distribute or sell them to third parties, or transform some successful enterprises into public-private partnerships by selling a portion of them to private companies, typically at highly undervalued prices, and by making employees individual shareholders of their own enterprises (Ost 2005 153-155; Kowalik 2012). In any case, the great majority of employees had been marginalized.

This was partly due to the often-noted opaqueness and complexity of privatization processes. One did not know how the value of a given enterprise was calculated in the midst of skyrocketing inflation, fluctuating market prices, and shifting systems of evaluating productivity, largely informed by Western capitalist auditing technologies. At times, the Ministry of Privatization was also operating at a loss (Dunn 2004; Verdery 2003). However, even when the workers were offered the ‘opportunity’ to become shareholders of the firms they worked at, this did not mean participation in management. Rather, it often meant to make workers share the burden of financial risks and absorb their potential antagonism about the effects of privatization (Ost 156). Besides, most workers lacked sufficient savings to buy shares or preferred to use them for survival at a time of great economic uncertainty. Furthermore, workers were systematically disempowered vis-à-vis the legal bodies responsible for privatization. The latter were authorized to decide which enterprises to liquidate without necessarily consulting the workers.

The privatization process was key to the creation of a tiny propertied class and to the dispossession of masses of workers. It showed how the interests of capital were
institutionally privileged over those of labor as part of the project of capitalist accumulation, which aimed at nothing short of creating a new class society. Even pro-capitalists acknowledged that the goals of marketization could “dangerously” collide with the values of democratization (Wyrzykowski 1993, 177). Unlimited individualism in economic life had to be “balanced” by the public interest. But this was very challenging, given that anything considered “social” had undesirable “socialist connotations” and anything “communitarian” had “communist connotations” in society (ibid).

Most trade union leaders, activists and the rank and file members, especially those of post-1989 “Solidarity,” as David Ost (2005) showed, belligerently supported the idea of privatization even when this meant condoning the violation of workers’ rights and silencing their criticisms about collective punishment (mass layoffs) and drops in real wages and cuts in healthcare and other services. Both the ex-dissident liberal government and “Solidarity” served as an umbrella for neoliberal policies, protecting “reform” and shielding private owners and managers against labor. The “belief in the sanctity of ownership rights” was indefatigable.79

Even when workers became shareholders of (previously) state-owned enterprises, what they understood by participation in management notably had changed. They related to the enterprise not as a worker, but as a part-owner. They cared more about the profitability of the enterprise than about work conditions, perhaps in an attempt to save their workplace in the age of liquidation. Similarly, the popular discontent about the effects of privatization was framed in the language of ownership. The logic of private

79 David Ost wrote, “Governance rights, [union activists and the rank and file members] believed, derive from ownership, not from employment. Workers should not have many rights in private firms because they are not the owners of private firms. State-owned firms, however, are treated as if they are owned by all, which means that they are owned by workers, too. Being a worker is not enough to warrant influence over firm decisions. Being a part-owner is. Owners have rights; workers do not” (2005, 137).
ownership or capital accumulation was barely the target of criticism. Rather, it was the question of who accumulated capital. The problem was that the owners were not yet ‘real’ owners and the capitalists were not yet ‘real’ capitalists (Ost 2005). It was the ‘reds’ or the ex-communist elite who were responsible for the ‘perversion’ of capitalism, which was otherwise a good system. Thus, the union-based mobilization, which became the engine of emerging opposition, immersed itself in the narrative of communists’ stealing state property and corrupting the Polish nation and its Christian values. This narrative of (secret) robbery and corruption and the inequalities generated by privatization had lain at the epicenter of rightwing mobilization around lustration.

**REDEFINING NATIONAL COMMUNITY: CIVIC-SECULAR VS. ETHNIC-RELIGIOUS NATIONHOOD**

The dominant language of contentions of postsocialist transformation revolved around the competing visions of national political community and definitions of the constituent entity or power of the new republic, none of which challenged the sanctity of private property. In this regard, the public debates around the 1996-1997 constitution-making process were illuminating. From the beginning, the process was disputed as illegitimate by “rightwing” groups, including part of the Episcopate, parliamentary and extra-parliamentary groups, and the “Solidarity” trade union, since it was the “communists” and their “atheist allies” that were leading it (Bralczyk and Wasilewski 2010; Osiatyński 1997; Spiewak 1997). They accused the drafters of betraying the 1989 revolution and called for a “radical transformation of the state” and “combating of the communist legacy” (Spiewak 1997). Some rightists also called for eliminating the prohibition on torture and restoring the death penalty (Osiatyński 1997).
The conflicts around the preamble were polarizing. In a preliminary draft, Tadeusz Mazowiecki referred to the subject of the Constitution as “We, Polish citizens.” The expression stirred a huge controversy, criticized for bypassing the idiom of “nation” and the Christian heritage of Polish nationhood (Zubrzycki 2001). After quarrels, the Constitutional Commission changed its position. Wiktor Osiatyński, a leading member of the commission, argued: “if the concept of the nation is to be included, it can only be in its civic version, not the ethnic” (quoted in ibid, 644). Thus, the final draft of the preamble sought to incorporate both positions. Below, I cite an excerpt to give a sense of its rhetorical construction:

Having regard for the existence and future of our Homeland,
Which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate,
We, the Polish Nation - all citizens of the Republic,
Both those who believe in God as the source of truth, justice, good and beauty
As well as those not sharing such faith but respecting those universal values as arising from other sources,
Equal in rights and obligations towards the common good of Poland,
Beholden to our ancestors for their labors, their struggle for independence achieved at great sacrifice,
For our culture rooted in the Christian heritage of the Nation and in universal human values

…
Aware of the need for cooperation with all countries for the good of the Human Family,
Mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in our Homeland,
Desiring to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies...80

There was no end to criticisms. Some radical nationalist or “far right” groups found too loose and compromised the references to Christian God and the teachings of the Roman Catholic Church. How could “other sources” such as universal human rights

and values, be similarly referred to as the constitution’s axiological values? The preamble was seen as a perplexing mixture of a civic-secular vision of nationhood based on human and citizenship rights and an ethnic-religious vision of nationhood based on blood and descent (see the third line referring to both the “Polish nation” and “citizens”) (Bralczyk and Wasilewski 2010, 114; Zubrzycki 2001). The liberal groups, including some lay Catholic intellectuals and members of the clergy, supported the civic understanding of the Polish nation and state ‘neutrality’ toward religion, seeing it as more inclusive toward existing and future ethnic and religious minorities (e.g., Jewish minorities, immigrants). Some rightists considered the possibility of including immigrants on purely legal-political grounds like citizenship as inviting “treason” and danger to the already fragile existence of the Polish nation. Unlike the state, the Polish nation was a lasting phenomenon and its moral and ethnic purity had to be preserved (Zubrzycki 2001, 645). The conflicts also revolved around the alleged opposition between the natural law, which considered “God as the legislator,” and the positive law that insisted on the secular, self-referential foundation of state law (Bralczyk and Wasilewski 2010). These debates also had important implications for the struggles around the issue of abortion, which conservatives aimed to prohibit by invoking natural law, and the conflicts around the usage of moralistic judgments in legal proceedings, as in lustration.81

Each ‘camp’ justified its position by invoking certain historical traditions. Since in the popular imagination the link between Catholicism and Polish nationhood (the figure of Polak-Katolik) had been deeply entrenched for the last five decades (Porter 2001), it was mainly the secular liberals who had to promote vigorously their civic

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81 These debates echoed the famous postwar debate between H.L.A. Hart and Lon Fuller on the question of adjudicating the “crimes” of Nazi Germany that were legal at the time when they were committed.
nationalist vision. As Genevieve Zubrzycki observed, this was particularly challenging, because the terms ‘‘citizens,’ ‘social justice,’ and ‘civic rights and duties’ are sometimes heard as an echo of Communist rhetoric:”

[Thus, the intellectuals had to] reconstruct a distinctively Polish narrative that emphasizes the civic heritage of the Polish nation by, for example, referring to sixteenth-century religious tolerance; the First Republic’s multiethnic and multiconfessional state; the Democracy of Nobles’ elective monarchy; the Constitution of May Third; the Polish legions fighting “for your freedom and ours;” interwar liberal traditions; and to a certain extent KOR’s and Solidarity’s peaceful resistance and civic activism (2006, 81-82).

Of course, this was not the first time the intellectuals sought to develop a civic vision of national identity. As we discussed in the previous chapter, many KOR activists already had embraced that (e.g., Jan Jozef Lipski’s influential essay, “Two Patriotisms, Two Fatherlands”) and the conflict with ethnic-religious nationalists had been clearly expressed (Friszke 1994). Reworking through that vision in the 1990s created its own tensions, however. The invocations of the First Republic (Polish-Lithuanian Republic or Commonwealth, 1569-1795) recycled part of its political vocabulary such as ‘liberty,’ ‘equality,’ ‘nation,’ ‘citizen,’ and ‘republic’ (Romaniszyn 2005, 155). However, as is well-known, these terms had had a different meaning in the royal republic, where memberships in ‘nation’ was limited to nobility (szlachta) (hence, the name the Democracy of Nobles). The Constitution of May Third, 1791, which had become an important symbol of freedom after 1989, “extended full equality for all citizens” and broadened the boundaries of ‘nation.’ But “political membership was now dependent on landownership, not on noble birth. The landless nobility was therefore excluded from the nation, while the burghers were its new members. The peasantry was overlooked altogether” (Zubrzycki 2006, 39).
This was then the tradition that was invoked with the end of communism. Krystyna Romaniszyn wrote, “The reborn *Res Publica*...put an end to the [People’s Republic of Poland] and the eagle [the national emblem] stripped of its royal crown. The transition undertaken after 1989 refers directly to the tradition of the Commonwealth culminating in the Constitution of May Third” (166). The Polish eagle was crowned once more and had its claws sharpened. Moreover, the civic discourse identified with that tradition was addressed to both the national and the international audience (Zubrzycki 2006). It stressed that “Poland could only ‘make it to Europe’ as a modern, civic nation.” Civic nationalism was Western and civilized whereas ethnic-religious nationalism was primitive and violent. In view of the devastating war in former Yugoslavia and the prospects of membership in NATO and the EU, civic nationalist discourse, based on human rights and pluralism, gained further strategic importance in international relations (2006, 82-83).

As part of the conflicts around the civic-secular and ethnic-religious, sexual minorities’ relation to the nation was also debated. The drafters of the Constitution initially introduced an article prohibiting discrimination on the basis of sexual orientation (Osiatyński 1997). Later they dropped it in order not to risk the already contested Constitution by drawing the antagonism of the great majority embracing a heteronormative view of the Polish nation. Yet, all these conflicts sufficed to make the new Constitution an object of condemnation by some radical nationalist Catholics, who saw it as “the work of a ‘homosexual-mason conspiracy,’ ‘abortionists,’ and ‘amoral, anti-Christian, and anti-Polish’ people” (Łętowska 1997). In addition to this mode of criticism, there was another one coming from a different direction. The Constitution was
criticized for implying that the entire communist period was one of stark “violation of the fundamental freedoms and rights of man” and the submission of Poland to a quasi-foreign rule until 1989. The sharp discontinuity and contrast this formulation implied, it was argued, contradicted the practice of legal continuity, however, as many laws of the former state had been in force in the 1990s (Bralczyk and Wasilewski, 2010 125-6).

The contentions around constitution-making barely concerned socioeconomic issues. Only a few groups, mainly “Labor Union” (Unia Pracy), brought them up, for instance, calling for the protection of the state industrial sector. This demand was abruptly dismissed especially by the ex-dissident liberals such as “Freedom Union” (Unia Wolności), which considered it as state ‘intrusion.’ Even though the final draft of the constitution referred elusively to terms like “solidarity” and “dialogue” in spite of the liberals’ objections, it was clear that the prerogatives and interests of capital and private property were to govern the social and economic life of the new republic (see Osiatyński 1997).

The turnout for the referendum on the new Constitution was merely 43 percent. Out of that, 54 percent approved it. Perhaps this was partly because, as Ewa Łętowska (1997) suggested, people had been exhausted by the endless debates around the Constitution (which parties utilized for campaigning for the forthcoming elections), or, because people realized that “the constitution will not spell swift and direct improvement in their lives.” In any case, none of the debates would be forgotten. They were going to come back in future struggles around lustration.

SECURING DEMOCRACY, “TRANSFORMING HEARTS AND MINDS”
Let me recapitulate what we have discussed so far. Our discussion mainly has concerned the shifting notions of citizenship and human rights and the major conflicts around the new definition of national community. Specifically, we have seen how civil and political rights have become the focus of postsocialist legal transformations, as social and economic rights have retreated to the background, glossed as a matter of security. Equality and liberty are mainly redefined and reinstituted as private citizens’ rights and freedoms, largely following the Western legal and moral norms, and they are expressed as “freedom of economic activity” based on ownership. With respect to community, the liberal groups articulated a civic-secular nationalism, the community of equal and free citizens and subjects of human rights. The major opposition to this dominant position came from rightwing groups, which heatedly countered not so much the necessity of privatization or free-market capitalism, but the sort of political community espoused by the liberals. The alternative to civic-secular pluralism appeared to be the ethnic-religious and genealogical imagination of national community with a strong desire for national purity and homogeneity. As liberal ex-dissidents adhering to individual-based rule of law evacuated the space of the common (‘civil society’ practically did not mean much more than commerce or ‘market society’), it was mainly the conservative nationalists that monopolized the language of social justice that transcended the instituted rule of law (e.g., national moral justice beyond positive law).

Poland’s Constitutional Court played an active role in arbitrating many contentious issues of postsocialist transformation. As in other Eastern European countries (especially, Hungary and the Czech Republic), it became one of the symbols, indeed “guardians” of democratization, as constitutionalism came to be associated with the
‘democratic breakthrough.’ It engaged with conflicts over access to abortion services, religious education at public schools, and economic policies. Specifically, the Tribunal’s activism around the social and economic rights of the people attracted vehement criticism of the political groups. The Tribunal was at times accused of defending the 1952 (communist) Constitution. The Tribunal’s judicial activism and guardianship of democracy was often considered as part of the influence of the ethos of postwar Western European constitutionalism on postsocialist legal transformation (Brzeziński 2000; Müller 2011; Sadurski 2002). But this European ethos had had wider consequences in postsocialist Poland (and Eastern Europe) than animating a publicly engaged constitutional court. It also had determined the main terms of that engagement and imported an expansive security drive into the legal field, particularly under the doctrine of “militant democracy” (streitbare Demokratie) (see Belavusau 2013; Harvey 2004; Macklem 2012; Müller 2012a). I want to underscore that it is this doctrine that notably had carved the legal and political space of lustration, preparing the discursive conditions for its increasing securitization. At a moment when the contradictions of postsocialist transformation seemed more precarious and explosive, giving way to populist rightwing movements against the liberal establishment, it was militant democracy that was invoked to protect the legal, political, and economic order against the dangers of democracy.

The Germanic idea of militant democracy was first coined in 1937 by Karl Loewenstein, “when one European country after another had been taken over by authoritarian movements using democratic means to disable democracy.” (Müller 2012a, 42) Drawing on the experience of the Weimar Republic, Loewenstein observed that democracy was not capable of defending itself against fascism by sticking to “democratic
fundamentalism” and an “exaggerated formalism of the rule of law” (ibid.). Thus, he argued for the deployment of preventive measures that restrain democratic rights and freedoms in times of emergency. After the Second World War the concept of militant democracy was further elaborated by West German scholars and found expression in the constitutional courts of many European countries. The ethos of militant democracy well resonated with the general restrictive understanding of popular sovereignty that was common to the liberal-democracies of postwar Europe. There was also the prevalent skepticism about the administrative power of the welfare state and the ‘communist threat’ at home and from the East. In fact, the European integration project partly derived from this shared impulse for vigilant oversight and security, and distrust of the popular classes.

Müller wrote:

> European integration was part and parcel of the new ‘constitutionalist ethos,’ with its inbuilt distrust of popular sovereignty and the delegation of tasks to agencies that remained under the close supervision of national governments. Member countries consciously delegated powers to unelected domestic institutions and to supranational bodies, in order to ‘lock in’ liberal-democratic arrangements and prevent any backsliding towards authoritarianism. This development was even more pronounced with the Council of Europe and the European Convention on Human Rights, essentially a Christian Democratic-Tory creation (2012a, 43-44).

The European Union, suggested Müller, continues to express this restrained understanding of democracy. The de-colonization movements, the 1968 protests, the tumultuous worker struggles in the 1970s, the end of the Cold War, and the waves of immigrants to the continent made post-1989 Europe no less fearful and suspicious of popular sovereignty, social movements, and war at home (see also Müller 2011). As mentioned earlier, Eastern European countries—in particular, the Czech Republic, Hungary, and Poland—quickly ratified and incorporated the European treaties and
conventions in order to “lock in” their precarious transition to liberal-democratic capitalism and “return to normality” (Sadurski 2005). They incorporated the ethos of militant democracy even if that term was not explicitly used.82

An important problem with the concept of militant democracy has been its fluid boundaries. As the Hungarian scholar and currently a judge of the European Court of Human Rights András Sajó noted, “[t]he difficulty with the concept of militant democracy…has been with its potentially expansive reach: unfortunately, a “militant democracy” can easily become an illiberal democracy, more concerned with its own stability than with political development” (cited in Macklem 2012, 565). After the Cold War, militant democracy discovered new enemies, which were even more vague and invisible than its usual suspects (e.g., religious fundamentalism and terrorism) (ibid 576). “Populism” also became a suspect (Müller 2012b).83 In respect to this proliferation of enemies, the national courts and the European Court of Human Rights (ECtHR), supervising domestic compliance with the European Convention on Human Rights, played a major role in defining the legal contours of militant democracy (Macklem 2012).

The ethos of militant democracy may be observed in Poland in two major ways.

One is, as mentioned above, the general thrust of constitutionalism expressed by, for

82 Patrick Macklem observed that the ethos and instruments of militant democracy can be found in many European constitutions even when the expression was not used. “Militant forms of democracy have also found specific authorization in the written constitutions of several European states. The Polish Constitution forbids political parties and other organizations devoted to totalitarianism or racial or national hatred….The Bulgarian Constitution prohibits the formation of political parties on the basis of ethnicity….More generally worded constitutional provisions are also often capable of being interpreted to authorize the enactment of militant legislative measures that infringe on civil and political freedom in the name of democratic self-preservation (2012, 576).” See also Müller (2012b, 537).

83 Patrick Macklem wrote: “The rejuvenation of militant democracy is partly a response to the…destabilizing potential of new forms of terrorism and religious fundamentalism. Neo-Nazi movements, empowered perhaps by successful exploitation of fears associated with economic and cultural globalization, may have also provoked states to assume militant stances towards threats to democratic institutions. Militant democratic stances of post-communist democracies in Central and Eastern Europe also perform a symbolic function by negating their histories of totalitarian rule. Whatever its causes, militant democracy is emerging as a new archetype of statehood (2012, 576).”
instance, the vigilant role of the Constitutional Tribunal in guarding the rule of law 
(Rechtsstaat) and human rights principles enshrined in the Constitution. The other is the 
European institutions and conventions, which directed or supervised the actions of the 
Polish state. In this respect, the Convention on Human Rights and ECtHR are notable. 
Both had had important implications for the Polish lustration process. The Polish 
Constitution and European legal standards had been the key references in the decisions of 
the Constitutional Tribunal regarding lustration.

The lustration law was made in 1997, the year in which the Constitution was also 
made and a number of laws (e.g., administration law, information law, state secrecy law 
etc.) were passed. It was the year when the ‘transition’ was largely legally 
institutionalized. That was also the moment when the problems with “wild lustration,” 
that is, the extra-legal accusations (media denunciations), seemed to urgently require 
legal regulation. The new rightwing coalition government led by Marian Krzaklewski 
from “Solidarity” also had been using issues of lustration and privatization as a rallying 
point. The populist mobilization around lustration seemed to demand an immediate legal 
response. Besides, Poland was in the process of NATO and EU accession and the 
problem of accusations of collaboration gained an additional urgency to increase the 
country’s credibility and display of loyalty to the new camp of states with which it now 
aligned. As in the case of other laws, the lustration law followed the European legal 
standards. Thus, the special resolution (no. 1096) adopted in June 1996 by the European 
Parliamentary Assembly of the Council of Europe provided an important guideline for 
the conceptual framework of the lustration law (see also Calhoun 2002).84

(last accessed 15 August 2015)
The resolution was intended to instruct the candidate postsocialist countries about the “measures to dismantle the heritage of former communist totalitarian systems” and build democracy in a *civilized* and *humane* manner. Addressed to the thriving yet perilous democracies of the East, the resolution was a prime example to see how the militant democracy doctrine pervaded the European approach to the problem of democratic transition and reckoning with the communist past. “The goals of this transition process are clear,” the resolution noted at the outset; they were “to create pluralist democracies, based on the rule of law and respect for human rights and diversity.” However “to re-establish a civilized, liberal state” was difficult because “former communist totalitarian systems,” so it claimed, posed different types of obstacles, including at the institutional level, “the militarization of civilian institutions, bureaucratization, monopolization, and overregulation,” and at the social level “collectivism,” “conformism,” and “blind obedience.” To dismantle these, the resolution underscored the need for “separation of powers, freedom of the media, protection of private property, and the development of civil society.” At the subjective level, that dismantling also involved the “transformation of mentalities (a transformation of hearts and minds) whose main goal should be able to eliminate the fear of responsibility, and to eliminate as well the disrespect for diversity, extreme nationalism, intolerance, racism and xenophobia, which are part of the heritage of the old regimes.” If necessary, that dismantling could undertake *exceptional* legal actions. For instance, when a given act “did not constitute a criminal offence according to the national law,” it could still be punished if it was “considered criminal according to the general principles of law recognized by civilized nations.”
This was the general framing of the European resolution. It provides a brilliant insight into how the communist past was conceived and thoroughly contrasted with the goals of the democratic transition in almost every respect. Deregulation of economy, protection of private property, transformation of the state, and development of civil society were all part of the majestic operation of changing hearts and minds of the people. There is nothing new to this set of goals of the transition; as we have seen, they have been commonly stated goals. What is more striking is the formal inscription of lustration or de-communization into this operation, clarifying the objectives of the legal process and providing a guideline about how to implement it. Specifically, the Assembly underscored the following about lustration: “The aim of these measures is to exclude persons exercising governmental power if they cannot be trusted to exercise it in compliance with democratic principles, as they have shown no commitment to or belief in them in the past and have no interest or motivation to make the transition to them now.” To deploy those measures, one had to observe the following rules:

First, guilt, being individual, rather than collective, must be proven in each individual case… Second, the right of defense, the presumption of innocence until proven guilty, and the right to appeal to a court of law must be guaranteed. Revenge may never be the goal of such measures, nor should political or social misuse of the resulting lustration process be allowed. The aim of lustration is not to punish people presumed guilty – this is the task of prosecutors using criminal law – but to protect the newly emerged democracy. The Assembly thus suggests that it be ensured that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law, and focus on threats to fundamental human rights and the democratization process (emphases added).

Note that this language of danger and security of democracy combined with constant reference to the rule of law pervaded the entire resolution. This type of framing also underpinned the Polish lustration law and became a key reference for the subsequent
rulings of Poland’s Constitutional Tribunal. It was not that state security and human rights concerns were not important before, but they now gained a new force, having been framed and authorized as the European standard of lustration. As we will see below, this framing also brought the language of private property to the center of discussions about justice, security, and labor concerning lustration.

THE UNCONSTITUTIONAL LUSTRATION: PUBLIC AND PRIVATE

By the mid-2000s, the hegemonic liberal narrative of democracy and prosperity was vividly challenged by the bleak contradictions of postsocialist transformation. Democracy did not at all seem as inclusive as it had been claimed while entrepreneurial freedom appeared to be the privilege of the few who grew rich at the expense of popular classes. The gap between the promises of 1989 and the constituted order, as well as the political impasse, became more evident and pronounced. The World Bank at the time registered the unemployment rate as 20% of the labor force (among the youth, above 40%) (Kowalik 2012). The figures still did not entirely reflect the extent of unemployment, as the accession of Poland into the EU in 2004 resulted in an unprecedented wave of tens of thousands of people leaving rural areas and underinvested and de-industrialized towns to find some form of employment in the West. In the meantime, two major corruption scandals, involving media and energy sectors (i.e., Rywin and Orlen affairs), shook the ex-communist government, exposing its far-reaching illicit ties with private business. The parliamentary investigative commission’s hearings about the cases were broadcast daily from TV, disclosing the secret bargains struck between politicians and private companies, some of which involved the former security officers.
It is at this conjuncture that the language of security augmented its force in politics and society. While the reflexes of militant democracy became more apparent, conservative opponents, seeking to utilize the crisis of actually existing democracy, embarked on a repressive politics of fear, punishment, and radical lustration. This context of security also gave way to a widespread talk about “juridification of politics” by the Constitutional Tribunal and its flip-side “ politicization of law” by the conservative nationalist coalition government led by the “Law and Justice” Party (PiS). One of the main projects of the newly formed government, which included a far right Catholic-nationalist party, was to initiate a comprehensive lustration law to establish a new republic, the “Fourth Republic” (*Czwarta Rzeczpospolita*), disavowing the corrupt one.

During the PiS-led government (2005-2007), issues of property once again became a central issue on the public agenda. The government established a new secret service called “Central Anti-Corruption Bureau” (*Centralne Biuro Antykorupcyjne*, CBA) that had the task to police economic crimes. However the CBA soon attracted much criticism for serving the government’s aim to check on public employees and ensure the loyalties of its own cadre and allies (Kochanowicz 2007). The PiS-led government employed a wide range of disciplinary and punitive measures to reinforce its hold on the executive branch. It sought to control the state media and Ministry of Justice, reorganize the military intelligence and other security apparatuses, change the education system, clear the streets of communist-era names and monuments, impose a flat tax, and restrict access to abortion. To counter Poland’s dependence on Russia and the EU, the government approached the US militarily and economically, facilitating the flow of US capital into the Polish market. Some critical observers noted the government’s general
“lack of leniency toward those who break the law,” highlighting the condition of overcrowded prisons, which also was admonished by the EU authorities (Kochanowicz 2007). Moreover, well-known intellectuals began speaking of the dangers of populism that threatened the founding principles of the republic. Wiktor Osiatyński wrote,

The current government is the first, since the democratic breakthrough of 1989, which openly and quite cynically mocks, doubts or undermines human rights. Before that, we used to have in Poland what I call a liberal-democratic consensus. All the biggest political forces, with the exception of some parties of the extreme right, recognized the basic principles of the state: representative and constitutional democracy, rule of law, and those human rights and liberties which are codified in the international conventions which we had ratified (cited in Pankowski 2010, 176).

This was the moment to observe the reflexes of militant democracy. At times, the PiS also employed the rhetoric of democracy and freedom. For instance, the PM Jarosław Kaczyński said,

There is a certain liberal-democratic minimum, which we do not question: we are for parliamentary democracy, for the free market, for civic liberties… [But] in my opinion some curtailment of those freedoms is acceptable and does not undermine the liberal-democratic minimum. After all, the democratic system accepted the death penalty and the moral limitations…such as punishing homosexuals, and nobody questioned it was a democratic system (cited in Pankowski 2010, 173).

The new 2006-7 lustration bill prepared by the government was largely seen in this context of surveillance, personnel politics, criminalization, nationalist populism, and the thriving social unrest about the government’s increasingly repressive policies. According to the new lustration law, about 700,000 subjects were required to submit a lustration statement by 15 May 2007. This made the Constitutional Tribunal’s ruling from 11 May 2007 very critical, as many people waited for the verdict before filling out a statement. The Tribunal found a number of faults with the amended lustration law. It based its reasoning on the 1997 Constitution and international legal standards, especially the aforementioned European Resolution no. 1096, and the European Convention on
Human Rights. I will focus only on the articles pertaining to our discussion, specifically the alleged punitive aspect of lustration and public-private demarcation made in defining and allocating legal rights and obligations. While ‘property’ was most explicitly addressed with respect to the public-private demarcation, a consideration of the lustration law’s penal nature is essential to the Tribunal’s assessment of how lustration related to different public and private persons or entities.

Unlike the 1997 Lustration Act, the 2006 Act had an elaborate preamble. The Tribunal exclusively focused on it to assess the new law’s normative orientation, especially the nature of the sanctions it envisaged and the moral-historical vision it espoused. The preamble was crucial in interpreting the rest of the law. It stated,

We maintain that work or service in the security organs of the communist state, or help provided to them by the personal sources of information (osobowe źródło informacji) related to fighting (walczenie) the democratic opposition, trade unions, associations (stowarzenia), the churches and confessional organizations, the violation of the right to free speech and assembly, the right to life, freedom, property, and security of the citizen, all activities that are permanently related to the violation of human rights and citizenship rights in the name of the communist totalitarian regime (na rzecz komunistycznego ustroju totalitarnego) – regarding this and the necessity to fill positions that require public trust for persons whose conduct must guarantee honesty, nobleness, responsibility for one’s own words and deeds, civil courage and righteousness, as well as regarding the constitutional guarantee that grants the citizen the right to information about the persons discharging those functions, occupying those positions… the following is stated. (Dz. U.07.63.425)86

85 I use both the abbreviated version of the judgment (app. 40 pages) available in official English translation, and the longer, Polish version of the judgment (210 pages), as well as the original text of 2006-7 Lustration Acts (in Polish) where I need to reconstruct the relevant passages. All the referred legal documents are on file with me (SG).
86 My translation of the preamble in consultation with the official English translation of the Constitutional Tribunal’s 11 May 2007 judgment, TK K 2/07. I followed the English translation as much as possible.
Notice the combination of the communist state’s violations of human rights and
citizenship rights, including the right to freedom, property, and security, with the
objectives to ensure public transparency and morality.

These words do not offer any new insight into the usual justifications of
lustration, yet the Constitutional Tribunal interpreted them as expressing the law’s penal
objectives. How did that work? The goal of the new law, the Tribunal underscored, was
not just to hold responsible the person who submitted an untrue statement, as was
previously the case; it was to ensure the moral qualities of “those people who occupy
positions and perform functions and tasks requiring public trust” (section 4.4 Polish
version). These qualities implied a sharp contrast with the supposed qualities of the
‘collaborator.’ Thus, the preamble, the Tribunal maintained, strongly expressed
“condemnation and social, moral, and legal discredit” of the persons who provided such
work or help to the security agencies. The permanent violation of human rights invoked
by the preamble “undeniably amounts to a criminal wrong.” Thus, “the goal of the Act,”
reasoned the Tribunal, “is the stigmatization (in social life) and punishment…of persons
collaborating with the totalitarian system...” (English version, 13) Furthermore, the
Tribunal underlined that the “prohibition on undertaking specific occupations or jobs
[political, legal, academic, media] for a relatively long period of time [10 years]
constitutes a severe sanction, depriving the concerned person of the possibility to
continue their professional lives. Such sanctions are, by their very nature, punishments;
both the object and the contents thereof satisfy the description of what in the penal law is
known as the ‘penal measure’” (English version 14-15).
The Tribunal considered the preamble in light of its previous judgments and the concerned ECtHR decisions, as well as Article 2 of Poland’s Constitution that defined the republic as a “democratic state ruled by law and implementing the principles of social justice.”87 While the reference to social justice was somewhat elusively invoked in the dissenting opinions of some of the judges, Article 2 was predominantly interpreted in reference to the rule of law procedures and the European Resolution (1096) that clarified how a lawful lustration procedure should look. Since the new lustration law had penal objectives, the Tribunal stated, it must also explicitly and unambiguously provide the standard procedural guarantees observed in criminal proceedings (e.g., the right to self-defense, due process, presumption of innocence, and individual consideration of lustration cases), which were much more elaborate than the sort of swift administrative procedure the legislature envisioned for lustration. The bench decided that the Lustration Court, which the new law intended to abolish, must be replaced by lower criminal justice courts. In the next section, we will discuss more about the problems of discerning the punitive aspects of lustration by focusing on a legal case that applied to ECtHR.

Here, I want to concentrate on the problem of defining the subject population of lustration, which triggered much opposition against the new law. The Tribunal disputed the newly expanded category of “public functions” (funkcja publiczna) subjected to lustration on the grounds that lawmakers did not adequately define what they meant by “performing public function.” Nor did they follow the relevant constitutional articles

87 The Tribunal’s decision from 18 June 1992 already indicated the penal nature of exposing the names of the agents in a social context where such exposition amounted to infamy or ostracism. As for the ECtHR, on 16 February 2006, (Turek v. Slovakia) and on 30 May 2006 (Matyjek v. Poland) the Court determined that lustration proceedings must follow the procedural guarantees of criminal proceedings indicated by the Article 6 of ECHR.
indicating how that term must be understood.\textsuperscript{88} The fundamental question concerned the limits of the term, whether it could include the social groups conceived as “public persons” (\textit{osoba publiczna}), as the legislature intended, that had the capacity to cultivate public opinion. Lustration would then apply to a wide range of groups involved in art, media, education, and sports. In fact, the government also called for the lustration of any private companies, making a contract with the state. The Tribunal noted however that the lawmakers failed to ascertain the exact criteria for drawing the public boundaries of lustration. It thus objected to the conflation of “public person” with “person performing public function,” defining the latter in reference to the constitutional article that identified it with formal “organs of public authority” (\textit{organy władzy publicznej}). Yet, this institution-based definition was still not precise enough. Not every employee of those institutions could be conceived as performing a public function. The latter had to be limited to the positions that had the competence to “realize tasks in the structure of public authority (\textit{władza publiczna}) or exercise decision-making power as part of public administration and other institutions” (art 10.2).

The Tribunal further clarified the subject category of lustration, referring to the Constitutional Article of 61. In this regard, it invoked the concept of property to materially determine the moral and political boundaries of the public:

\begin{quote}
[T]he category of persons discharging public functions may not encompass functions, positions or jobs that are in no way connected with the sphere of public power (\textit{imperium}) or with managing communal assets or the property of the State Treasury (\textit{dominium}) (18).
\end{quote}

A vocal critic of the Tribunal’s judgment, the Ombudsperson Janusz Kochanowski (2008) rightly observed that one of the central criteria of categorization of persons and

\textsuperscript{88} In this regard, the Tribunal referred to Article 61 and para. 1 and Article 103 of the Constitution, which listed the positions “performing public function.”
organizations was whether the person or institution at issue made use of communal or state property. Lustration included the local administration, which as we discussed earlier, earned a new legal subjectivity on the basis of its communal property. But it was also on the basis of property that the Tribunal exempted from lustration the directors, administrative and governing boards, and department chairs of non-public (niepubliczny) schools, as well as the journalists, expert auditors, bank managers, and tax counselors working in the private sector. Since they were not formally connected to either imperium or dominium, there was no sufficient public interest that required the lustration of those positions. In fact, lustrating them, the Tribunal stated, would violate “freedom of economic activity” that was protected under Articles of 20 and 21 of the Constitution (pg. 15, Polish version). Yet, the exemption of the private sector has been one of lustration’s main paradoxes, considering the widely held belief that many ex-communist agents set up a private business after 1989, benefiting from their expertise in economic intelligence on state property. Curiously, the private sector was also excluded even when the PiS-led government passed a special bill called “Property Lustration” (Lustracja Majątkowa) to screen the source and type of property accumulated by the political class, civil servants, and managers of state firms, banks, and associations. This law against “burglars” and “criminals,” as the government called it, did not apply to private entrepreneurs.

Furthermore, the Tribunal held that the lustration of the private sector would also violate the constitutional principle of the “freedom of employment” (wolność wyboru i

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89 Note that Article 20 is the article we had quoted earlier, where the economic system of the new republic was stated. In its interpretation, however, the Tribunal discounted the role of “solidarity” and “dialogue” and instead, focused on the need to protect private property.

90 According to the law, the CBA was to investigate the source of property and decide its legality. Like in the ‘conventional’ lustration law, property lustration entailed the publication of results. See e.g., “Lustracja majątkowa promowana przez rząd to gratka dla złodziei i porywaczy,” Bankier.pl, 16 February 2007.
wykonywanie zawodu), as well as the right to privacy (prawo do prywatności), the protection of one’s good name (Article 47), and the informational autonomy of the individual (pg. 15 of the Polish version). In this sense, property, ownership of information, moved to the center of the judgment. In the same vein, the Tribunal criticized the ambiguous discretionary power granted to the state institution (the Institute of National Remembrance) in deciding who is who and who could access which documents. As opposed to the legal restrictions on archival access, the Tribunal invoked the constitutional right of citizens to demand the correction or deletion of untrue or incomplete information (Article 51) and access the data concerning oneself. This was necessary to safeguard the citizen’s honor and reputation, conceived as the right to privacy.

As Raymond Geuss (2001) suggested, there is an intimate relationship between private property rights and liberal understanding of privacy or the private sphere. Assumptions about individual autonomy, self-development, and self-realization conceived in isolation and separation from other individuals are central to privacy (e.g., preventing others from knowing about oneself, especially one’s failures). The private ownership of means of production also reinforced the idea of individual freedom defined as privacy and as against the possible “intrusion” of other individuals and agents, especially the state (even if in reality it is the state that guarantees these rights) (91, 103-4). Similarly, the corporations can also be treated as a juridical individual, thus benefiting from the protections devised for individual freedom, as we have seen above.91 But the

91 The idea of privacy is commonly related to the rise of individualism, which arguably has its origin in capitalism. Mark Neocleous noted that “liberalism’s defense of privacy historically accompanied its defense of capital. In Adam Smith’s Wealth of Nations…the word “private” is most frequently conjoined with “property.” “When conjoined with property,” Neocleous wrote, “[‘private’ by no means necessarily
curious concept called “public opinion,” Geuss wrote, was no less central to the historical understanding of privacy:

If “private” in general, carries with it the idea of privilege, “private property” is property over which some individual has privileged control independent of occupying some (public) political office, and the central part of the idea of “privacy” is limited or restricted or privileged cognitive access. One way to think of the origin of the idea that privacy is a great human value is to see it in connection with the growth of conceptions of “public opinion” (emphasis original, 86).

While liberalism considered “public opinion” (originating in the 18th century) as a positive notion contributing to the formation of “rational political goals and policies” and the protection of citizens from miscarriages of justice, it also saw “public opinion” as a form of repression of the individual and something to be restricted (87). Hence, the longstanding ambivalence about the boundaries of “public opinion” and “privacy” in liberalism. Much of that ambivalence, in my view, also found a vivid expression in Poland’s Constitutional Tribunal’s judgment, where it tackled the issue of regulating the limits of the two concepts in the new republic.

The Tribunal did not tackle this and other problems in a void, however. Its judgment was underpinned by a certain consideration of urgency and necessity. In this respect, the most fundamental question it engaged was, perhaps, the following: Was this type of tough and comprehensive lustration that generated many conflicts and problems necessary eighteen years after the regime change in 1989? Framed within the doctrine of militant democracy, e.g., in reference to the aforementioned European Resolution no. 1096, from which the Tribunal generously cited verbatim in many passages, the question

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refers to a human individual, but also to the exclusionary property rights claimed by corporate bodies […] This tells us that as much as ‘privacy’ may be used to defend individual human rights, it can just as easily be used to defend the corporate rights of capital: the right, for example, to extract a surplus from wage labor or to put the interests of shareholders above the safety of workers or consumers. And these rights are created and defended by the state” (2002, 104-5). See also David Harvey (2014).
posed a number of problems. Was there a reasonable urgency to employ the means of a tough lustration to protect the “newly emerged democracy” against a possible “totalitarian” setback or resurgence? Was there a real threat of blackmail of current state employees and the political class by foreign states (i.e., Russia)? Had not time taken its course and overturned the old staff? Was it worth limiting the constitutional rights of the citizens (the right to privacy, good name, and information) to make that security operation bolder? Did the kind of transparency of public life and national security aspired to justify the state’s interference in the private sector and individual privacy? Were the sanctions envisaged by lustration proportionate to the danger it was supposed to respond to and the public good it was supposed to achieve?

The answers were negative. The Tribunal’s decision suggested that such radical lustration threatened the liberal-democratic order more than securing it. That sort of lustration was more dangerous than the dangers it claimed to fight, challenging the fundamental principles and institutions of the newly constituted order: the institution of private property, the individual right to privacy (informational autonomy) and dignity, equality before the law, and the right to due process. The Tribunal boldly underlined that the private sector must not be subjected to lustration. This was not only because of the ownership issues (can foreign corporations be lustrated by the public prosecutor of Poland?), but also because the state was not supposed to demand political loyalty from private companies or interfere in their personnel arrangements that were supposedly governed according to an independent economic logic. These private companies did not owe anything to the state. On the contrary, as agents of capitalism in a developing democracy, they needed special state protections and incentives to thrive. The Tribunal
did not state this in its judgment. Instead, it drew on a well-rehearsed and institutionalized security language to underline that the private sector did not constitute a danger to democracy. Unlike the *imperium*, it did not have the structural capacity to threaten the political, economic, and legal order. That is also another important reason why the private sector employees were exempted from lustration. The Tribunal quoted the following passage from the European Resolution as a guideline for its judgment:

> Lustration shall not apply to persons holding positions in private or semi-private organizations, since such organizations are characterized by too limited a structure of positions to enable the violation of fundamental human rights and the process of democratization or pose a threat thereto (7).

This is a dubious proposition, to say the least, at a moment when the harms of private corporations to environment and livelihood are today widely recognized and there is even mainstream talk about ‘corporate responsibility,’ ‘ethical capitalism,’ and so forth. Yet, part of the judgment’s overlooking of the harms of private companies, in my view, also arises out of the longstanding problem caused by the historical transformation of the dominant form of property: from landed property to financial forms of property (commerce) that are not as easily located or fixed as the former and are often seen as a traveler (and feminine as well) (Humphrey and Verdery 2004) – thus, the controversial problem of lustrating foreign-owned financial companies (e.g., Ernst & Young), which was debated at the time. Considering that postsocialist privatization has been accompanied if not driven by financialization of economy, the application of lustration to the private financial sector would also have raised big problems about citizen-state relations and the nature of postsocialist transformation.

However, let me underscore that not all the judges agreed to the Tribunal’s judgment. In their dissenting opinions, some judges argued in favor of the 2006-7
Lustration Act, while others found the judgment’s criticism too mild. None of the judges questioned the importance of human rights, public transparency, state security, and so forth. The important point was where they placed the accent and to what other concepts they related those abstract principles. The contending visions of national community that we examined in the context of constitution-making came back. The judges, who adhered to the civic-secular vision, highlighted the importance of the equal rights of citizens and individual human dignity, and invoked the normative guidelines provided by the European Convention on Human Rights and the aforementioned European Resolution. This was also a part of the “Christian heritage” of Poland. Other dissenting judges, instead, underscored the unconditional authority of patriotism and national morality that required purification. They also referred to the values of European civilization, but to those emphasizing the love of the Fatherland, family, and truth. Property might seem marginal to these contending views. And this is the point I wish to make. Relatively speaking, it received little attention, precisely because a private property regime had indisputably been taken as the fundamental element of the new democracy. Thus, property, in these normative arguments, mainly entered by way of limitations on individual privacy and the right to know, or disavowal of the constitutional definition of “persons performing public function,” the concepts of *dominium* and *imperium*. Yet, in what follows I will take a different approach and focus on property to see how the competing notions of community are articulated in lustration cases.

LUSTRATION AT THE EUROPEAN COURT OF HUMAN RIGHTS
As in other EU member countries, ECtHR judgments met ambivalent reactions in Poland. While the groups concerned with national sovereignty often see them as unjustified intrusion in domestic affairs, other groups, more sympathetic toward the EU, find the ECtHR’s handling of disputes insufficient and ineffective. Lustration has not been an exception to this trend. Below, I focus on the lustration case of a certain retired judge to explore the legal space of ECtHR’s arbitration. While throwing some light on how the pre-2007 lustration process looked, this final section will continue our analysis of the way the language of property frames the claims around lustration at the ‘European level’ and becomes entangled in the questions of national sovereignty, community, and social and economic rights.

These claims take on another level when the issue concerns entitlement to retirement pensions for the employees of the now largely discredited communist state. The postsocialist transformation has involved different sorts of revaluation. “It is not only that occupations, professions, and whole industries have contracted and expanded,” Susan Gal and Gail Kligman observed, but “the skills, education, and resources of workers have also been revalued and reinterpreted in the new economic context” (2000, 58). This revaluation was notably gender-biased, pushing women into the service sector and public jobs (e.g., healthcare and teaching), while encouraging (young) men to occupy positions in higher-paying private sector, especially banking, which became thoroughly masculinized (59). As labor turned into a commodity in the marketplace (Dunn 2004), the institution of retirement, as in other neoliberalizing economies (e.g., Chile, Argentina, and Turkey) became a target of new ‘restructuring’ policies. In Poland, the rearrangement of old age pensions related to the population ‘inherited’ from the past has been a volatile
issue – raising a number of questions of value in both the monetary and the moral sense.\footnote{Some of the questions were: What was the current value of the labor expended for the former state, which today appears as the main obstacle (corruption) to economic reforms? Was the new state responsible for the material and symbolic privileges allocated by that state to reward certain groups of people (e.g., miners)?}

Further, the pensions of the judiciary and, especially, senior judges have been particularly controversial, as they are suspected of loyally serving for or blindly participating in the wrongs of the communist regime. Thus, in the 1990s the judges’ past credentials and activities have come under special scrutiny.

Like other judges, Alicja Rasmussen was subjected to lustration screening in the late 1990s after the lustration law came into force. In spite of my attempts, I was not able to meet her. We only had a few conversations on the phone. She was in the process of initiating a “self-lustration” (autolustracja) proceeding to clear her name and was concerned about talking about her case. Nevertheless, she rapidly underlined that lustration had been a long and painful process for her and she was not given a chance to defend herself. “What they said about her” was not true. “It was a shame that the [Polish] court did not trust anybody, any of the witnesses, except the falsified (falszowane) documents of the secret service,” she complained.\footnote{Our conversation from 16 March 2011.} She wanted to check with her lawyer to see if I could come to the city of Szczecin to meet her. The next time I called her I learned that her lawyer did not want to take any risk. Thus, my account of her case is largely based on media reports and the judgment about her case.

Alicja Rasmussen was in her late forties when she applied for the newly created status of “retired judge” by the Ministry of Justice in the summer of 1997. She already had worked for twenty-seven years as a judge. Due to her ill health she wanted to retire three years earlier than her ordinary retirement plan required. As mentioned before, 1997
was the fateful year when the Polish state was fundamentally reformed through different legal acts. That year also coincided with the national election, as a result of which a rightwing coalition came to power. The new Minister of Justice was an ardent supporter of lustration, but there was considerable ambivalence among the legal personnel about the issue. The status of “retired judge” created by the former Minister was amended in late 1997. The amendments held that the “retired judge” like actively working judges “shall be obliged to keep the dignity of the position of a judge” and thus, were subjected to lustration. In case of untrue declaration, they would “lose the right to the retired judge status…”

As soon as the amended law came into effect in 1998, Rasmussen submitted her declaration stating that she did not collaborate. She also noted, “Under the threat of blockage of her and her children’s foreign travel, she was forced to sign a declaration for collaboration.” Rasmussen claimed that she wrote only a few reports, which were, in her view, “worthless, of no use whatsoever to the security service.” The Commissioner of the Public Interest, who verified the statements, did not agree and took her to the Lustration Court. Both instances of lustration proceedings decided that Rasmussen was a “secret and willing collaborator” and thus, a “lustration liar.” The main witnesses in her case were two former security officers. In secret hearings they testified that the judge was “willing to collaborate” and wrote many more reports than she claimed, but those reports were missing from her file (Siedlecka 2009). Rasmussen lost her special pension in the summer of 2005 (it was about 1,200 USD/month, twice as much as the ordinary pension). She lodged a cassation to the Supreme Court, but was not admitted. She applied for an

94 See ECHR’s judgment paragraph 25.
95 See the journalist Ewa Siedlecka’s excellent review of Alicja Rasmussen’s case, “Strasburg Swoje, a Polska Lustruje,” Gazeta Wyborcza, 29 April 2009, p. 5
ordinary social insurance pension, but did not qualify; her employment time fell short by three years. While laboriously seeking a new pension scheme, Rasmussen applied to the ECtHR. The ECtHR is generally noted for its heavy caseload and turning down many inadmissible applications, inadvertently working against the poor, whose applications often failed to meet the required legal literacy and knowledge of the European Convention on Human Rights (Dembour 2006, 124). Rasmussen was assisted by the HFHR in the application process and had her case admitted. The ECtHR categorized her complaints under two general headings. The first one concerned the violation of her right to a fair trial, which was guaranteed by Article 6 of the Convention. The second related to her complaint that she was unfairly deprived of the “right to enjoy her possessions.” The ECtHR declined to consider separately her complaints about the normative ground for lustrating inactive judges and the wide and ambiguous definition of “collaboration,” employed by the Polish courts (Siedlecka 2009).

The complaint concerning the fair trial was easier to determine for the ECtHR. That was, in fact, the most popular type of complaint admitted by the Court (Dembour 131). Rasmussen’s case was already the fifth lustration case taken to the ECtHR on similar procedural grounds in Eastern Europe. These problems mainly concerned the imprecise definition and long duration of the “lustration proceeding.” Among other things, they highlighted the adverse effects of the violation of “due process” on the subjects of lustration (see e.g., Matyjek v. Poland and Turek v. Slovakia).96 The ECtHR’s

96 The question about the accepted temporal boundaries of the lustration proceeding was important, as it determined the legal (evidentiary) procedure to be followed. At what stage of the examination of lustration declaration does the proceeding start? Should the proceeding be strictly identified with the court proceeding or include the initial “verification” of declarations? Matyjek v. Poland showed that these were important questions. While the proceeding required the observation of relatively high standards of evidence, verification of declarations when framed as administrative process had lower standards. Another important issue has been the long duration of the legal process (including pre-trial stage), which sometimes took more
engagement with such problems made it clear that lustration was a sensitive issue, directly or indirectly producing long-standing punitive effects. It thus required the same procedural guarantees observed in criminal and civil proceedings and indicated by Article 6 of the Convention. Consequently, Rasmussen’s complaint about the violation of her right to “a fair and public trial” moved to the center of the ECtHR’s arbitration. The Court noted:

The applicant complained that the proceedings concerning her lustration declaration had been unfair. They had not been held in public. The applicant had not had access to the case file to an extent sufficient to ensure equality of arms between her and the Commissioner of the Public Interest [RIP]. She could not make and retain notes in the proceedings as the case file could be consulted only in the secret registry of the lustration court and she had not been allowed to take the notes out of the registry. Nor could she make copies of the documents in the case file and take them out of the court, other than the minutes of the court hearings. This had rendered her defense ineffective (para 36).

The ECtHR decided that the applicant’s right to defense was seriously curtailed by the practice of state secrecy and security. It was not that the ECtHR was critical of the principle of state secrecy or the classification of certain documents by state security *per se*. All states undertook such practices, it stated, but only under “exceptional” conditions, where there is a “compelling State interest in maintaining the secrecy of some documents” (para 50). The ECtHR noted that the issue of secrecy had been addressed in previous lustration cases, but the Polish state evidently failed to implement the Court’s decisions (e.g., *Matyjek v. Poland* and *Bobek v. Poland*). It warned that the exception may well become the norm for the lustration process.

As we will see in the following chapters, none of this legal struggle around secretive and controversial lustration proceedings would be forgotten. What I want to

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than a decade. The *Turek v. Slovakia* case highlighted the adverse effects of such a long bureaucratic process on the subject of lustration (e.g., the suspension of professional activities).
underline here is that curiously, it was in the ECHR’s treatment of Rasmussen’s second complaint about her being deprived of her possessions and of the status of “retired judge” that lustration’s wider normative ground became the focus. While the ECHR showed a clear stance on the procedural issues regarding due process, it hardly expressed any strong position in respect to the conflicting normative claims made by Rasmussen and the Polish government. Nevertheless, the ECHR’s review highlighted the way the language of property pertained to the contested normative ground of lustration. Rasmussen framed her complaint as the violation of Article 1 of Protocol No.1 to the Convention, known as the property protection article, which read:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law (emphasis added, cited in para 57).

The article added that the state could limit one’s enjoyment of possessions if it clashed with its right to “control the use of property in accordance with the general interest or to secure payment of taxes...” No doubt the article offered a wide margin of interpretation, which state representatives could utilize. Indeed, the Polish government underlined that the status of “retired judge” and the pension it entailed was a national policy, a special material and symbolic privilege granted by the state to honor the citizen. Rasmussen’s deprivation only meant a “refusal to honor,” not a “penalty.” Besides, “the requirements of social justice, guaranteed by Article 2 of the [Polish] Constitution,” the government invoked that popular article, “had made it necessary to draw a distinction between judges who had made true declarations and those who had not. Trustworthiness was one of the values which deserved special protection by the State, especially in respect of judges” (para 63). According to this account, Rasmussen was not punished, understood in purely
legalistic terms, but was refused by the state that exercised the power to determine whom to honor in light of the public interest and social justice.

The ECtHR kept silent on this point, but Rasmussen did not. Her loss was beyond material deprivation of the special pension: “Her position in society suffered greatly as a result. She had been working as a judge throughout her entire professional life” (para 65). Her disqualification amounted to a devaluation of her professional life and social status as a judge. Further, she questioned the rationale of lustrating retired judges by invoking European Resolution 1096. There was no longer any reasonable threat to democracy in Poland, so no need for lustration, either: “Poland after 1996 was a stable and relatively mature democracy, no longer threatened by the possibility of a post-communist coup d’état.” Thus, the “limitation of her right to the peaceful enjoyment of her possessions” was “unnecessary and unacceptable” (para 66-67). However the government claimed that according to the national law, a judge never really retired and remained answerable to the required moral qualities throughout his or her life (para 73).

I want to underscore how property took on both moral and economic or materialistic meanings in these conflicting claims. Certainly, this is not unique to this case. One may recall, for instance, John Locke’s famous rendering of property as propriety, which notably influenced the development of modern liberal jurisprudence (Asad 2000; Verdery 2003). There is no reason to doubt the ECtHR’s recognition of the multiple moral and materialistic meanings of property and their foundational role in articulating human rights and state-citizen relations. In fact, property claims, as I discuss below, have been common among the applicants concerned about losing their pensions on similar moral and political grounds. In my view, this has been the case largely because
the applicants assumed that it was the language of property that would best express their complaints and draw the attention of the ECtHR. In this sense, it is comparable to the cases where the liberal notions of property and self-ownership are also strategically employed by “natives” to win the recognition of Western legal institutions (e.g., Povinelli 2002). The ECtHR did not explicitly engage with the competing arguments about the necessity of lustrating retired judges and the need for lustration in year 2006. Yet, the Court’s disengagement also revealed something about its general orientation toward social and economic rights. The ECtHR confined its decision to a determination of possible state “interference with the property right” of Rasmussen (para 69) and the question whether the loss of her special retirement pension meant depriving her of all means of subsistence. Similar to the issue mentioned above, however, the complaint about what the Court glossed as “social security” also brought a disadvantage to the plaintiff vis-à-vis the state. The ECtHR’s judgment stated,

> Article 1 of Protocol No. 1 to the Convention does not create a right to acquire property. It places no restriction on the Contracting States’ freedom to decide whether or not to have in place any form of social security system, or to choose the type or amount of benefits to provide under any such scheme (para 71).

I think that this social security language is not as ‘neutral’ as it may seem. As may be recalled from our earlier discussion of Wiktor Osiatyński’s approach to social and economic rights, this language that has made its way into the liberal arrangement of rights has been a strategic policy instrument that called for the state’s preservation of order. In his study of the historical linkages between “social security” and “national security,” Mark Neocleous (2006) insightfully showed how the “social security” concept, developed in the New Deal era, aimed to immobilize the social antagonisms around
unemployment and old age pensions to protect the capitalist order (to defend private property against the ‘communist threat’). The “social security” concept functioned not only to secure order at home, but also to develop “national security” policies, including lending loans and aid packages (e.g., the Marshall Plan and the Truman Doctrine) to police the international political economic order in a more “liberal and humanitarian” way than direct military intervention (378-379). In any case, postwar Western Europe, the well-known target of those policies, integrated much of that security language into its legal framework that reinforced state power. Thus, it is perhaps not surprising that the ECtHR, which has origins in that era, avoided evaluating the rationale behind a particular “social security” policy adopted by the Contracting State. Unlike the procedural protections guaranteed by the Convention, the provision of “social security” or what we call social rights was entirely left to the state. The Court was not supposed to propose or promote any standard of social rights to modulate citizen-state relations. These rights were not the focus of the Court’s understanding of human rights needing protection. What the ECtHR focused on was the fair implementation of a domestic law related to “social security” in a given case.97

This line of reasoning was, indeed, a well-established practice of the ECtHR. In its judgment, the Court made wide references to “similar” cases brought against Poland by the applicants who had been deprived of their “veteran status” and related social insurance benefits, for instance, under a law passed in 1991 in Poland. The ECtHR acknowledged that “the 1991 Act was partly intended as a condemnation of the political role which the communist security service had played in repressing political opposition to

97 Following this procedure, ECtHR agreed with the government’s point that the domestic law required the applicant (Rasmussen) to submit a true lustration declaration to be eligible for the title of “retired judge” and that “the loss of…special pension did not deprive [her] of any means of subsistence” (para 72).
the communist system.... Such considerations of public policy,” the Court underlined, “even if they resulted in the reduction of social insurance benefits, did not affect the property rights stemming from the social insurance system in a manner contrary to Article 1 of Protocol No. I.” (para 75).98 Likewise, Rasmussen’s complaint was dismissed even if the concerned “public policy” depriving her of the status of “retired judge” and the related pension explicitly aimed at moral and political condemnation.

The dependence of human rights law and, in particular, the ECtHR on the state, both for its recognition and for the enforcement of its decisions is often noted (e.g., Asad 2000; Douzinas 2000). Such dependence, one may expect, also constrains the scope and effectiveness of the ECtHR’s arbitration.99 Rasmussen v. Poland highlights the ECtHR’s principled avoidance of ‘interfering’ with socioeconomic or “social security” policies adopted by states. In his reflection on human rights, Wiktor Osiatyński, it may be recalled, also embraced the same principle, partly due to the pragmatic considerations of economic resources and the state’s supposedly reduced capacity to ensure welfare in the era of neoliberalization. Perhaps this type of disengagement also relates to the ECtHR’s often noted proceduralist orientation. In any case, the ECtHR’s reticence in addressing the normative issues underlying lustration also created dissatisfaction in Poland, even among those who otherwise supported the EU and its human rights standards.

In spite of this, the ECtHR enjoyed much authority in Poland. The Court’s decision heartened Alicja Rasmussen to undertake another lustration proceeding. She

98 ECtHR did not admit the veteran soldiers and former security officers’ complaints. Their complaints did not concern lustration or the right to fair trial. Instead, they focused on the politically biased nature of the national law (moral condemnation) and on their right to social security.

99 The limitation of the ECtHR’s arbitration to individual citizen-state relations, as Marie-Benedicte Dembour (2006) wrote, also leads to a systematic exclusion of a variety of important complaints and problems such as racism caused by social and intergroup antagonisms and structural mechanisms (134).
became the first applicant who ever brought the lustration case back to the Polish courts after obtaining a Strasbourg verdict.\(^{100}\) Other applicants who ‘won’ at the ECtHR stopped there, satisfied with the recognition they earned from the Court. A fair trial, Rasmussen hoped, would help clear her name. Recently, in 2013, I learned that she was again determined to be a “lustration liar.” She failed to obtain the title of “retired judge” after fifteen years of struggle. She found herself once again in the company of ordinary old age pensioners, who had to make their way through the financial insecurities inscribed in the highly speculative public-private sector of social insurance.

**CONCLUSION**

In a recent talk, Wiktor Osiatyński argued for the need to ‘balance’ the excess of electoral democracy and the excess of constitutionalization of human rights, particularly social and economic rights. Too much electoral democracy invites the specter of populism, he said, but too much constitutionalization of rights generates social disrespect and laxity about the rule of law by making impossible promises. Both are *dangerous* to liberal democracy.

I do not think that this argument against excess adequately captures the reality of the contradictions that have been producing explosive antagonisms in postsocialist Poland. In this chapter, I have argued that the postsocialist conceptual and institutional architecture of equality and liberty that I explored in the new make-up of citizenship and human rights, with a focus on property transformation and the debates around national (political) community, determines the roots of the major antagonisms of postsocialism. We have seen that international and, especially, European agencies have shaped that

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\(^{100}\) Thanks to Pawel Osik from the HFHR for this information.
architecture of equality and liberty with their legal standards, ideas, or values, which, to a
certain extent, have produced effects different than were intended (e.g., lustration’s
monopolization by radical nationalist groups that aimed to limit the civil and political
rights in favor of national security). We also have seen that the main axis of the political
struggles has revolved around the definition of national community and individual
identity, much less around the logic of capital and class inequality. In this sense, our
conclusions join the arguments developed by David Ost (2005), who insightfully
suggested the displacement of ‘class politics’ by ‘identity politics’ in the 1990s, and
Nancy Fraser (1997), who observed that our postsocialist predicament is marked by the
widening gap or disconnect between a “politics of equality” and a “politics of
recognition.”

These views illuminate much about the transformations. As Tom Bottomore noted
in the early 1990s, dismantling social rights in Eastern Europe contributed to the
destruction of the measures that had worked toward a ‘relative’ equalization of
misfortunes, risks, and uncertainties in society. The kind of emancipation that was
aspired to in the 1970s and 1980s came to be reformulated as a “liberation from
communism,” a “normalization” to be achieved by creating an affluent middle class on
the basis of private property and capital accumulation (Kurczewski 1999, 204).
Paradoxically, the main opposition to the establishment also embraced the imperative of
privatization. One of the main programs proposed by the leader of the “Solidarity” union
Marian Krzaklewski was a “universal privatization plan,” where workers would fight not
as workers but as owners in order to “get a greater share of the privatized wealth” (Ost
2005, 164).
I want to underscore that law and human rights have been part of this problem, not merely its failed solution. In an essay on human rights, Talal Asad (2000) wrote,

[In a world where capitalist transformation increasingly isolates the individual and makes her more vulnerable, a legal-rights culture (including human rights law) provides more protection. But it is also the case that modern international law itself facilitates capitalist transformations – just as legal reforms did in Asia and Africa in the nineteenth and twentieth centuries. And as Marx pointed out long ago, the increasing power of capital in liberalized society that produces the universal equality of citizens goes hand-in-hand with the inequalities of class and administrative power. As with all cultural material, “the culture of law” is soaked in complex inequalities of power. And as with all law, it is necessarily dependent on violence. “Human rights culture” therefore is not simply a persuasive and reasoned language that comes down from a transcendent sphere to protect and redeem individuals. It articulates inequalities in social life everywhere and at all times (19-20).]

The new architecture of citizenship and human rights in postsocialist Poland, I have argued, has also been soaked in inequalities of power and different forms of violence. Yet, human rights, as Asad observed, typically avoid considering particular forms of violence, especially socioeconomic violence that results from, for instance, neoliberal austerity, financial sanctions, and extraction by transnational corporations. Even if the causes may be of global extent and part of imperialist strategy, the economic problems are typically seen as the responsibility of national governments, the flipside of the (ECtHR’s) recognition of state sovereignty over national economic policies or social security. Furthermore, widely promoted as part of “cultural transformation” and variously described by the Western and non-Western (national) elite as “civilization,” “Europeanization,” or “development,” human rights law and discourse, Asad suggested, also need to be seen as a “mode of converting and regulating people, making them at once happier and more governable.” As such, human rights promoted “normalizing” practices that displaced alternative possibilities of action (21-24). Drawing on this
insight, we may note that the ideology of Europeanization shared by the legal elite in Poland also had a normalizing effect, constraining the material and discursive field of argumentation and collective action.

Marx’s famous phrase, “Freedom, equality, property, Bentham,” which he employed to highlight the contradictions of liberal arrangements of freedom and equality as a free market exchange between allegedly equal persons (one sells labor power and the other buys it as a commodity in the market) is particularly apt to describe the main tendency of postsocialist transformation. This commodity exchange model drew much attention of Marxist legal scholars, who used it to interpret bourgeois law in the same spirit as a form of alienation and reproduction of capitalist domination (e.g., Evgeny Pashukanis 1987). However, I do not suggest that postsocialist legal transformations merely failed to “liberate” man, or that one could even expect a delivery of “human emancipation,” in the sense Marx meant it, from citizenship and human rights. Nor do I mean to belittle the importance of political and civil equality (rights) with respect to social and economic equality (rights). I do not assume that liberty and equality are mutually exclusive problems, as both Western liberal capitalist states and Soviet socialist states had done during the Cold War (see Balibar 2014). Instead, my point is that the reproduction of socioeconomic inequalities and relations of power by capitalist transformations and the postsocialist legal architecture also hinders the effective practice and social meaning of civil and political equality. It plants the seeds of popular antagonisms that are detrimental to the social life of the institutions and principles of equality and liberty that have been won by the social struggles across history. The suppression and containment of those antagonisms by the employment of security
measures such as militant democracy to protect democracy prepares the conditions for increasing securitization and repression of democratic politics. The history of the Polish lustration law shows well how liberal democracy undermines itself, caught up in the contradictions of equality, liberty, and security.

In the next chapter, I will continue to explore the legal and political battlefield of Polish lustration and its complex effects by focusing on the lustration trial of a prominent Constitutional Tribunal judge, who took part in the Tribunal’s landmark decision on lustration that I have analyzed in this chapter. This focus on the subjective effects and micro-politics of lustration proceedings will complement the broad postsocialist context in which I have situated lustration.
When he was accused of “collaboration,” Bogdan Kowalski felt deeply threatened and undignified, or so he told me. Until the day of his court hearing in December 2009, he suspended all his civil and professional activities. Kowalski has been a well-known legal scholar and judge, and the director of the Human Rights Program at a prestigious university. He has been teaching at that university for about three decades. He said:

The Institute of National Remembrance [IPN] tried to cause my civic death by spotting me as a suspect. I remember that when I entered the classroom of two hundred students [in September 2009] I felt that while one half of the students were with me, the other half were not. I thought that some of them were suspicious of me. When they saw me they may have told themselves: “something must be wrong with him. Otherwise, why should he ever be accused and taken to court?”…My work as a teacher and human rights lawyer depends on moral credibility, and personal integrity and sincerity to the values human rights represent. Later I suspended my teaching for one semester and my work as a judge to first hear the result of my trial. I waited for the day of my trial throughout the semester.

On the day of the trial, too, Kowalski seemed noticeably distressed in the courtroom, filled with journalists, human rights lawyers, and domestic and international observers. In the first hearing, the district court acquitted him. Kowalski seemed very relieved, thanking everyone for coming to his hearing. I did not say much except trying to congratulate him like everyone else. To me, it was no more than another court verdict in a lustration case. I even pictured him as a powerful man defended by two brilliant lawyers who fluently spoke about the importance of international human rights and rule of law standards, promoted by the European Union. The lawyers argued that there was no place for “moral analogy” in a criminal law proceeding such as this one, where the personal

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101 All the names of the judges, including Bogdan Kowalski are pseudonyms.
102 Conversation from 14 June 2011.
and professional integrity of the renowned judge was at issue. Moreover, the trial was particularly important because the admission of moral analogy, the lawyers underlined, would open the way for a loose interpretation of “collaboration” and communist “security service,” jeopardize the autonomy of the judiciary, and consequently, threaten the newly emerged democracy in Poland. Indeed, this language of danger and security, as we also discussed in the previous chapter, has been pervasive in the lustration discourse.

Kowalski’s trial attracted much media attention, unlike the other trials that I observed. I was somewhat reserved about the entire event about which I knew little at the time. But I also was mesmerized by seeing him, the Constitutional Tribunal judge at the peak of his career as merry as a young student who just passed an exam. It was as if law once again proved to him its worth and power. It seemed not possible to be at home with law. There was no guarantee. He seemed gratified like a man who had spent his entire life with law and was not betrayed by it in the last hour.103

**WHY DID THEY ACCUSE ME?**

It is not that Kowalski had any illusions about the relations of power that mark the legal field of practice. He was acutely aware of them, as someone who not only had been leading the life of an accomplished legal scholar, but had also participated as a legal expert in a number of parliamentary committees since 1989 and, recently, had served in Poland’s Constitutional Tribunal. The next time I saw him was almost a year after his court hearing on 25 February 2011. When I asked why he was accused as a “lustration liar,” I could not help noticing his elaborate skeptical attitude toward the lustration process led by the IPN. He quickly began to mention about other judges who also had

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103 The appellate court also cleared him of the accusation several months after the district court’s decision.
been accused by the IPN, the state institution which had been increasingly following the political line of the conservative-nationalist “Law and Justice” (PiS) party. One of these judges was Leszek Kozlowski, a well-known legal scholar. He served as a judge *rapporteur* in a case concerning the allegedly manipulative activities undertaken by the controversial anti-corruption watchdog that was established by the PiS. His critical report on the issue, Kowalski suggested, drew the government’s suspicion and eventually earned the judge a lustration file. Kowalski claimed that the intimidation of the judges through threats and accusations was common in the PiS-led government’s “political and psychological warfare.”

Kowalski paid particular attention to Mariusz Tempowski’s case. Previously, Tempowski was accused of collaboration for having taught at the “Academy of Interior Affairs” (*Akademia Spraw Wewnętrznych*, ASW). There, he taught criminal law but did not declare it in his lustration statement as part of his “links with the former security service.” Even though the law that was in force at the time did not consider the ASW a “security institution,” the lustration prosecutor claimed that Tempowski lied in his statement by allegedly hiding his links. The court eventually cleared Tempowski, finding no legal ground for the prosecutor’s suspicion. Having told this, Kowalski asked sharply: “Why then did the IPN insist on pursuing my case when I was in exactly the same position as Tempowski? What did the prosecutor expect to gain from my case when it was clear from the beginning that there was no legal ground for it? Why did they push for my case, wasting lots of precious public money and time to investigate me, my entire life?” He likened what he went through to the “game of the snake and the rabbit,” according to which the snake was the IPN and the rabbit the court and the accused. “My
court file clearly showed this,” he emphasized. “To prove the well-known fact that I taught at the School of High Officers, the prosecutor prepared a court file of three volumes! If the court file had only twenty pages, no one would take it seriously. But three volumes! It made you think that there must be something wrong with me.”

I could not help thinking that the trial must have hardened his feelings about the IPN and the conservative-nationalist groups in general. He was, as it were, in the game of accusation and casting blame. He alleged that many judges appointed by the Ministry of Justice to the lustration cases were, in fact, partial. Similarly, he suspected that the prosecutors took part in the lustration process to quickly advance in their careers.

Moreover, Kowalski saw himself as the last bastion on the road to the PiS-led “moral revolution” (rewolucja moralna) and suspected that he was attacked as part of political revenge against the Constitutional Tribunal at a time when the PiS had lost the recent parliamentary elections to a liberal-conservative party, its main competitor on the Right. “The IPN must have seen me as a dark figure who was working against them and who needed to be illuminated, just as I saw them as a dark institution….I know well those Kaczyński brothers…we were in the same department at the university. They, too, know me well,” he said. He and the twin brothers were supposed to belong to two different planets. He added, “These people tend to be extremely suspicious, distrustful, always looking for hidden plots. They believe in the dark nature of the people. For them this is the norm. They suspect anything that is rational….[but] they particularly hated me when I served as a judge rapporteur on the cases that dearly interested them.” He was convinced that both President Lech Kaczyński and his brother Jarosław, the PM at the time, hated him.
An influential LGBT rights activist, Kowalski compiled a very critical report on the ban on the gay pride parade in Warsaw imposed by Jarosław Kaczyński who was then the major of the city in 2005. As we will see, the conflict over the parade, which was curiously rendered in the Polish vernacular as “Equality Parade” (*Marsz Równości*), had a high symbolic importance mediating the longstanding contentions around national identity, Europeanization, inequality, and secularism. Moreover, Kowalski took part in the Constitutional Tribunal’s review of the case concerning the special parliamentary investigation committee on the banking sector and capital market in post-1989 Poland. He underlined that the committee that was devise by the PiS-led government aimed to incriminate the neoliberal privatization reforms of Leszek Balcerowicz, whom he called “the father of the economic miracle.” “In a true liberal democracy,” he said, “politics is never supposed to interfere in the economy and no government is allowed to investigate the national bank at its whim.” Our subsequent conversations suggested that he firmly embraced this liberal principle just as he considered most valuable the sort of freedom and equality that was articulated through individual human rights, the rule of law, and the private property regime promoted by liberal-democratic capitalism.

In this chapter, I focus on the lustration court case of Bogdan Kowalski to explore further the constitutive tensions or contradictions of postsocialist legal and political-economic order that we discussed earlier. Through a series of conversations with this prominent legal scholar and judge, I attempt to understand the way in which Kowalski reflects on his past and present life, and makes sense of his professional and social-political world. In this sense, what follows is a certain biography of law that registers the
spirit of its time, illuminating its main concerns, dilemmas, and tendencies. In his ethnography of white South Africans, Vincent Crapanzano (1985) studied how the dominant class justified its domination and understood their world, but were remarkably constrained by the system of apartheid that traversed their social relations by fostering anxiety and fear. Certainly, apartheid South Africa is neither socialist nor postsocialist Poland. In a similar spirit, however, this chapter is also concerned with the world of one of the dominant legal elite of the new liberal-democratic capitalism. More specifically, it studies how the judge has become enveloped by the moral accusation of betrayal, living through the kind of emotions that the accusation has produced and reproduced. To this end, I aim to understand the relations between law, fear, and shame in the context of lustration and postsocialist legal transformation and capitalist democratization.

My second aim in this chapter is to examine the ethical-political questions of guilt and responsibility that arise out of the legal battles around lustration. As Kowalski already suggested, this battlefield is mainly inhabited by the legislative dominated by the PiS and the Constitutional Tribunal, which critically reviewed a number of highly controversial bills, including the ban on the “Equality March,” the 2006-7 radical lustration proposal, the activities of anti-corruption police, and the establishment of a special parliamentary investigative commission on the banking sector. While examining the key problems that unite these bills and the Tribunal’s decisions, I focus on how the moral and political questions of responsibility raised by the legal struggles relate to what I have earlier identified as the central postsocialist contradiction: the gulf between formal political and legal equality (e.g., equality before the law, equal right to vote and run for

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104 Here I also have in mind Kate Brown’s evocative historical work on the Western Ukraine titled, “Biography of No Place” (2005).
election) promoted by the democratization process, and the social-economic or class inequalities structurally generated by the capitalist transformation. In light of these concerns, this chapter asks: What does the legal biography and lustration experience of Bogdan Kowalski reveal about the dilemmas of ascribing guilt or responsibility for the communist past and the capitalist present? How does the language of private property (and, by extension, privacy) and nationalism mediate the conflicts around lustration? How are the boundaries between the moral and the legal drawn in making judgments in lustration cases? How can we think more productively about individual and collective responsibility for the communist-era state violence and capitalism’s structural violence beyond the moralization of politics and the securitization of democracy?

I begin by discussing Kowalski’s engagement with the LGBT rights to offer a sense of both his active civic life and the broad context in which issues of lustration and sexuality are discussed together in Poland. I then describe Kowalski’s and the Constitutional Tribunal’s particular mode of legal interpretation to ground their approach to the problems of lustration and other controversial issues mentioned above. Finally, I explore an alternative form of collective or political responsibility for the communist past and the capitalist present by drawing on the work of Hannah Arendt and Iris Marion Young.

“EQUALITY PARADE” BETWEEN THE WEST AND THE EAST

Like lustration, sexuality in Poland became a particularly heated issue by the mid-2000s. It mediated the major antagonisms around identifying the dominant social norms through a language of loyalty, suspicion, and fear that is pervasive in the lustration discourse.
They both highlighted the perplexed problem of social inequality and conservative populism in an EU-oriented liberal-democratic capitalism.

In her insightful study of the “politicization of homophobia” in Poland, Agnieszka Graff (2010) focused on the dynamics through which “sexuality became a burning issue at the center of political debate, tightly linked to the questions of national pride, cultural belonging, and resistance to the foreign” (588). During the period of “rightwing rule” (2005-2007), she observed, “several LGBT demonstrations had been banned; participants of gay pride parades were regularly victimized by members of neo-Nazi groups; police had used violence against gay activists; and openly homophobic statements had been made by politicians” (583). Ironically, all these attacks but especially the June 2005 ban of the Warsaw equality march and the police violence against the protesters in Poznań, contributed to the “great popular success” of LGBT activists to garner the media interest and “sympathy” of the large crowds, which “would never have supported sexual rights” (2010, 588).

Many human rights activists and members of pre-1989 democratic opposition actively participated in the struggle of “sexual minorities” (ibid.). “The LGBT activists and left-wing commentators would invariably respond,” Graff writes, “in the discourse of universal human rights and Europeanization, pointing out that freedom of assembly is a right most needed by minorities and that Poland ought not to lag behind the EU in matters concerning equality” (584, emphasis added). Sexuality, then, became a matter of talking about human rights and the state of democracy in Poland, especially in terms of backwardness or deficiency (588).105

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105 The appeal of “sexual progressives” to the “European standards” in advocating for sexual rights has been a common feature (Graff, 584). During my fieldwork in Poland in 2003-4, I also observed the
Parliament (EP) in 2006 and 2007 only worsened the situation. The resolutions aimed to warn the governments of the new EU member states of the East against rising homophobia. Expressed in such a “paternalistic” and “self-righteous” language, however, the resolutions ended up disturbing many groups in Poland, including those who favor Europeanization. Certainly, this was not the only instance where sexual rights and especially “homophobia” have been used by the EU states (e.g., the Netherlands, France) to draw the boundaries of exclusion, particularly against Muslim immigrants. But as Graff underlines, the EP resolutions only marginalized and displaced the real issues of the struggle. They caused a “wounded [national] pride and outrage….and the right to be a homophobe became a question of Poland’s sovereignty” (589-591). For instance, the German-owned tabloid, Fakt, exposed the Polish members of the EP with a screaming headline, “They Have Betrayed Poland,” and carried news about how a “female traitor” with a “foreign-sounding name” contrived against Poland for money, “The Corruptible Parliamentarian: I will do anything for money” (cited in Graff, 590). Gays and lesbians in Poland became increasingly marked as “foreigners” (591). They were associated with other figures such as the “Jew” and the “communist.” Like other Polish scholars, Graff observed that “homophobia,” as a reactionary nationalist discourse mobilized against the EU and allegedly hidden lobbies inside and outside the Polish nation, operates within the same “logic of hatred, suspicion, and fear” (592-594).

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106 Muslim immigrants are typically considered culturally homophobic and, thus, not belonging to the “sexual modernity” of Europe. See Judith Butler, “Sexual Politics, Torture, and Secular Time,” British Journal of Sociology 59, 2008, 1-23.

107 In this regard, a U.S. based Catholic Family and Human Rights Institute sent a petition to the EU with the title, “Homosexual Hands off Poland.” (Graff 2010, 591)

108 The figure of the “female traitor” (the old witch) is a popular figure in radical right publications such as Fronda.
Anti-Semitic and homophobic discourses remarkably overlapped: “Subjected to a hermeneutics of suspicion, the gay, like the Jew, is paradoxically always both too visible and too secretive. Another striking parallel pertains to the power, secrecy, and scheming attributed to the gay/Jewish villain” (594). Moreover, to these villains another villain figure, ‘the communist,’ was added. For instance, in an article titled “The Homosexual Lobby” published in a mainstream daily Rzeczpospolita, Wojciech Roszkowski warned against the “violent attack of the homosexual lobby against the foundations of social life in Europe” under the “guise of tolerance and diversity.” “All this,” wrote Graff, “reminds the author of the communist strategies from the Stalinist era. Roszkowski clearly feels cornered by the “lobby” whose machinations he has unmasked: his report from the EP is suffused with fear, entrapment, and danger” (594-595).

Let me underline that I do not mean that homophobia, anti-Semitism, or anti-communism is intrinsic to some sort of ahistorical, impervious Polish mentality or culture. Nothing is further from my point. Instead, I want to highlight that the unproductive polarization of the public discourse between two reactionary positions, radical nationalist and liberal Europeanist, is largely an effect of the impoverished notion of community employed by these positions: one hears either of the individual as the sole bearer of human rights, or of the family, the nation, or some notion of Europe as the only horizon of community.\(^\text{109}\) It was as if there could be no other form of collectivity that may respond to the LGBT activists’ demands. This impasse, in fact, also has crucial implications for the popular perception of human rights in Poland, which came to be largely considered as a European import and its advocates as ‘foreign bodies.’

\(^\text{109}\) In this interpretation, I follow Partha Chatterjee’s (2011) view on the unfruitful debate between Westernized “liberal individualists” and “Eastern communitarians” in India, which, he suggests, mainly reproduce the terms of the famous liberal-communitarian debate of the 1980s in the US.
Second, the entire “politicization of homophobia” described by Agnieszka Graff reveals the contradiction of invoking the Europeanized “equality” discourse (the “equality march”) against the foreground – not the background – of glowing social-economic inequality and geopolitical relations of domination between Brussels and Warsaw. I do not mean that those who struggle to practice sexual rights and liberties are mainly the byproducts of liberal, cosmopolitan, consumerist capitalism. But I suggest that the kind of “sexual democracy” or “secular sexual modernity” embraced by Poland’s LGBT community often uncritically opposes itself to some sort of essentialized traditional religiosity or national backwardness. The language of sexual progress and equality in the context of vivid class inequalities and geographical cleavages only antagonizes further the popular classes’ experience of the postsocialist contradiction between alleged political-legal equality and social-economic inequality.110

As a result, as Agnieszka Graff noted, “[n]o one was discussing the actual issues at stake: the legal status of same-sex couples, inheritance, hospital visitation rights, or the possibility of some form of legal union…. [T]he idea of sexual freedom is instrumentalized in discourses that are, in fact, concerned with neither freedom nor sexuality – their real investments are national identity, state boundaries, money, and power.” (591, 601)

DEMOCRACY BETWEEN LOVE AND FEAR

While this is an important point, Graff does not explain why sexuality is instrumentalized in that particular way. One may ask: What is it that makes sexuality particularly

110 See Ryan (2010) for the criticism of LGBT activists concerning the notion of ‘equality’ in their mobilization strategies and general disregard for other fronts of struggle (anti-racist, labor).
instrumentable by these struggles around “national identity, state boundaries, money, and power”? I think that part of the answer lies in the history of sexuality Michel Foucault (1990) has reconstructed. As is well known, his research investigates how ‘sexuality’ has come to be constituted as a distinct moral and scientific object of knowledge and truth, where the practice of confession, at least in the Christian world, was considered to reveal the secret or repressed truth of oneself and qualify one’s moral integrity. This interplay between morality, truth, and secrecy, I think, has been central to both lustration and sexuality politics in Poland. We just have seen the projection of that interplay at different scales, including the European Union, nation, and particular groups and individuals. As in sexuality politics, the social life of lustration is also marked by the postsocialist contradiction of (in)equality. Moreover, both lustration and sexuality politics share the same language of suspicion or fear of betrayal and corruption.

While sexuality is historically a fertile soil where fear and suspicion flourish, the mechanisms of fear and suspicion, as Foucault cogently argues, do not belong to sexuality itself. These mechanisms are essential to the long history of the art of government and the exercise of modern state power (e.g., surveillance), as many studies suggest.¹¹¹ For instance, Zygmunt Bauman (2007) underlines that the sense of fear or insecurity, whether personal, existential or circumstantial, is often carefully “managed” by the modern state through a set of institutions and policies, especially social and economic rights (e.g., employment, insurance, health security, and old age pensions). The reorganization of these rights, as in the economic restructuring of the post-welfare state,

¹¹¹ The theme of fear and suspicion has been a longstanding one in the history of government. Machiavelli is perhaps one of the best known jurors, who highlighted the role of fear in government. Thomas Hobbes also famously focused on the role of fear in the constitution of the early modern body politic. See Joseph Massad (2014) and for a general overview, Corey Robin (2006).
remarkably shapes the affective state of the population and the quality of citizenship. At a more general level, one can also argue that fear has been central to the relationship of authority between the ruler and the ruled; as such, it has been part of the field of strategic action both for the government and oppositional or insurrectionary movements. Certainly, the identification of enemy, the “localization of danger” (Steiner 1999) and the calculation of risk have been fundamental to modern governmental practices.112 This identification, Mary Douglas (2005) underscores, also serves to draw and maintain the boundaries of a community by redefining or upholding its moral norms.

The history of European liberal democracy offers many instances to observe the brutal force of this boundary making both ‘at home’ and in the colonies, and the installation of security mechanisms against real or imagined dangers. The liberal-democratic government is indeed often noted for its entrenched and institutionalized “fear of the masses” and “distrust of popular sovereignty” (see e.g., Rosanvallon 2008). As we have discussed earlier, the doctrine of “militant democracy” is developed by postwar European Constitutional Courts to prevent the dangers emanating from illiberal or totalitarian groups (e.g., fascists, communists, and most recently, “fanatical” Muslims) even when these groups form the government via democratic means (after winning parliamentary elections). The European Convention on Human Rights, the European Court of Human Rights, and European integration had been conceived in light of this doctrine, which authorizes the deployment of exceptional security measures to defend democracy ‘from within,’ as it were, against its domestic enemies (Müller 2012a, 43-44).

112 See Franz B. Steiner’s reflections on the concept of danger in relation to taboo. Steiner identifies two social functions of taboo: 1) the “classification and identification of transgressions” and 2) the “institutional localization of danger, both by the specification of the dangerous and by the protection of society from endangered, and hence dangerous, persons.” (1999, 214) These functions, in my view, may well be considered as governmental practices.
As discussed earlier, Polish lustration has been formulated in dialogue with the doctrine of militant democracy that was embraced by the leading Polish authorities in the 1990s as part of the legal and political transformation.

What I want to highlight in this chapter is the centrality of emotions in the doctrine of militant democracy. Ultra-nationalism, populism, and totalitarian movements have been deemed alarming by this doctrine, because, first of all, they generate such intensely hostile feelings – especially hatred and anger – that do not fit into the “deliberative or aggregative processes characteristic of democratic decision-making” (Sajó 2012, 563). According to the eminent Hungarian scholar and judge of the European Court of Human Rights, András Sajó, the real problem of liberal democracy lies in the fact that it is incapable of defending itself against “an emotional attack by [mobilizing] an emotional counterattack” (569). This is because, Sajó suggests, following Karl Loewenstein, constitutional democracy mainly relies on dispassionate rationality, in the classical Weberian sense, and the legal, bureaucratic, and political control of emotions. It neither expects emotional loyalty from its citizen-subjects nor “hope[s] for a passion leading to democratic heroism” (571). Thus, to defend itself it needs to employ the instruments of militant democracy to demobilize “emotional fanaticism,” allegedly driven by extreme nationalists, racists, or religious fundamentalists. In any case, this is one important reason why hate speech, xenophobia, and homophobia as well as populism have seemed so dangerous to liberal democracy.

This account of law-governed democracy may well be its own ‘ideal type,’ as it is well known that law not only responds to the emotions of its subjects, but also generates or shapes them through institutional arrangements and practices (see e.g.,
Nussbaum 2006). It demands loyalty and sacrifice from citizens, especially in times of war or emergency. But what I want to underline is that the assumptions about dangerous enemies, the threshold of reasonable or permissible emotions in society, and the liberal skepticism of popular sovereignty outlined in this discussion have been in play in the context of lustration in Poland. In fact, by the mid-2000s, the PiS-led lustration itself was considered by many groups as a threat to democracy. During the rule of the PiS government between 2005 and 2007, it became clear that the EU resolutions and the European Court of Human Rights’ critical decisions on lustration, the human rights organizations’ concern about nationalist purification and xenophobia, “the politicization of homophobia” described by Agnieszka Graff, the landmark battles between Poland’s Constitutional Tribunal and the radical lustration legislations, and the widespread fear and anxiety about the increasing power of the executive and radical nationalist groups, especially their control over the means of violence (e.g., military intelligence and the secret service), the state-owned media, and the judiciary, all these operated within the space of security and emotional norms designated by the framework of militant democracy.

Bogdan Kowalski has been among the key actors in this battlefield of democracy. He has been subjected to the fear, resentment, and shame knitted around the social-political struggle over lustration. But he was not simply the passive object of lustration. Like other judges, he also participated in evaluating and acting on the lustration law itself and, thus, was doubly related to lustration. After the radical lustration bill passed in parliament in February 2007, Kowalski, like many other intellectuals, publicly engaged with it. The new law aimed to considerably expand lustration’s scope by adding a number

113 See the previous chapter, where I elaborate on this argument.
of new groups for examination (e.g., university and media employees) and turn lustration into a swift administrative check by abolishing the judicial mechanisms (i.e., the Lustration Court). Some members of pre-1989 democratic opposition boycotted the new procedure by refusing to submit a lustration statement. Responding to the government’s threats about the citizens’ obligation to obey the law, the protesters invoked the right to civil disobedience. In April 2007, Bogdan Kowalski helped organize a conference titled “Who are you, citizen?” (Kim jesteś obywatelu?). The conference was dedicated to the renowned democratic oppositionist and later, Prime Minister, Tadeusz Mazowiecki. There was much discussion about democracy, freedom, and the human rights as the ultimate ethical horizon of the Third Republic. There were also strong denunciations of the “rule by fear,” the police-state, and the “incompetent” ambiguous legislations of the government, which did not live up to the European standards of the rule of law. For the upcoming parliamentary elections in autumn 2007, the moderate liberal-conservative opposition party (PO) advertised itself as the party of love against the hatred associated with the PiS (see Pankowski 2010, 188). Between that love and hatred, however, the Constitutional Tribunal faced one more confrontation with the government, concerning lustration.

The amended lustration law required that the lustration statements were to be filled out by around 700,000 subjects by 15 May 2007. The social polarization expressed around the new law added extra weight to the Tribunal’s decision of 11 May 2007. The Tribunal was going to make its decision in three days. The hearings were long and exhaustive, involving the presentation of opinions by some deputies, the General Prosecutor’s Office (Prokurator Generalny) and the Ombudsperson. On the first day, the
PiS deputy and chief author of the 18 October 2006 lustration bill, Arkadiusz Mularczyk, claimed that four judges sitting on the bench did not qualify to participate in the judgment because of their partial views on lustration. Bogdan Kowalski was one of them. After two and half hours of discussion, the Tribunal rejected the claim and the hearing resumed. On the next day Mularczyk again took the stage, approaching the bench with a note in his hand. It was already past 7pm. According to the IPN archives, the two judges, he said, were registered as “operational contacts” and demanded that the Tribunal must settle the issue before making its decision. When he was asked to present the evidence, he said that he did not personally see the files concerned or have them in his possession. The Tribunal rejected his claim and continued to prepare its judgment.

Different scenarios were entertained to make sense of Mularczyk’s interventions. Some conservatives claimed that these interventions were necessary and showed how the majority of the Tribunal judges were either biased or had deep links with the former regime. While they criticized the Tribunal as an undemocratic and unaccountable institution (i.e., not a popularly elected body), the conservative critics also held the judges to be part of the “secret network” that had been running the Third Republic. In response, other groups alleged that Mularczyk aimed to delay the decision-making process by making false or controversial claims. If the Tribunal admitted his claims and asked for the investigation of the files of the alleged communist agents, the entire

[114] Certainly, this type of criticism was not new and had been voiced, at least since the late 1990s. See e.g., Wildstein (2005). Also note that such criticism of judicial review has been common among conservatives around the world, e.g., in the US during the Reagan administration. See Crapanzano (2000).
decision-making process would then depend on the speed and discretion of the IPN, which would affect thousands of people’s employment.\footnote{At the time, hundreds of thousands of people who had not yet submitted their lustration declarations were waiting for the judgment, because if they had not submitted on time, they would have automatically lost their office.}

The Tribunal found many faults with the new lustration law. Since I already discussed part of the judgment in the previous chapter, here I will only mention the key issues, which will also be relevant to Kowalski’s lustration case: the “penal stigmatization” of the negatively lustrated person; the “automatic” nature of the sanctions and the lack of procedural guarantees regarding the lustrated person’s right to defense and fair trial; the vague and purely “objective” definition of “collaboration” that does not take into account its “subjective” conditions; the public/private division in defining the scope of lustration; and finally, the regulation of public access to and disclosure of information from the IPN archives.\footnote{The Constitutional Tribunal’s judgment (TK K 2/07).} Perhaps the most important was the Tribunal’s qualification of the lustration law as a penal procedure that aims explicitly at the social and moral condemnation and exclusion of the persons linked to the former security from public life. This was an important point because the categorization of lustration as an administrative procedure allowed for the observation of a lower standard of proof and procedural guarantees in comparison to a criminal law proceeding. The new lustration law, as we saw, even aimed to abolish the Lustration Court to turn lustration into a ‘swift’ administrative check and considered its sanctions (the ban and public disclosure of “collaborators”) as non-punitive. At any rate, the Tribunal strongly opposed this and authorized the lower criminal justice courts to arbitrate the lustration-related disputes.
This emphasis on the penal character of lustration was certainly going to influence the legal perception and handling of Kowalski’s case.

Another important issue was the determination of which “public functions” would be subjected to lustration. The fundamental question was whether that term also referred to the positions in the private sector that have public significance (e.g., the private media). After long deliberation, the Tribunal exempted the private sector from lustration by highlighting that the state could not demand political loyalty from private enterprises or interfere in their personnel issues. Invoking the 1996 European Resolution (No.1096), the Tribunal underlined that the private sector, unlike the state, did not have the structural capacity to constitute a danger to democracy. As I have discussed in the previous chapter, this concern for the autonomy of private enterprise vis-à-vis the state also found expression in the acknowledgment of the need to protect the individual right to privacy. In the same vein, the Tribunal approached critically the normative usage of the secret documents of the former security service to make moral judgments. It instead underlined the informational autonomy of individuals, e.g., the right to demand correction or deletion of untrue or incomplete information. In fact, this emphasis on private property and privacy was a common feature of many of the Tribunal’s decisions, at least the ones in which Kowalski took part.

What also seemed common was the Tribunal’s criticism of the PiS-dominated legislative in respect to the language of law. The Tribunal often found fault with the legislative’s employment of imprecise categories, which provided room for political manipulation. Indeed, the determination of the proper margins of ambiguity and the
identification of possible lacunae has been central to many legal-political struggles over
and beyond lustration.

STRATEGIES OF LEGAL INTERPRETATION

Questions of legal interpretation and indeterminacy have been of particular importance
for Bogdan Kowalski for about the last three decades. In our conversations, he often
suggested how interpretation has been central to the legal front of social-political
struggle. But what happens when there are competing interpretations? What is it that
determines the force of a given interpretation, rendering one interpretation more valid or
authoritative than the other? Kowalski argued that it is the axiological vision of the
Constitution that renders one interpretation more authoritative. For him, there was no
doubt that the 1997 Polish Constitution was written in the best liberal-democratic spirit
embracing the principles of rule of law, private property, and individual rights and
freeness. This axiological vision expressed by the Constitution was supposed to guide
any act of legal interpretation. Moreover, this vision, he said, was essentially forward-
looking, transcending the current needs of society just as legal decision-making is future-
oriented.

This strategy of legal interpretation with its forward-looking mode seems to
weave a continuous thread in Kowalski’s professional and scholarly life. This is, at least,
how he presented to me his vocation as a judge and legal officer at the first
Ombudsperson’s Office in Poland in the late 1980s. While working at the Constitutional
Department of this Office, he was one day approached by Andrzej Malanowski, who

117 All our discussions about legal interpretation are from our meeting on 29 June 2011.
inquired about the legal possibilities of reestablishing the historical Socialist Party of Poland (PPS). Curiously, after 1989, Malanowski and some other socialist activists from the PPS became close affiliates of the HFHR, engaged in anti-racist and anti-homophobic activism, as well as the investigation of the CIA-run secret prisons in Poland. Kowalski’s contact with Malanowski and foreign journalists and his trips to West Germany made him a target of a special surveillance operation. He was suspected of communicating secret documents to the Western capitalist states. To which Kowalski responded sarcastically: “I did not know that our Constitution was a secret document!”

But this was not the real issue. The real issue was his particular interpretation of that 1952 Constitution. In reviewing the legal possibility of reestablishing the PPS, he employed a “creative” approach to the Constitution. There were two ways of looking at a glass half-full, he said. One was to see it almost empty, the other almost full. He said that the orthodox reading of the Constitution of the People’s Republic typically saw an empty glass, assuming that the communist system cannot allow for any other political party next to the ones already named in the Constitution. Instead, he read the Constitution as almost full, calling for more parties. Shortly after his exchanges with Malanowski, the PPS was officially reestablished in 1987. In the meantime, that creative, pluralist reading of the Constitution earned Kowalski a security file called “Representative” (Rzecznik).

I often have been struck by the line of continuity that Kowalski drew between the past and the present in his biographical account of law, legal change, and power. Unlike the anti-communists who tend to categorically denounce anything related to the former state, he tended to highlight the institutional and legal continuity. While he agreed to the view that the Constitution of the People’s Republic had a different valor and quality than
the one in liberal democracy, Kowalski was also impatient to hear of the popular views that treated that Constitution (and law) as irrelevant or a mere window-dressing for the wild exercise of power.

Furthermore, for Kowalski, the past was not completely a bygone era, or one big indistinct darkness, but still offered lessons and clues for the present. Like the majority of legal scholars and officials in socialist Poland and the East bloc, he was schooled in the Austrian-German legal tradition. A student of administrative law, he had ample opportunity to observe how state administration worked. One of the core institutions of state socialism, administration was responsible for redistributing wealth and addressing the needs of the citizens. Administration, however, also exercised a certain type of “discretionary power,” which Kowalski came to see as the nightmare of any democratic government. The citizen could never be sure if his or her needs or desires would be met, or what would be the result of his or her petition. The legal uncertainty and imprecision that was built into the heart of state administration encouraged the arbitrary rule of the bureaucratic class that was practically availed of taking any responsibility for their decisions and actions.

To counteract this type of rule, Kowalski unequivocally argued for the reduction of the space of legal uncertainty, indeterminacy, and discretion as much as possible through legal arrangements and specifications.118 Not only did the 1997 Constitution express the new axiological norm of the Third Republic by articulating its main moral vision, but it also sought to minimize this space of indeterminacy through procedural mechanisms. That is also how Kowalski and other Constitutional Tribunal judges

118 Indeed, the problem of legal indeterminacy has received much reflection from legal scholars and activists. See e.g., Hussein Agrama (2010). In Chapter 6, I address this problem in more detail.
justified their criticism of the 2006-7 lustration legislation. The imprecise and expansive definition of “collaboration” (as the act of helping or giving information to the security in violation of human rights and national sovereignty) allowed so much room for the political instrumentalization of lustration and the manipulative treatment of the IPN archives. The public access to the archives was left to the discretion of the IPN. The new law was also filled with strong moral judgments that could be easily used to launch a wide range of accusations of collaboration and public shaming. As we will see, this became, in fact, the main strategy followed by the prosecutor in Kowalski’s trial.

Finally, I want to underline that this type of Tribunal criticism of the PiS-led legislations was not unique. In other contentious cases, too, the Tribunal struck down some of the legislation as unconstitutional in light of similar concerns for legal ambiguity or indeterminacy, individual privacy, or the autonomy of the private sector vis-a-vis the state or political power. For instance, the case concerning the highly mediatized and controversial activities of the anti-corruption police (the CBA), which publicly shamed many social groups (from doctors to business circles) and led the ‘revolutionary’ struggle of the PiS against allegedly corrupt people, also revolved around the issue of legal ambiguity. The Tribunal decided that the law concerned did not clearly define the scope of anti-corruption investigation and surveillance. This was especially sensitive when it was private property and one’s privacy that were in focus. The critical report on this case, Kowalski later suggested, cost the judge concerned a lustration trial.

In another related case, Kowalski offered a critical opinion as a result of which, he thought, he had been ‘punished’ by being taken to a lustration trial. It was about the government’s initiation of a special parliamentary investigative commission to examine
the economic crimes by focusing on the development of the banking sector and capital market since 1989. As in lustration and the CBA, the Tribunal found the proposed scope of the investigation too general and imprecise; the investigation could include virtually any domain of economic activity, including the private sector. The Tribunal expressed grave concern for the legislation’s *blurring* of the boundary between the public and private, politics and economy, and the state and individual, where the constitutional guarantees for the individual would become defunct. “This would then be a return to the situation,” the judgment warned, “in which…it would not be possible to have any certainty as to one’s life, freedom, or property.”¹¹⁹

Notice the close link the Tribunal established between the life, freedom, and property of the individual, which is made to stand in sharp contrast with the communist past. The judgments on lustration, the CBA, and the investigation commission on the banking sector highlighted the intimate link between the right to individual privacy (against state interference) and the rights of the private sector (economic autonomy from state power). Legal certainty stands out as the basic condition for the enjoyment of these rights together with the well-known principles of publicity or non-secrecy.¹²⁰ However, as we will see, it is also this constant emphasis on the sanctity of privacy, publicity, and certainty that paradoxically opens up a strategic field of moral accusation, shaming, and fear-inducing politics.

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¹¹⁹ Sygn. Akt U 4/06, 22 Września 2006, paragraph 12.2.
¹²⁰ Lon Fuller (1977) famously counts the principle of publicity of law as part of the inner morality of law. For the law to be good, it needs to be publicly known. Consider in this light the Tribunal’s criticism of the use of secret documents of the former security to evaluate the conduct of persons who were not aware of those documents.
After a half-hour train trip from Warsaw to the city of Legionowo, one of the first things that strikes the eye is the graffiti dedicated to the memory of the Warsaw Uprising (1944) that color the walls by the train station. Legionowo is a rapidly developing town of Poland with its population approaching to 50,000 today. It was first founded by Tsarist Russia at the end of the 19th century as a military base. During the First World War the German army occupied the barracks and after the war, Polish General Józef Piłsudski developed the city and gave it its current name, Legionowo, inspired by the famous “legions” of the General. Recently, Legionowo has become a site for the Warsaw inhabitants to build their summer houses next to the houses and mansions owned by the families of veteran soldiers.

Part of the Warsaw Uprising, which was brutally repressed by the Nazi forces, also took place in Legionowo. The Uprising left behind the memory of sacrifices, partisans, devastated childhoods, and heroic nurses. After decades of silencing by the communist authorities, the Uprising today witnesses a huge revival. Indeed, one of the main projects of the conservative Warsaw major, Lech Kaczyński was to build a grand
museum for the national memory of the Uprising. Furthermore, Legionowo also accommodates a prominent academy of the Ministry of Interior since the 1960s. Spread out over a huge green area surrounded by concrete grey walls, the academy was named by the communist authorities as the “School of High Officers of Feliks Dzierżyński” (Wyższa Szkoła Oficerska m.in. Feliks Dzierżyński) (the School). During the reorganization of the state in 1990 it was renamed as the “Central Police School” (Centrum Szkoła Policyjna). As may be recalled, the lustration prosecutor took Bogdan Kowalski to court because he lied about his past by not disclosing in his lustration declaration that he once taught at the School. The question was how the prosecutor would elaborate this claim, given that even the more radical and comprehensive 2006-7 lustration law did not name the School as a “security institution.”

Figure 3 The “Central Police School” Photos by the author, June 19, 2010

It was at our third meeting that Kowalski and I talked about his lustration court file.121 We were already somewhat familiar with each other. Besides, more than a year had passed since his trial, so I thought the issue would be relatively cool for him. But as soon as the file appeared on the coffee table in his apartment, we both became excited.

121 From the meeting on 14 June 2011.
He first sat at a distance from me and said, “I feel I am going to be examined by a prosecutor.” I was surprised that in spite of our prior interactions, he still thought that I was there to ‘try him.’ It did not occur to me at the time that the addressee of his ‘account’ was not just me or that he had many more interlocutors with whom he spoke through me (see Crapanzano 1980). In any case, after this brief moment of suspense, he came closer to the coffee table and bent over the three thick volumes. They were his copy of the file.

The first volume begins with the documents printed out from the IPN web-page (BIP) where Bogdan Kowalski figured as a “contracted employee” (pracownik kontraktowy) of the School. The 2006-7 lustration law required the IPN to prepare and publish on-line catalogues about the links of the public persons concerned to the former party state authorities. This page was a product of that legislation. Furthermore, as in other lustration court files that I saw, this one also carried a number of pages, which at length documented the communication between the prosecutor and various state institutions (most of them were different IPN branches to which the prosecutor inquired about the existence of relevant archival material). The volume was full of such inquiries. Looking at the thick volumes somewhat impatiently, Kowalski protested: “what are these pages for? We are supposed to know only the outcome of the investigation and not all the preparatory stages. One communication after another…” After a moment of silence, he suggested that this was to create an impression on the media and the judges by signaling, “there must be really something shady about the suspected person. Look how much we have on him….The thicker the case, the stronger it is!” He quickly shifted his position.

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122 See Vincent Crapanzano’s discussion of life history and its dialectical production through real or imagined multiple interlocutors in Tuhami (1980).
from the ‘suspect’ to the judge or scholar. It was as though we were looking at someone else’s file.

The rest of the first volume included the correspondence between the IPN prosecutor and the National Library in Warsaw. She inquired about a certain manual on the School. The volume also had a copy of the written communication between the School and his university from the 1970s. It inquired if Kowalski was qualified to teach at the School and indicated that he was; he had not been involved in oppositional activity and had no bad habits (e.g., alcohol) or contacts with suspicious foreigners. It was a common background check. The communist state showed great interest in knowing and documenting the social, political, and moral identity of the citizen-subject.

Why did he apply for a job in Legionowo, I asked. After finishing his doctoral study, he began to teach administrative law at a university. However, his salary was too little, he said, and he had not much else to do with his diploma. Since there was no private sector, everyone was basically a state employee, he emphasized. Thus, one had to look out for job announcements at the workplace. The Ministry of Interior sometimes notified his department about teaching jobs at different institutions. At other times, the School directly approached the person; all this was publically known, Kowalski added. “After all, [these] were exchanges between different state institutions. In my case, a colleague of mine turned down the offer; he did not want to teach there. But I accepted, mainly for financial reasons.”

This was not as strange as it may sound today, he suggested. “We lecturers were aware that we often had special SB or MO groups (like twenty students) in our classes, especially the big ones. The Ministry of Interior sent us many of them, so that they would
learn about the basics of our legal system. We easily recognized them. It was so obvious who was who. Everyone knew who they were."

The School hired Kowalski as a part-time lecturer of administrative law. What he taught was not related to any “operational” subject, he emphasized (just as his lawyers did in the courtroom). Initially, he was going to teach there for one semester, but later his contract was renewed for one more year. “I had colleagues who taught there until 1990, but see, later I was not approached [by the School] any more. Apparently, they did not like my teaching very much,” he said pleasantly. He then complained about how the IPN tried so hard to prove that he was, in fact, an SB (security) functionary. If not a functionary, he was then a “secret collaborator” (TW). If not a TW, he was then an “operational contact” (KO), and so on. In any case, “[n]one of these [scenarios] worked out,” he delightfully said. “In the end, I was nothing but a part-time lecturer.”

I asked how it is that the new lustration law added the Academy of Internal Affairs (the Academy) to the category of security institutions whereas it left out the School. Kowalski did not want to point to any qualitative difference between the two schools. He only said, “It was not so obvious from the start that this kind of education institution could be considered as security institutions when the lustration law was first envisaged. The Academy was added only in 2006…” I asked, why did the Tribunal’s May 2007 verdict not challenge the inclusion of the Academy? “The Tribunal did not dispute the inclusion,” he said, “because it was very burdensome for it to establish the unconstitutionality of that inclusion. Was the Tribunal to undertake historical research on the Academy and try to prove that it cannot be considered a security organ? (...) At any rate, constitutional principles were not at stake here.”
Having said this, Kowalski immediately added that he did not mind stating his part-time lecturer position at the School in his lustration declaration if he was legally obliged to do so. In his previous lustration submissions, he did not state it and all went fine. In any case, there was no sanction for admitting it, he said, and he had nothing to hide. I sensed that my questions might have started making him somewhat defensive. I stopped asking about the School and lustration. However, later I understood that we had both been enveloped by the dialectic of accusation that had been set long before we met each other. This dialectic manifested itself in almost all our conversations, regardless of the particular subject of the conversation.

We went back to the court file. We saw that the security service also registered Kowalski as an “object” (target) of surveillance in an operational case (“SOS”) named, “Representative” (Rzecznik). As I have discussed earlier, this security operation mainly focused on his work at the Ombudsperson’s Office in the late 1980s. I noticed that he seemed more comfortable with this relatively unknown ‘fact’ than his relation to the School, which came under the focus of the Polish media and courts, as well as the international legal circles. Unlike his alleged ‘collaboration,’ his work at that Office did not receive much attention.

The rest of the first volume provided information about the short biographical narratives (życiorys) Kowalski wrote – as everyone else did at the time – when he petitioned to the party-state government. Seeing all this information, he took a deep breath as if to signal his disorientation in the face of the irretrievable passing of time and a particular historical epoch. He did not comment. The next volume presented a generous amount of photocopies of the official documents of the School (i.e., statut and
These documents described at length the functions and ideological goals of the institution in the official language of the regime (e.g., cultivating the political and ethical outlook of the security officers, working for the betterment of socialism, and so on). Kowalski said that “he never read these texts when he taught there,” and added how ironic it was that he could now see them after thirty years. He protested, “What is the point of putting all this information here? This was secret before and I could have never seen or known about them…. Besides, they concern the operational programs, which I never taught at the School.” Kowalski and I were again in the courtroom. Besides, I could also hear the echo of the Tribunal’s warning against the normative usage of secret documents of the former state in today’s liberal-democratic state.

What was, indeed, the purpose of this long presentation of the internal documents and ideological goals of the School in the court file? What did it suggest about the general legal and moral field of lustration? Certainly, the use of such documents is not unique to Kowalski’s lustration file. It once again reveals the paradoxical attitude of the nationalist anti-Communist institutions toward the documents and artifacts of the institutions of the former state. On the one hand, they typically undermine these institutions and morally disqualify them as the ministry of lies and treachery, and, on the other, show enormous fidelity to the ‘truth’ allegedly unveiled by the documents generated by these institutions. In this regard, the internal documents that describe the ethical-ideological core of the institutions draw particular attention. The prosecutor treats dead seriously and literally the much-contested “newspeak” (nowamówa) of the regime to emphasize that the institution must really have achieved what it said or intended. In fact, the more the institution’s self-descriptive ideological documents elevated its
importance in the education of the SB and MO functionaries, the more dangerous and culpable these institutions appeared. Teaching there also became complicit with the actions of those menacing institutions and the people who were trained there.

Of course, as some lustration prosecutors told me, the presentation of such official documents about the institutions was partly educational. It aimed to provide information to the judges, considering that the inner mechanisms of these institutions were largely unknown during communism. Some of the prosecutors even complained that the judges were often not well oriented to the lustration cases because they did not know how to read the security documents and thus, could not sufficiently evaluate the archival evidence. Nevertheless, the last volume of Kowalski’s court file supports the claim that the main strategy of the prosecution was to impose “guilt by association” by offering a stream of moral analogies.\(^\text{123}\) The more the School and its students seemed guilty, the more Kowalski and other employees of the institution were supposed to be guilty, regardless of what each person individually did there. They were all supposed to bear the collective guilt ascribed to the institution and its post-1989 afterlife (see also Verdery 2014).\(^\text{124}\) How else could one make sense of the presentation of a number of documents, concerning the security officers who were once students at the School in the 1970s and the 1980s even when Kowalski did not teach there? What was the purpose of presenting the results of the verification of these officers in 1990, who applied to continue their job in the newly reorganized security service? Why was it important to know how these

\(^{123}\) Note that Kowalski told me that he was not shown the third volume during the preparation stage of the trial and it was added to the court file right before the hearing.

\(^{124}\) Katherine Verdery (2014) suggests that the individualization of collective guilt does not adequately acknowledge the intricate and thick network of social relationships that traversed the state socialist society and constituted the subject. Instead, the individualized distribution of guilt wrongly isolates the subject from the rest of society.
officers had been evaluated in 1990 to make a decision about the lustration case of the judge? Were they supposed to be still in touch and even form a secret criminal network after 1989, as some conservative anti-communists suggest (e.g., Łoś and Żybertowicz 2000)?

“Communist guilt” (wina komunistyczna) is often invoked in light of the denazification experience of West Germany and with frequent references to the famous work of Karl Jaspers, The German Guilt. Without the public acknowledgment or ‘coming out’ of an individual’s moral guilt for participating in the structures of communism, it is argued, there was no hope for collective or national purification and redemption in the present (see e.g., Grabowski 2005). In this account, moral guilt was not an issue to be resolved within the conscience of the individual. Rather, it had to be made public and communicated to other fellow citizens for the nation’s moral health. Likewise, shaming and the public admission of shame were generally deemed as a necessary moral sentiment for the rejuvenation of community.\footnote{For instance, András Sajó argued (2011) that while the law had to safeguard the individual against racist or sexist defamation, it also needed to shame the guilty to facilitate reconciliation.} They were supposed to restore the lost sincerity and unity of the community and trust in political power. These views, however, rarely engage with the contradictions the moral usage of guilt and shame generate for the making of the common world.

Hannah Arendt offered a strong and perceptive criticism of the political uses of guilt. Even though she agreed with Jaspers on the need for “collective responsibility” for Nazi Germany, Arendt was also deeply concerned about the kind of politics that demanded “moral sincerity” and confession of guilt from its subjects. In her view, by its nature politics, understood as collective sharing of opinions and judgments in public and
as public, was of a different order (the common world) than the one to which the moral world of the person belonged. As she writes, “In the center of moral considerations of human conduct stands the self; in the center of political considerations of conduct stands the world” (cited in Young 2010, 78). “Individuals can be blamed or found guilty only on the basis of what they have done; the moral and legal concern the self in that personal sense;” “political responsibility, on the other hand,” suggests Arendt, “concerns how things stand in the world. Whatever the cause of sufferings, they are our responsibility to notice and address” (ibid. emphases added). It is based on one’s “vicarious” and “indirect” contribution to the production of injustice, or involvement in the institutions that committed wrongs (see also Schaap 2001).

Arendt insightfully argues for the possibility of responsibility, specifically collective or political responsibility, beyond the question of legal or moral guilt. She suggests that casting blame or imposing guilt collectively was detrimental to both the individual and the political community and, in fact, obscured the real issue. As she famously put it, when everyone was guilty, no one was. The guilt necessarily individualized responsibility in a legalistic and moralistic universe (especially of criminal justice), which was incapable of addressing the institutional nature of modern state-perpetrated violence. Moreover, Arendt observes that seeking and casting blame on individual perpetrators triggered a massive denial in society of any responsibility and hindered any meaningful political engagement with the Nazi past, as was the case in Adenauer’s Germany. In Poland, too, one may observe a similar tension. When persons (e.g., ex-communists, “collaborators”) refused a public confession of guilt, the radical

126 In the same vein, Arendt insightfully observes that public or state apologies could never really pass the test of sincerity. They are destined to be seen as an “opinion,” one among other public opinions.
anti-communists usually claimed to detect another sign of guilt, one that is deeper and more *shameless* (see e.g., Wildstein 2005). Guilt-driven politics did not cease to prompt more accusations, denials, and suspicions of guilt.

In this sense, the lustration of Bogdan Kowalski highlights well the tension between individualizing guilt-driven politics and collective or political responsibility. This tension, I think, is inscribed at the heart of the Polish lustration law from the very beginning. In the absence of any acknowledgment of political responsibility, the lustration law constantly fluctuates between legal and moral judgment of guilt. In one sense, the guilt is inescapably associated with the collective (“security institutions”), and in another sense, it is relentlessly individualized (each person’s declarations is supposed to be treated individually), following the individualist orientation of the European standards (i.e., the European Resolution no: 1096). That is why Kowalski had to bear moral shaming while his responsibility was mainly political for his involvement as a part-time lecturer in the School of security officers who took part in the repression of the workers strikes and the imposition of martial law in the first half of the 1980s when Kowalski did not teach there any longer. Since he cannot be found legally guilty or be considered politically responsible (that category did not exist), the prosecutor could only impose moral guilt on him. She could do that precisely because there was room for it in the structure of the lustration law, which always spoke both a moral and a political language, sometimes explicitly sometimes not.

The rhetorical construction of Kowalski’s court file played a major role in producing the effect of this moral accusation. First, by disclosing all the archival material (including the passport files, school files, etc.) collected by the prosecutor, the file
exposed much of his personal data to the view of journalists, researchers, and the ‘concerned’ public. The file was stored in the district court archives and publicly accessible, at least in principle. It reproduced the information gathered by the former security agencies by presenting their investigations, reports, and so on. Besides, as we have seen, this was not just a neutral presentation of facts, but was part of the strategy of accusation employed by the prosecutor to make a persuasive case. The aim of the file was not just to produce a historical document about the past of the judge, but to prosecute him; it was to show that he had “lied” in his lustration declaration. It was not by chance, then, that Kowalski, as he often suggested, felt that his entire life was under review and that he did not wish to have all the pieces of information publicly available in the form of a court file. He asked: Who could tell how his file would be read by the visitor to the court archives or what the reader would do with that information? Regardless of the outcome of the judicial proceedings, his personal life registered by the court file could be used, he suspected, for political purposes. He trusted neither the institutions involved in generating his file nor the prospective reader of the file.

Kowalski was certainly not alone in worrying about the fate of his file. There have been serious contentions in Poland about public access to certain groups of files produced by the former secret service. One of them was about the operational case named by the former secret service as “Hyacinth” (Akcja Hiacynt). The operation aimed to create a national database of all homosexuals and the people in touch with them in Poland in the 1980s (included approximately 11,000 persons). Recently, it was alleged that the current secret service may be using that information for its own purposes. In 2007, during the rightwing rule members of the LGBT community asked the IPN to destroy all the
files related to “Hyacinth.” The IPN, however, declined, explaining that the operation was legal at the time and was of “preventive” character. Besides, “Hyacinth” now belonged to the national property, which the IPN could not destroy by its own will. At a moment when, as we have seen, homosexuality was particularly politicized, the public disclosure of one’s sexual orientation could well invite the possibility of denunciation. One confronted many challenges by becoming subject to a lustration investigation. The court proceedings and the legal judgment were only one of them.

In spite of his official legal clearance by the court, Kowalski still seemed engrossed by the accusation. A big part of this, I think, results from the moral shaming imposed by the prosecution that stuck on him beyond the courtroom. This seems to explain his dilemma when I asked him to compare the School with the Academy of Interior Affairs. I often sensed that he did not want to appear to know too much about these institutions, because this may create the impression that he was one of them. On the other hand, if he did not say much, he may seem too dismissive or care-free about the School and perhaps more important, this would obscure the particular circumstances of his teaching and what his job entailed. In other words, he had to respond, but the question was how to do that to counter the moral accusation based on analogies and associations. That his students were as good as any students and the School was not so bad? That not all security officers were harmful? That teaching there was just another state job? That he needed money and cared about his career like many other people? In one of our conversations, Kowalski powerfully expressed the problem: “How can you argue with this accusation? That this is all nonsense? Yes it is. But it is still there and you have to deal with it. (…) I do not want to be involved in the general evaluation of the School
where I taught part-time for only a few years. But it is a construction that pulls you into its own terms when you want to confront it.”

Public shaming for “vicarious” or indirect involvement with the actions of repressive state institutions, as we have noted, often triggers a stubborn self-defense or denial, but rarely offers any room for genuine engagement with political responsibility. Political responsibility, suggests Iris Marion Young (2010) following Arendt, is not only backward looking, but also forward looking. It requires from the person a collective engagement with both past injustices and the present ones that are reproduced on that past. It is a mode of responsibility that is beyond the individualized guilt and the legal case of Kowalski.

**PREVENTING DANGERS AD INFINITUM**

In one of our first meetings Kowalski suggested I contact the prosecutor involved in his lustration to learn about the rationale behind his trial. When I went to the Bureau of Lustration I learned that that prosecutor was on maternal leave. Thus, I talked to the chief prosecutor of the Bureau, Jarosław Skrok.127 I had been in contact with him since the early stages of my research. Unlike the stereotypes drawn for the lustration prosecutors, Skrok struck me for his genuine curiosity and care for the moral and historical complexities involved in reading the secret service files. Like other prosecutors whom I saw, he was in his late 40s, a member of the generation that came of age during martial law.

He was surprised to hear me asking about Kowalski’s case, which ended a year ago at the time. He skeptically inquired, “Why should I be interested in a case that was so

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127 Conversation from 16 June 2011.
extraordinary? It was not a proper lustration case. He did not secretly and consciously inform on his colleagues. But he still had to declare that he had worked as a lecturer in the school of security agents [the School].” I noticed that Skrok could not straightforwardly call the judge an “agent” (agent), “collaborator” (TW) or any other popular terms of the lustration discourse. I wanted to know how the prosecutor who looked into Kowalski’s case evaluated it. Skrok revealed nothing new on this. As Kowalski thought, she sought to locate him in the company of other security officers. After all, the judge, Skrok told me, had a “personal file” (teczka personalna) from the School as other officers did. “He just had to put that information; that was all. There was no punishment.” Because he did not, “they had doubts about the truthfulness of his declaration.” That is why they took the case to the court. In any case, Skrok said, he did not personally prepare the case and could not recall the details.

If there was no punishment, how did Skrok explain the widespread denial or fear of admitting the past links with the state security? He kept silent for a few seconds and said, “They fear people’s judgment. They fear that the people around them will see them in a bad light and they will have to explain things. They fear of their own social environment.” He continued, “Each case should be considered individually on its own terms. [In this office] we check the information communicated by the person and consider the reasons for his recruitment, as well as the effects of his collaboration on other people. But this can be very complicated.” He said that he personally had seen cases where the person who informed to the SB lied or tried to mislead them into error. Or in some other cases the collaboration was not realized. “We, the prosecutors have, of
course, different approaches to such cases,” he underlined. It was left to their discretion to decide what evidence was sufficient to suspect a “lustration lie.”

I am not sure how much of what the prosecutor said arose out of his attempt to paint a brighter picture of the lustration process. In any case, Skrok did not want me to judge their hard work from a few problematic cases. He wanted me to have a fuller picture of himself and his office. He said that he took the job in 2007 when the IPN Lustration Bureau was founded with the 2006-7 Lustration Act’s placement of the legal process under the archival institution. He took it not because he liked to track people, but because he was interested in history. He considered his job as a valuable chance to learn more about the secret service and Polish society and engage with highly confidential documents, which only a few people were allowed to access.

To show the importance of their work, Skrok underlined the following, less visible but very crucial aspect of their work. He suggested that the force or valor of lustration (walor lustracji) could not be reduced to the number of court cases initiated. Nor could it be understood from the results of those cases. The real force of lustration lay elsewhere. It was more general and less noticed from outside. It manifested itself in the conduct of those persons who withdrew from public life or ceased to aspire to “perform a public function” because they did not want to risk lustration. In this sense, lustration has been, first and foremost, a preventive security measure. It keeps public life clean through the continuous threat of shaming and legal ban from one’s profession. To this end, Skrok seemed to be proud of the overall performance of his Bureau. He thought that they managed to discourage many suspects from applying for public office.
Furthermore, as in other countries where lustration was employed (e.g., the Czech Republic), in Poland, too, the legal process has been prolonged indefinitely. The temporary “preventive justice” procedure has become permanent. Virtually, lustration will be in force until the last person born before August 1971 dies. In that, lustration expresses a certain biological tendency, focusing on the generations that came of age before 1989. This biological necessity, as perceptive observers underlined, may also turn into a certain generational drift or even war if it was expressed as a general organizing principle by a series of state policies targeting the elderly. Not only were their retirement pensions under threat, but they were also under the continuous suspicious gaze of the lustration process that was dominated by the young nationalist historians, prosecutors, and journalists.

There is also another sense, however, in which the temporal extension of this preventive measure becomes virtually a mechanism of permanent threat and disciplinary control, which operates through the ambiguities that are generated by the lustration procedure. As may be recalled, the 2006-7 Lustration Act obliges the IPN to prepare and publish on-line catalogues of different groups of people related to the political parties and security services of the communist era. However, the on-line IPN catalogues also augmented the sense of uncertainty, especially for the people who became or thought they became an object of investigation. While the wide temporal horizon of lustration enabled the reopening of already ‘concluded’ cases, the constant search of ‘unfathomable’ security archives entertained the possibility of discovering yet another piece of information and ‘update’ on the web-site. Thus, as a prominent IPN historian suggested: “the enquiry never ends” (kwerenda nigdy się nie kończy). One could expect at
any moment a damning media report that called one a collaborator on the basis of ‘recently revealed evidence.’ Some of the Tribunal judges also had to confront this threat. They found their names on the website under the category of “pending.” Another Tribunal judge realized that she had been under investigation but there was no indication of it on the website. In short, while the catalogues as a medium of transparency offered an easy, user-friendly, public access to the past links of “public persons,” they also created nothing short of what Siedlecka called the “circle of suspicion,” at least among the judges.128

This is but half the story of suspicion, however. What I have described above is only about how the ‘public tribunal of judgment’ formed through the performative act of accusation and investigation, and the opacities generated by on-line cataloguing, which paradoxically claimed to provide public transparency. When one becomes an object of investigation, however, one does not simply watch the process from outside, as it were, by looking at the screen. The suspicion of betrayal creates a dialectic that envelops the subject. Below, I will detail further this process of subjectivation by focusing on some of my interactions with Bogdan Kowalski.

My study of his court file made me notice the silence of the judge on certain episodes of his life. His silence seemed to concern especially the time he spent as a member of the socialist youth organization and the Party in the 1970s and the 1980s. I do not think that that episode must have offered all the answers to the questions about his

128 See her “Judges in the Circle of Suspicion” Gazeta Wyborcza. Reflecting on the game of uncertainty employed by the catalogues, she observed, “Looking at the IPN catalogues, one sees that there is no end to an investigation of the person. No case ever ends even after the court proceeding ends. Likewise, it does not mean that there is no information gathering on a given person even though on the website there is no indication of ongoing investigation.” http://wyborcza.pl/1.76842,7184161,Sedziowie__w_kregu_podejrzen__IPN.html (last accessed 15 August 2015)
late intellectual and political activity. Nor do I suspect that he deliberately kept it as a secret to hide something shameful. It may be that he no longer considered that episode relevant to his current biography, or that he did not see any point in talking about that ‘bygone era.’ I do think that the silence suggested something more than what that past may have been, however. It gestured toward the present social-historical conjuncture, the time of our meetings.

In one of our last meetings, I explicitly brought up the question of his activities in the socialist youth organization and the Party to hear more about that particular episode of his life. He first dismissively responded that he was also active in other youth organizations. Seeing that I wanted to hear more, he casually told me that in the 1970s, the security services, in principle, were not allowed to recruit party members as informers. This was hardly news to a student of Poland, but what was particularly striking in his remark was how quickly he had understood my question within the terms of lustration. It was as if I had judged him for joining the socialist organizations and asked him to prove that he was not guilty, as if I implied that a former party member must be as guilty as a former informer. After a moment of silence, he shrugged his shoulders and said that at any rate, he had never been an engaged party member and returned his party card in 1982 right after the declaration of the martial law.

I made another attempt later in the meeting. This time, he seemed more ready to talk about it. “After Gomułka,” he said, “it was time for hope and I thought why not join the Party. They asked me if I was interested and I accepted.” He then sank back in time, looking more introspective and distant than ever. “Now that I look back,” he repeated this line a few times until he found the right word, “I realize that I have always been drawn

129 From our meeting on 29 June 2011.
into situations or positions in response to someone else’s offer. In my life, it is always other persons who have come up to me with offers. I accepted some, but turned down many.” He seemed empowered. “I never fought to become a leader… It is they who chose me.” He appeared delighted but also melancholic, becoming absorbed in his own or someone else’s thoughts.

When we took his dog out for a walk, he talked more about it. He said that he had been very social at the university, organizing student meetings and discussions. His involvement in the socialist youth organization was part of this. There, he just continued to do those things. But anyhow, he was expelled from it in 1978 when he was in his early 30s, because he was too inactive. He appeared delighted again. He was proud to be expelled. He spoke about his party life in the same spirit. He only wanted to talk about how he resigned from it with the martial law: Why did he have to bear responsibility for the decision, which he was not able to influence and with which he disagreed? When he quit the party in 1982, he said, it was clear that all was coming down. Some of his friends from the university tried to discourage him. They told him, “If everyone like you quits the party who will there be? Only the crude, dogmatic, hardline communists.” Kowalski emphasized that the Party organizations at the university had been particularly liberal. That is why, he said, what his liberal friends said at the time was a good argument. But all this did not have a bearing today, he added bitterly.

When I mentioned to him that both his father and brother were also Party members and casually asked whether his family had any leftist lineage, Kowalski quickly assured me that his family was not politically engaged. They did not join the Party out of ideological conviction. None of them were a communist, he assured me. I sensed that he
might be somewhat puzzled by my question. Instead, he wanted to draw a liberal lineage for his family. His father, he stressed a few times, was a civil lawyer engaged in family-related problems (marriage, divorce etc.). This was already a critical stance, he suggested, because civil law was the most liberal part of the law in the People’s Republic. “My father specialized in private law in a socialist country,” he proudly said. His father was even upset when Kowalski chose to study administration law. He had less to say about his brother, who was a public prosecutor, except that his brother never occupied a position of authority or performed managerial tasks. In brief, both his father and brother were ordinary civil servants, the middle man, Mickleinfurberste, he said in German. His mother was not interested in politics, either.

I often had the impression that Kowalski was particularly interested in highlighting the historical influence of liberalism in the intellectual life of Poland, as well as in his own professional and family life. As I mentioned earlier, he had been in favor of the shock therapy reforms of Balcerowicz and, presumably, other liberal or neoliberal economists. Thus, his association with the communist state or the Party may have seemed to him to demand a considerable work of self-refashioning to confirm his liberal outlook, which is not to say that he tried to trick me or that it was impossible to be of liberal orientation in the Party. However, what was even more striking was the peculiar position I came to inhabit in our conversations. My questions, as it were, came from elsewhere and when he responded, he seemed to have another addressee in mind. As we have seen, this was particularly acute in our conversation about his involvement with the Party. The Party immediately raised for him the question of guilt. When I asked another time, he said that he had joined the Party because “there was no harm doing it.” Perhaps
imagining that what I really wanted to get at with that question was his involvement in
the School, he added, “I am not proud of having taught there, but I am not ashamed of
it, either.” I never suggested any link between the Party and the School in our
conversations. When I thought that we probably had passed beyond talking about his
lustration case, it quickly found its way back when our conversation focused on his pre-
1989 biography. In this sense, perhaps prosecutor Jarosław Skrok understood well that
the real force of lustration lay elsewhere.

After this conversation, I met Kowalski one last time to talk about his court file.130
This time he also spoke about the specific moments when he was contacted by the SB
officer. He said that he had been approached a few times after finishing his doctoral
study. He was asked to talk about who among his students in the law department would
be interested in applying for a job at the SB or who were his bright students. Kowalski
said he told the security officers to contact the University directly since both were state
institutions and they must be able to gather that kind of information through their official
contacts.

Kowalski was also approached in Vienna in 1975. He was on a short research trip
with his wife. “Someone” contacted him, presenting himself as from a “scientific
committee.” It was a general conversation about scholarships, Kowalski told me. When
he came back to Warsaw that officer contacted him about the same issue. Kowalski never
saw this man again until the lustration prosecutor summoned him as the chief witness
against the judge. The man turned out to be from the counter-intelligence department of
the SB. Looking at the retired officer’s testimony Kowalski claimed that the man must

130 From our conversation on 30 June 2011.
have mistaken him for someone else, possibly because the officer had had many academic contacts.

In the meantime, Kowalski also had the chance to see the special operational file compiled on him by the SB when he worked in the Ombudsperson’s Office in the late 1980s. He complained that the current secret service (ABW) and the IPN in bad faith singled out only certain parts of the file about his sensitive personal information. While reading his SB-generated file Kowalski also recalled some of his activities at the Ombudsperson’s Office. As is usually the case, in the file there were pages of “character reports” (charakterystyka) prepared about him on the basis of the information gathered through the human contacts of the security. Kowalski told me that he recognized the person who reported about him. It was not difficult to recognize because the person lived in a small town and informed about the specific details of Kowalski’s work. Kowalski also said that the “secret collaborator” misled the SB in important ways.

Not long ago at an academic conference, Kowalski saw this man. During the coffee break they recalled together the good old days. Kowalski told him that he recently saw his SB file and found out that someone who knew about his work informed on him. The moment he said it, so Kowalski told me, that man was no longer able to look him in the eye. Moreover, Kowalski told me that he pressed the man further by saying (not so gently) that he knew who the informer was and where he lived. The man responded in panic, “But it was me who was there.” That was the end of their small conversation. After a few weeks, Kowalski told me, he received a letter from that person. In the letter, the man swore that he did not inform on him and had always been loyal to his colleagues.

**CODA: ON POLITICAL RESPONSIBILITY**
As lustration extends to *ad infinitum* through permanent verification and on-line cataloguing of persons, accusation begets more accusation. Fear becomes pervasive, as shame reproduces itself through transference and by striking at other persons. Since I heard this anecdote from Kowalski, I have been puzzled by the ease in which he switched his position to that of a resentful victim blaming his ‘perpetrator’ as soon as he read his file. What is, perhaps, most curious is that he did so in spite of his acute awareness of the problems involved in using those security documents to launch accusations and condemn persons. Stuck in a victim-perpetrator framework, he could be, as it were, either on the good side or on the dark side. I sensed that he wanted to appear on the good side by telling me about his suspense story. He wanted to say that he was *not only* a dark figure. Such was the paradox of his ‘defense.’

In his ethnography of white South Africans, Vincent Crapanzano (1985) explores the social psychology of “waiting” and specifically, the passage from anxiety to fear. Unlike anxiety, he writes, “[t]he object of fear is specific. We are afraid of snakes, war, that man over there” (46). In its search for an object anxiety transforms into fear, and thereby the act of waiting for something unknown gains a specific object to anticipate. But this happens at a certain cost. For “[t]he man who is afraid, the nervous man,” observes Martin Heidegger, “is always bound by the thing he is afraid of or by the state in which he finds himself” (cited in ibid.). He is absorbed by the object that “colors the present and determines the uses [he] makes of the past.” In waiting for that object, the future then becomes constricted, closed in on the present while the present freezes in

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131 When I asked Kowalski if he would be interested in seeing his security file if he did not go through a trial, he said he wouldn’t.
expectation and is “filled with suspense.” “Such waiting is terrible,” writes Crapanzano (ibid.).

The lustration process involves much waiting. It took fifteen years for retired judge Alicja Rasmussen to finalize her struggle in the courts, as I have discussed in the last chapter. Some Constitutional Tribunal judges waited in suspense to see from the IPN’s on-line catalogues where the lustration investigations about them were heading. Bogdan Kowalski waited for the result of his trial and, I suspect, still does in spite of the court verdict. The trial persists in his recollection and evaluation of the past and in his relation to himself and other persons.

In this respect, the punitive aspect of lustration plays an important role, which I think is rightly underlined by the ECtHR decisions, Poland’s Constitutional Tribunal, and the HFHR, among other groups. The subjectivation of Kowalski by the dialectic of accusation materializes the longstanding link, assumed between punishment, memory, and selfhood. In the Western Christian world, Friedrich Nietzsche (1989) famously stated, it was first and foremost the threat of punishment and fear that produced memory, obliging one to remember and give an account of oneself. Judith Butler lucidly expressed this view: “[A]ccountability follows only upon an accusation or, minimally, an allegation, one made by someone in a position to deal out punishment if causality can be established. And we become reflective upon ourselves, accordingly, through fear and terror. Indeed, we become morally accountable as a consequence of fear and terror” (2005, 11).132 It is the fear of punishment that sets the parameters within which one has to refashion oneself.

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132 Note that Butler finds this perspective too negative and wants to describe a more affirmative approach to self-narration by drawing on Michel Foucault’s late works on the history of the ethical subject.
Yet, this self-refashioning is often marked by denial, self-defense, or blame-switching that impedes taking responsibility for the common world.

We have seen that the lustration process, especially at certain political moments, is pervaded by the mechanisms of fear and suspicion and the doctrines of security, ‘the defense of democracy.’ The national law, human rights law, EU resolutions, and the ECtHR greatly shape the contours of this field of security. The radical lustration bill of 2006-7 only expanded this field into new terrains. The rightwing populist government sought to harness popular anxiety and resentment, partly generated by capitalist transformations. It sought to deploy lustration together with other punitive and policing measures to establish a new, morally pure Polish republic. Even though the Constitutional Tribunal and Bogdan Kowalski in particular did not approve most of those measures, many people who feel betrayed by the political establishment supported them. For instance, in his fieldwork in 2006 in Poland, Don Kalb’s informant, a veteran worker activist told him:

(…) we cannot undo what was done. But it would be psychologically important to find out whether this company was sold for less than its real value…. It is all a question of honor. I myself never believed that this was how it had to be, that Poles are such that they cannot do this or that (…) it was a big mistake to say that Poles are worthless (2013, 14).

Kalb’s informant, then, went on to accuse the liberal elite of treason, of stealing national property and robbing the Polish people.

What I want to highlight is that the allegation of this ‘shameless’ robbery, devaluation, and inequality greatly foreshadows the popular perception of the liberal notions and institutions of individual rights, human rights, and privacy, which are, as we have seen, often invoked by the legal deliberations on lustration.
As such, it forcefully exposes the contradictions between so-called civil and political equality, and social and economic inequality. Much of the current legal elite and, certainly, Bogdan Kowalski are implicitly or explicitly held responsible for those glaring contradictions of the Third Republic. Kowalski has been among the ‘winners’ of the transformation, what he called the “economic miracle.” He also has been an active member or supporter of the legal institutions and processes that contributed to the production and reproduction of some of these injustices. Indeed, it is not possible to neatly disentangle his post-1989 involvement in the legal and political institutions from his lustration case. We have seen that lustration is not only about the communist past but also about the present positions and actions of the person (about the liberals blamed as communists). If this is true, the burning question is, then, what form of responsibility may someone like Kowalski bear for the social injustices systemically generated by that “economic miracle”? How could we think of responsibility beyond the sort of moral responsibility or blame imposed on him by lustration for his participation in the network of people, the dominant bloc of the Third Republic, which is held responsible for sharpening inequalities and corruption?

Iris Marion Young (2010) has recently suggested rethinking Hannah Arendt’s concept of “political responsibility” in relation to the “structural social injustice” produced through institutions and processes of contemporary capitalism. As such, she focuses on the largely unexplored relationship between structural injustice and reconciliatory politics of guilt and responsibility. Unlike mass killing or state-perpetrated genocide, observes Young, structural injustice is often
perceived not as “horrible” as the cruelty of war (93). Nor does it seem to call for
the restoration of the breached “norm” or the violated “normal” life through
punishment, redress, or compensation for the victim (107). Conceived as an
outcome of *peacetime* activity, structural injustice is usually perceived as
“ordinary” injustice, experienced on a daily basis (93). It is the outcome of the
interests, behaviors, and habits that are accepted as “normal” (e.g., seeking self-
interest, profit, security in capitalist market). It is rarely the product of a deviation
from the norm.

As in wartime state violence, however, structural injustice also poses the
challenge of fully identifying the responsible authors and allocating guilt for the
harm in accordance with the individualistic framework of criminal liability or tort
law. This is because the injustice at issue (e.g., low-income housing shortage,
unemployment, class dispossession) is often a *combined effect* of many practices,
processes, and institutions, which are hard to disentangle and are not always fully
authored by specific individuals. The structures that generate injustice are likely to
be “produced and reproduced by large numbers of people acting according to
normally accepted rules and practices, and it is in the nature of such structural
processes that their potentially harmful effects cannot be traced directly to any
particular contributors to the process.”\(^{133}\) If this is true, the blame- or fault-oriented
process that seeks an individual perpetrator, Young suggests, is often *politically
counterproductive* and *insufficient*, because the moralistic language of blame
impedes public discussion and the full understanding of the multiple causes of

\(^{133}\) This does not mean, however, that it is impossible or useless to identify and punish certain individuals,
often public officials or company managers that are culpable for making key decisions (see Young 115-6).
structural injustice. Instead, it “expresses a spirit of resentment, produces defensiveness, or focuses people more on themselves than on the social relations they should be trying to change” (114). The insistence on “who dunnit,” the causal responsibility of the individual (as in criminal law), and the victim-perpetrator framework even absolve many persons who contribute to it by their “normal” and ordinary actions from bearing responsibility (100).

“Political responsibility” is, then, precisely a way to address the form of responsibility of those persons who participate in the structural processes of injustice without being legally or morally culpable. Building on Arendt’s view, Young construes political responsibility as a form of responsibility that is not moralistic (guilt- or blame-driven), but one that a person shares with other persons to engage with the ongoing production of injustices in order to transform the structures producing those injustices. It is forward-looking, transformative, and discharged only collectively, through collective action, because a single individual cannot effect a change at that level. It encourages a collective engagement with the common world, the commonness of the past and of the future. I believe that it is in this light that we need to think of the responsibility of Bogdan Kowalski and other persons, who vicariously, indirectly, and normally participated in the operation of the communist state’s security apparatus.
CHAPTER FIVE  THE POLITICS OF HISTORY, VICTIMHOOD, AND TRUTH-TELLING

I observed [Lech] Wałęsa on TV, speaking incomprehensibly, irrationally, and with little cultural sophistication. I wondered whether this man with such mentality and manners of speaking could – as he claims – ever overthrow communism and be a secret collaborator of the SB [the communist-era secret service]. I wanted to discover the truth about Wałęsa, because only the truth is interesting.\footnote{Paweł Zyzak, 1 April 2009}

The IPN [Institute of National Remembrance] monstrously injures the Fatherland, steered by irresponsible hands that do not serve Poland. It destroys Polish heroes and patriots and is worse than fascists, who at least murdered their enemies, not their friends.\footnote{Lech Wałęsa, 1 April 2009}

Something has changed between Lech Wałęsa’s autobiography from the late 1980s A Way of Hope (1990) and his recent one, The Third Republic. I Lost My Patience! (2007).

After the publication of the 25 year-old historian Paweł Zyzak’s book, Lech Wałęsa: Idea and History (Lech Wałęsa: Idea i Historia) in March 2009, Wałęsa broke into tears in front of the cameras. The old working class hero and former President said he would return all the awards and medals the new state had given him, and emigrate from Poland for good. His daughter initiated a civil lawsuit against the publishing house to prevent the book’s further publication. She claimed that the book, using an aggressive, defamatory language, morally and psychologically injured them and violated their right to their “good name” (dobre imie).

Hours before the court hearing, different Polish media agencies gathered by the door of the courtroom at the district court of Kraków. None of the court proceedings that I observed ever garnered such attention. Wałęsa and his daughter did not attend the

\footnote{http://wiadomosci.onet.pl/kraj/zlikwidujcie-ipn/rcdhz} (last accessed February 18, 2015)
hearing, as the entire legal process was marked by the following paradox of publicity:
since the book was still available for purchase at the bookstores, the court proceedings
aggrandized further its publicity and contributed to the circulation of the most harmful
words and passages of the book in the media. The defendant responded to the claims of
injury by invoking the right to “free speech” (wolność słowa) and “freedom of academic
research” (wolność prowadzenie badań naukowych). Pointing to Wałęsa’s and his
daughter’s absence, the lawyer argued that their injury could not be as bad as they
claimed, for they did not even bother to appear before the court.

What were those contested words and passages out of the 624 page long so-called
“political biography of the legendary leader of ‘Solidarity’”? Here, I do not want to
reiterate them to avoid their further reproduction. They were, of course, about sex and
romance, broken hearts and blind alleys not publicly excavated earlier. The teenager
Wałęsa’s conduct became the main focus of the media and court proceedings no less than
his alleged secret links with the SB. In fact, Zyzak claimed that the discovery of Wałęsa’s
adolescence constituted the real strength of his research, as it supposedly threw important
light on the character of the future President of Poland. That said, let me briefly refer to
some of those “discoveries,” which the court cited and examined at length, to offer a
sense of the issue. This discussion will illustrate some of the intersections of lustration
and history writing in Poland.

The court cited the following passage from the book to assess the meaning of
those “facts” about Lech Wałęsa’s life:

The neighbor of the brigade worker, the former director of the State
Machinery Association (Paitswowe Ośrodku Maszynowe) said that Lech
was certainly not an “angel.” He notably differed from other boys who
finished the Technical School in the village of Lipina... There, the faithful
boys lived quietly…. From the beginning, Wałęsa sat on the wall with a beer and constantly contemplated. The villagers soon began calling him “wall-pisser” (obszczyrmurek) (emphasis original) (2009, 49).

This was not the only passage where Wałęsa appeared in the book as a transgressor of some sort, either too outgoing when the boys were calm, or too introverted, sitting alone in the Youth House when the boys were out there to have fun. His transgression also involved blasphemous acts and an anti-clerical attitude. When the court inquired about the evidentiary source, it turned out that most of Zyzak’s claims relied on the oral history interviews he had conducted on the whereabouts of Wałęsa, rumors of villagers and Wałęsa’s old classmates and co-workers he had unearthed, and conversations with some anonymized interlocutors who wanted to remain unknown, fearing a vehement retaliation of the former President.

The court summoned three history professors as expert witnesses. They all had directed Zyzak’s master’s thesis, on which his book was based. The judges’ relentless inquiry about the methodological standards of scientific historical research produced no result. Oral history, witness testimonies, confidential sources of information, and usage of fiction films, the historians stated, had been well-established research practices, especially in the West, for instance, in studies of the Shoah. So they must be applied in Poland as well, the witnesses suggested. The historians said that the great number of sources that Zyzak had used in his research also made it impossible for them to verify all the sources. The judges were visibly perplexed by not being able to establish an objective criterion to evaluate the book. As for the determination of the moral and psychological injury caused by the book, there was also no sufficient material evidence.
Yet, the court prohibited the further publication and distribution of the book. In contrast to its generous references to Wałęsa’s alleged collaboration with the SB, the judges found fault with the fact that the book did not mention that the IPN had already issued Wałęsa an official certificate for his victimization by the SB. He had been earlier lustrated negatively. How could scientific research exclude such an important legal fact that had been established by Polish legal and state institutions, inquired the judges. After the hearing, a representative of the publishing house heatedly told me how the decision was another act of political censorship. There were still too many taboos in Polish history. She said Zyzak had to leave for the U.S., victimized by the political and academic elite, who would not give him a job in Poland, because they did not want the truth.

**LUSTRATION AND “HISTORICAL POLITICS” (**POLITYKA HISTORYCZNA**)**

Truth, victimhood, and historical knowledge, these are the main themes I will explore in this chapter. I will examine how these themes are articulated and vehemently contested in the context of the lustration law’s practices and public accusations of betrayal. While this chapter will continue my analysis of the social-political struggles for hegemony through and around law, it will also focus on truth-making, truth-telling, and epistemic practices. Specifically, I will explore the social dynamics of publicity, scandal, and rumor, as well as the political games of knowing and strategies of producing a popular desire to know. In this respect, the problems with the IPN archives — their highly disputed management, restricted public access, and the destruction of a number of files — are of central importance. Finally, by focusing on the protests around the lustration of media and higher education institutions, I will explore how these institutions function as a terrain of
struggle in the reproduction of class relations of power, as well as in the rightwing populist mobilization against the dominant political bloc.

Let me start from the final point. As mentioned above, the conflicts around Paweł Zyzak’s book raised crucial questions about the standards of proof and the boundaries of privacy allowed for public figures such as Lech Wałęsa. I will explore these questions later in this chapter. But those conflicts also raised another point: how could a publication of that sort by a junior historian produce such a strong effect? What is of the structure of power that makes possible the production of that effect in the first place?

From the beginning, the real stakes of the conflicts around the book were obvious to many people. Zyzak was a young activist of the rightwing “Law and Justice” Party (PiS) that had been rallying around radical lustration projects. Wałęsa had been a major figure in their political narrative. Indeed, Zyzak openly implied in the title of the book that Wałęsa was an idea and history to be deciphered. He was never what he was, representing the mysteries and treacherous foundations of the new state. The book kept referring to Wałęsa’s links with the successor secret service (UOP), which in the early 1990s “cleared” (czyścił) the state records on him, including those relating to his adolescence (e.g., 47, 45-48). But he was not even a ‘good’ collaborator; it was supposedly the SB that broke off with Wałęsa, realizing that he had been informing for money and making up things to sustain their interest. Moreover, Zyzak appeared intrigued, to put it mildly, by the ties Wałęsa’s family members had with various communist state organizations (e.g., rural youth organizations) as if these ‘intimate’ ties revealed something decisive about Wałęsa’s future career and complicity.

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But what the book most profoundly revealed, in my view, is not so much the unknown secrets of Lech Wałęsa’s life, most of which, in any case, were hardly new. It is rather Zyzak’s and his social-political circles’ own assumptions about social class and national history. It is the irony of history that Wałęsa’s widely praised speech skills, which had deeply moved tens of thousands of industry workers at critical moments of the struggle against the communist state and competed only with the well-crafted public speeches of Pope John Paul II (Kubik 1994), has become a sign of “low intelligence” and “low culture” for people like Zyzak. It is true that the jokes about Wałęsa’s style of speaking are widespread in today’s Poland, as many people seem disappointed with his conduct as President. Yet, Zyzak’s derogatory remarks, combined with his unsympathetic description of Wałęsa’s ordinary peasant and worker life as a student of technical school and later an electrician, who was not born anti-communist, but lived a life in the countryside through its institutions (collective farm, schools, dormitories, and workplaces), all these supposedly disturbing ‘realities’ of Wałęsa’s character, in fact, showed Zyzak’s class biased archaeology of betrayal. They also showed how lustration worked through a biographical excavation of rumors, conversations, and field trips much in the spirit of the secret service.

I am not saying that Zyzak is alone in holding these views or undertaking such lustration. As mentioned in earlier chapters, issues of the working class and the language of class in general have been largely silenced and elided from the postsocialist public discourse because of their undesirable ‘leftist’ connotations. The peasants and workers were generally considered as a ‘redundant’ population inherited from the past. In the 1990s, the new national historiography had gained an explicitly elitist character,
resurrecting pre-war aristocratic family histories and the private histories of landed gentry, or celebrating the heroic fight of dissident intellectuals against communism (see also Poenaru 2013). If the private property regime was restored as the symbol of democracy and freedom after 1989, the life stories of property-owners also gained renewed attention (Jakubowska 2012). Moreover, the 18th century tradition of “gentry democracy” was invoked and the old myths ascribing a leading visionary role to the intelligentsia were revived. “Solidarity” and Lech Wałęsa had become the key references in the founding narrative of the new capitalist democracy.

Yet, similar to what Ranajit Guha (2000) famously observed for postcolonial India, the liberal-nationalist elite of Poland also failed to speak for the nation. Not only had there been an often-noted political apathy, but also the fragmented, yet persistent protests of workers and peasants called into question the newly emerging order. As mentioned earlier, the main challenge to the dominant bloc of ex-dissident liberals and ex-communists had come from the rightwing nationalist elite, who employing an anti-elitist language sought to organize the anger of the popular classes and speak for the nation in the language of moral decay and treason.

The contentions around Zyzak’s book on Lech Wałęsa were, then, largely a product of this longstanding struggle for hegemony between the two blocs of power. And it was not the first book that claimed to expose Wałęsa’s links with the SB. Zyzak, in fact, heavily relied on the work of Piotr Gontarczyk and Sławomir Cenckiewicz (2008), which arguably offered the most elaborate analysis of Wałęsa’s links with the secret services and prepared the ground for Zyzak’s book. Their book already had stirred much controversy about how the SB might deliberately have produced false information about
Wałęsa in the 1980s to divide the political opposition; how Wałęsa might later have been blackmailed by former SB officers and agents of Moscow. But Cenckiewicz and Gontarczyk also had been criticized by veteran oppositionists for treating the SB files as an “absolute” source of evidence, which they took to reflect the truth as it was.137

I want to underscore that both Zyzak’s and Cenckiewicz’s and Gontarczyk’s work on Lech Wałęsa must be seen as part of a broader nationalist historiographical tendency. Piotr Gontarczyk is an eloquent spokesperson of that tendency. At a meeting organized by the University of Warsaw students, which I attended, he said the following. Historical research, he stressed, was inherently political, providing a knowledge of actors and events, “who is who” (kto jest kim) today. Such was the essence of what he called “historical politics” (polityka historyczna), the term commonly used by certain conservative historians in Poland. Historical politics, he said, helped form a national political community and foster patriotism, which had been disparaged by the dominant elite. But historical politics was also about state security. “Today we do not have everything. Some of the papers that are supposed to be at the IPN archives have been destroyed, but Moscow must have them.” Historical politics was about lustration, that is, “clean politics” (czysta polityka). There was no true lustration until the PiS made a new law in 2006-7, he claimed. Ex-communists, dissidents, and the legal elite all feared lustration. The professors at the universities did not want to settle accounts (rozliczyć) and did not even respond to him. But “I will be waiting here for another 20 years….The young people,” said Gontarczyk looking at the students in the room, “you are our

137 See Igor Janke “Historycy na Froncie” (Historians on the Front), Rzeczpospolita 7-8 czerwca 2008, A15-A17, where ex-dissident Aleksander Hall claimed that the authors “absolutized the sources generated by the communist-era security apparatus and looked at the world through the lenses of the security (bezpęka).”
missionaries.” Later, he went on to denounce the controversial book of Jan T. Gross, which described how Polish people actively participated in the pogroms during the Second World War to plunder Jewish people’s property. Gontarczyk blamed him for “falsifying history” and launching a sinister attack on the Polish nation.\textsuperscript{138}

This was then how the historical politics advocated by the highly influential young historian and deputy director of the Central Lustration Bureau looked. Even if Gontarczyk may be one of the most radical, it is in this light that the moral-political orientation of (young) rightwing historians needs to be seen. It is a blend of national victimization (which Gross’s study contradicts) and a search for national sovereignty through purification and expulsion of the contaminated elements from the national body. As we will see below, many of the IPN historians have played an important role in the lustration trials, materializing the close ties between lustration examination and historical research.

What is the effect of this historical politics on the public perception of the persons named as communist agents? Though limited, the public polls about Cenckiewicz’s and Gontarczyk’s book \textit{SB and Wałęsa} provide a useful insight. Notably, a poll conducted by the CBOS indicated that the respondents who showed most interest in the accusation of Wałęsa’s collaboration consisted of men between 45 and 64 years of age, residents of large cities, with the highest education and income (e.g., managers, intellectuals, and private entrepreneurs); the least were “practicing-religious” respondents.\textsuperscript{139} Those who had no idea about the issue were the oldest group of people, with the least education and lowest income, especially the unemployed and unskilled workers. Curiously, it was also

\textsuperscript{138} Fieldnotes February 21, 2011 University of Warsaw.
\textsuperscript{139} See the poll (in Polish): \url{http://www.cbos.pl/SPISKOM.POL/2008/K_120_08.PDF} (last accessed 15 August 2015)
the latter group, especially the female rural poor that expressed the most critical views about Wałęsa. According to the polls, these people often identified with a “leftist outlook.” Wałęsa’s sympathizers were largely the residents of large cities, high and mid-level industry workers, private farmers, and entrepreneurs, who voted for rightwing political parties. To this end, the findings look hardly surprising, suggesting that Wałęsa has been largely embraced by the factions of the ‘new’ aspiring urban, liberal, and conservative ‘middle class,’ while attracting the antagonism of mainly the rural poor and dispossessed classes. Recall that Zyzak conducted his controversial interviews in the rural areas.

What is also remarkable is that almost half of the respondents thought that Wałęsa’s later life as an oppositionist and “his service to Poland” “invalidated” (unieważnić) his earlier alleged collaboration in the 1970s. Only 9% of the respondents stated that Wałęsa was a “longstanding and conscious SB agent, causing harm to his friends and colleagues.” What is no less striking is that more than one third of the respondents were unable to give a “yes/no” answer to both of these questions. In fact, this inability to evaluate or take a clear-cut position was quite widespread. For instance, with respect to the evaluation of the evidence presented by the book, only 20% of the respondents thought that the evidence was “authentic copies of SB documents” (mostly, the electorates of the PiS); 37% agreed with Wałęsa, who claimed that the material in his file had been largely retroactively fabricated (sfabrykowane) by the secret service to use it to divide the “Solidarity” movement. The majority of the respondents (43%) could not agree with either of the two positions. The evidence had left them lingering in ambiguity.

140 Furthermore, 45% of the respondents said, Cenckiewicz and Gontarczyk, above all, intended to compromise Wałęsa and become famous; 22% agreed that the book aimed to disclose the truth. Almost one third of the respondents were unable to evaluate the aim of the book.
Still, two thirds of the respondents indicated that the revelations had not affected (wpływ) their relation (stosunek) to Lech Wałęsa.

What thus emerge out of these findings are the following questions: Why did the seemingly devastating ‘revelations’ about Wałęsa meet such widespread indifference or skepticism? What explains the large number of respondents who were not able to express an unambiguous position on the issue of collaboration or the evidence presented? What were the sources of ambiguity and how did that ambiguity function socially and politically? Below, I take up these questions.

**ARCHIVE, VICTIMHOOD, AND THE SCANDAL OF NAMES**

The suspicion about the content of the files has a long history in postsocialist Poland, marked by a series of scandals and unresolved accusations. Certainly this history should have influenced the social perception of the work of Cenckiewicz and Gontarczyk and that of Zyzak. In that history, agent list scandals and volatile social-political struggles around lustration have occupied a central place.

The state-run Institute of National Remembrance (IPN) has been an integral part of the struggles around the files. Curiously, this institution that was given the mandate to institute Polish patriotism and prosecute the “crimes against the Polish nation” has come to be accused of betraying the Polish nation. For instance, Zyzak’s position as a researcher at the IPN notably implicated the institution. His book caused a steep decline in public trust in the archival institution. Similarly, Piotr Gontarczyk’s peculiar position at the IPN – his double role as the historian and deputy director of the Lustration

141 To my knowledge, there is no public poll focusing on the public perception of Zyzak’s book. The only related poll is the one about the IPN, which indicates a sharp decrease in the public appreciation of the IPN’s performance after the publication of the book. See the CBOS poll: [http://www.cbos.pl/SPISKOM.POL/2009/K_058_09.PDF](http://www.cbos.pl/SPISKOM.POL/2009/K_058_09.PDF) (last accessed 15 August 2015)
Bureau – had been subject to criticism. The exchanges between the research department and lustration posed perplexing questions about the impartiality of the lustration examination, hinting that the historians, operating beyond the legal procedures set by the lustration law, could participate in the “semi-criminal and politically sensitive investigation related to lustration” (Stola 2012, 53). This also affected the kind of research undertaken by IPN scholars, confining them to what Carlo Ginzburg (2002) calls the judicial mode of historiography. Thus, most research concentrated on naming individuals or groups and on events, which can be attributable to certain individual motivations and actions. During my field research, I observed on many occasions the deep concern of IPN employees for being associated with that type of research or with the controversial issues of lustration.

Some of the problems with the IPN had been of a structural nature. Since 2006, the IPN has brought together a number of functions, hosting the archival, education, and research departments, as well as the lustration offices and a special “Commission for the Investigation of Crimes against the Polish Nation.” In comparison to other state archives and research facilities, it had a generous budget and a special autonomous position that was supposed to shield it from party-politics. Yet, the fact that its head and board members were appointed by the parliament every five years had exposed the IPN to bitter party-political struggles.142 The institute “towered above the much poorer academic landscape,” monopolizing the means of knowledge production and publication on the recent past and flooding the market with its hundreds of subsidized books and exhibitions (Stola 2012, 55).

142 Indeed, it was during the rightwing PiS-led government (2005-2007) that the IPN most dramatically expanded its size and drew public investment in its infrastructure (e.g., archival collections, computers, and the staff).
The IPN also had been troubled by the tasks of regulating the public access to the archives and issuing victimhood certificates. According to the law on the IPN (1998), only certified victims and journalists and researchers with special permissions could access the archives. Indeed, the unclear margins of the IPN’s discretionary power to decide on permissions and regulate access had been an object of much heated criticism. But the restricted public access largely stemmed from the game of risk and the procedure of confession inscribed at the heart of the lustration process. The process had been explicitly structured around uncertainty. The prominent IPN historian Antoni Dudek observed, “the lustrated person risked (ryzykuje) in the process, as she was not supposed to know if she had documents or not. Imagine that the person who was going to file a lustration statement came to the IPN and asked for a victimhood status (status pokrzywdzony). She would then learn if there were documents on her and would file her declaration accordingly. The law aimed to prevent this.”\textsuperscript{143} The person who was subject to lustration was not supposed to inquire about the documents. In brief, non-knowledge of the subject and unconditional “truth-speaking” (prawdomówna) were the fundamental elements of lustration.

The IPN had received many applications from a variety of people who hoped to qualify for a victimhood certificate. Issuing such a “moral document” (dokument moralny), Dudek said, had placed the IPN in the difficult position of judge. Many applicants became upset when they did not qualify. A senior IPN archivist, Maria Konieczna, told me about the difficult problems they had had to face: “People came here and asked for the status of victimhood for things like distributing handouts or putting up a poster. It was pretty painful to decide what to do, as in many cases when we checked

\textsuperscript{143} Personal communication with Antoni Dudek, 29 April 2009 in Warsaw.
these people’s statements with the archival documents, we couldn’t find any
information.” It was not only that some of the applicants may have somewhat
overestimated what they had done in the opposition, or the reach of the secret service,
which was supposed to record just about anything; until recently, the archives were not in
good shape. The accumulation of documents and their reorganization was a huge labor-
intensive job. Besides, the documents from the 1970s and the 1980s were slowly
disappearing because of the cheap quality of the paper, so the archivists urgently had to
digitize them. Unlike in the previous decades, the communist state at that time began
economizing on paper, no longer treating its documents as solid and immortal as it did
before. The cheap paper, Konieczna suggested, reflected the increasingly fragile power
and ideology of the communist state. But fortunately, she said, the 2006 amendments on
the IPN law eliminated the category of the victim: “no victims, no problems (Nie ma
ofiarów, nie ma problemów),” she put it sarcastically.144

Why had people wanted to obtain a victim certificate? Why had they wanted to
see the files compiled on them? To be sure, there were many different reasons, some of
which I already discussed in previous chapters. Lech Wałęsa got his victimhood
certificate in 2005 during the 25th anniversary of the “Solidarity” movement, which, as
we have seen, was used by the court as legal evidence to evaluate the intention of
Zyzak’s book. There were also well-known oppositionists who did not apply for such a
certificate. There were less known oppositionists who wanted to obtain the certificate to
show it to their family members and friends. In their social circles, they valued the
recognition they had received from the ‘new’ state. Curiously, the power they had
denounced seemed to have symbolically empowered them after 1989. But I also know

144 Personal communication with Maria Konieczna, 15 April 2009
about cases in which it was the young child, especially the son, who pushed his parents to apply to the IPN in order to gather documents, obtain a certificate, and discover the informers. The documents and the question of “who is who” seemed more important for the son than the person targeted by the security apparatus. The ex-secret documents and victim certificates seemed to have turned into a peculiar source of self-fashioning and self-empowerment in the postsocialist era.

But we need to be more precise about this question: How was the desire to see or know about the files socially produced? Through what mechanisms had the files become a popular object of curiosity and truth in spite of the persistent criticisms of and skepticisms about their incomplete and misleading content? Focusing on the scandal called the “Wildstein List” (lista Wildsteina) scandal will throw some light on this question. Spread over January-February 2005, the scandal was particularly effective in creating popular desire for lustration and the truth that was to be revealed by the IPN files. The scandal also had important consequences for the IPN archivists’ work. Moreover, the Wildstein List crystallized the socio-legal effects of a particular type of approach to the security files, which was common among the rightwing nationalists rallying around radical lustration projects.

As mentioned in earlier chapters, the aftermath of the spectacular fall of the ex-communist (SLD) government under the weight of infamous corruption affairs was marked by a radical rightwing mobilization. The themes of national cleansing and claims to moral purity gained a special currency in the increasingly tense atmosphere. The eve of the scandal saw contentious discussions about the moral right of the victims, who publicly denounced the deciphered secret informers appearing in their files. The existing
law on the IPN did not impose any restrictions on what the person (journalist, researcher, and victim) may do with the information provided by the IPN. The legal regulation of “private denunciations” became an urgent problem, as there was no public institution that bore responsibility for such denunciations.

In this context, the influential anti-communist journalist Bronisław Wildstein advocated for the moral right of the victims to identify and denounce the persons who had betrayed them. He had been critical of the ‘dysfunctional’ and ‘unreliable’ court proceedings, which tended to take a long time and at times acquitted the accused because of evidentiary problems. Unlike the professional archivists and historians of the IPN, Wildstein often claimed, the legal personnel (e.g., judges and lawyers) did not know how to read the IPN documents. In his view, the archival institution without any outside interference should be able to compile a catalogue of names and publish it on its website. If anyone wanted to object to IPN’s verification, he or she could then apply to the court. The exposure of the agent names, he argued, would satisfy the people’s “basic feelings of justice,” but it was also a citizenship right: every citizen had the right to know those who represented them (2008: 71-81). After the exposition of “who is who,” the people could freely decide and make their own judgments whether they want to be in touch with or vote for that person. This was the vision of historical justice and truth through which Wildstein and other anti-communist nationalists justified their radical lustration projects.

The Wildstein List exploded like dynamite. “Line for the file” (Kolejka po teczki, Gazeta Wyborcza, 4/2/2005), “The IPN under siege” (IPN w stanie oblężenia, Rzeczpospolita, 4/2/2005), “Lustration Tsunami” (Lustracyjne Tsunami, Gazeta Wyborcza, 7/2/2005) were some of the news headlines that referred to the popular uproar
following the publication of a list of 240,000 names leaked from the IPN archives in January 2005.¹⁴⁵ The list lumped together indiscriminately in alphabetical order the names of different categories of people registered by the SB: security officers, “secret collaborators,” and “candidates” of collaboration—those whom the SB aimed to recruit, many of whom had been targets of covert operations. It was not possible to determine from the list whether the recruitment of these candidates was ever realized, or if these candidates actually ended up cooperating. It was also not possible to know what those “collaborators” had done. Besides, there were those people registered by the secret service under one category or another without their knowledge. The list was essentially a reproduction of the lists prepared by the secret service for its own purposes. Most of the names were not verified with the IPN archives before their public exposure. And some turned out to be not even verifiable, because the archival institution had no documents concerning them.

All the names met each other on the flat screen of a few websites, where the list made its public debut. Later it descended into the blackmarket on dubious CDs for those who did not have internet access at home. A number of people applied to the IPN to find out who really was on the list. Only a few days after the media news about the list, the IPN received more than a thousand inquiries, and in the following two weeks about ten thousand. The bombardment of names subjected thousands of people to the jurisdiction of the IPN and lustration. With a sudden burst, the scandal, as it were, created a community of files, self-righteous detectives, lustrators, and self-lustrators, who would otherwise not be subjected to such examination. One had to know what was in the IPN, because until proven innocent, anyone who had their name on the list was a suspect.

¹⁴⁵ See Gokariksel (2013) for a more detailed discussion of the Wildstein List.
Working under a tight schedule, the IPN categorized the applicants under two broad categories: victims and non-victims. Victims were those who were targeted by the secret service and only they were allowed access to the documents. The rest of the applicants were called non-victim, a status which did not qualify for access and drew suspicion. The non-victims included also those who did not have files. The IPN had to search the entire archives and produce an unambiguous response in a short period of time. But faced with thousands of inquiries, this was like wishing for the impossible. Many archivists I talked to during my field research recalled this period as dreadful.

Furthermore, there were not sufficient legal remedies for the injury caused by the list, or effective legal means to dispute the IPN’s swift decision about one’s application. The only available option was to apply to the administrative court. Yet, this court was only concerned with the question of whether the IPN followed the stated procedure of verification, but not with how the IPN interpreted the documents found in the archive. Thus, the entire lustration process had become _de facto_ an administrative process. The Helsinki Human Rights Foundation lawyers closely engaged in some of the legal cases, which after spending long years in the dizzy traffic of legal procedures had ended up at the European Court of Human Rights. The lawyers underlined that according to then-existing Polish law, it was not possible for the bearer of the name to bring a civil lawsuit, for instance, for violation of personal rights, such as reputation or public slander regarding collaboration with the SB.

Wildstein did not bear any legal responsibility for the injuries the List had caused or for walking out of the IPN archives with the list in his possession. On the contrary, his so-called sacrificial act elicited support from various rightwing nationalist groups. Nor
did Wildstein ever publicly express any regret for the incident. Instead, he often argued that the victim of “communist crimes” had every right to know “who is who” and democracy required transparency, accountability, and the moral cleansing of the new nation from corrupt communists and their liberal allies. As he often remarked, “The nation has the right to know about itself” (*naród ma prawo do prawdy o sobie*) (*Gazeta Wyborcza*, 31/1/2005).

The social consequences of the Wildstein List were pervasive and long standing. The scandal created inconclusive suspicions and irresolvable ambiguities, which many concerned people (often without access to the documents) had to bear in solitude. One was, as it were, thrown into an expansive space of indefinite waiting, indirect defacement, and indistinctive judgment, which was not fully answerable by the existing legal procedures. A great disparity emerged between the temporality of the scandal and its institutional handling. It became crystal clear that the slow legal proceedings were of no match to the sudden flash of the scandal. If it is true that Wildstein aimed to accelerate and expand lustration by removing the complex and contingent judicial procedures, he had succeeded, at least in the short run. The scandal increased the lustration’s and IPN’s publicity, subjecting masses of people to the archival institution’s evaluation of their pasts.146 Lustration practices had expanded horizontally and involuntarily. Through various forms of intimidation, suspicion, and fear, the List had forged a popular desire or ‘obligation’ to know one’s and other persons’ ‘secret truths’ to be revealed by the files.147

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146 See the public poll conducted by the CBOS about the consequences of the Wildstein List: [http://www.cbos.pl/SPISKOM.POL/2005/K_056_05](http://www.cbos.pl/SPISKOM.POL/2005/K_056_05) (last accessed 15 August 2015). However, in the long run, the Wildstein List defamed the idea of lustration.
147 The Wildstein List scandal express some of the dynamics Sally Merry observes for the gossip and scandal in urban and rural societies. She suggests the “impact of gossip and scandal is greater when it has the potential of producing a community consensus that can be converted into a variety of collective action
“TRANSPARENCY MUST HURT”

The Wildstein List scandal needs to be seen in the context of the rightwing populist mobilization of the mid-2000s. It was at this moment that the centers of hegemony were shifting toward the Right and a number of unfulfilled social demands and discontent (e.g., political impasse; economic crisis, oligarchy, and corruption; dwindling popular sovereignty; unaccountable communist-era state violence) became forcefully articulated by the radical nationalist discourse of purification and rebuilding a ‘healthy’ national capitalism. The Wildstein List scandal was part of the national-bourgeois formation, a war of small ‘home-grown’ capital against big ‘cosmopolitan’ or foreign finance capital, linked to the EU. As is typical of populist mobilizations, it was framed as the struggle of ‘the multitude of powerless versus the powerful’ few (see Hall 1988; Laclau 2005). What I want to highlight for our present discussion is, however, how the scandal’s cultivation of a desire to know ‘from below’ produced a popular demand for the imposition of law and order ‘from above,’ a radical lustration project.

In this nationalist mobilization, the language of transparency or the right to know, as we have seen, had been prominent. Certainly, this language, as social studies suggest, is in itself as indeterminate and malleable – invoked by all sorts of movements and political positions on the Right or the Left – as that of human rights (see e.g., Ballestero 2012; Hetherington 2011; Merry 2009). Studies also highlight the paradoxical production of suspicion by many self-proclaimed transparency projects across the world (see e.g., Sanders and West 2003). Here, I am not so concerned with such paradoxes, unintended consequences, or the question of whether our modernity is indelibly marked by the

such as public shaming, ridicule, expulsion, or death.” It is also “greater when normative consensus about the behavior in question [e.g., the act of collaboration] is more extensive” (1997, 69).
restless dialectic of revelation and concealment, by the unfathomable depths or failure of total mastery of oneself and the world by secular knowledge and truth. Instead, the question I want to focus on is this: how is it that the accusatory language of transparency and publicity has become so central and useful or effective in populist mobilizations under the conditions of liberal democracy?

Pierre Rosanvallon’s study Counter-Democracy (2008) offers some insight. To understand the phenomenon of increasing voter apathy and decline in popular trust in elected representatives in the West, he investigates the historical citizenship practices through which distrust has been socially organized. For distrust, he argues, is not the exception, but the rule in the history of liberal democracy. He identifies three major types of practices for the organization of distrust: oversight (citizens act as watchdogs of elected government), rejection (citizens act as veto-wielders), and accusation (citizens act as judges). When the government’s responsiveness to citizens declines and a political impasse sets in, suggests Rosanvallon, negative coalitions and accusations, what he calls the “democracy of accusation,” begin ruling the day (16). Populism, he argues, takes this central problem and set of citizenship practices (e.g., popular vigilance, accusation) to a “pathological” extreme. It claims to “resolve the problem of representation by conjuring up an image of a unified, homogenous people […]” Populists denounce “otherness” in moral terms (by vilifying the “corrupt” and “rotten”), in social terms (by condemning “elites”), and in ethnic terms (by attacking “foreigners,” “immigrants,” “minorities”) (266). Indeed, populism, notes Rosanvallon, can be seen as the “power of oversight turned against itself” (270). It is marked by “hopeless, bitter, and violent denunciation,” around which “negative masses” unite. Rosanvallon’s description of populism becomes
even bleaker, as he detects how populist movements swallow up the supposedly positive citizenship practices of judgment:

[T]he image of the court as a theater of reasoned argument and expert opinion has been transformed by populist movements into a theater of cruelty or circus. As a result, the very essence of power has been criminalized and ridiculed. All civic activity is reduced to accusation…The state is reduced to its prosecutorial and law-enforcement function, as if this were its only democratic manifestation. The vindictive populist people-as-judge shows little concern for distributive justice, for weighing the various feasible means of achieving greater equality. It suspects the beneficiaries of the welfare state of fraud and lumps them together with immigrants both legal and illegal. The only justice in which it is interested is the justice of repression, punishment, and stigmatization of those whom it condemns as “undesirables” and “parasites” (272).

One does not need to fully subscribe to Rosanvallon’s idealistic image of “the court as a theater of reasoned argument” or his rather stark views of populism as a “pathological” phenomenon to appreciate what his account reveals about the scandal of the Wildstein List. The denunciatory or accountability politics pursued by Wildstein and other nationalists resonates well with the peculiar transformation of ‘well-meaning’ citizenship practices into a kind of theater of cruelty and the justice of stigmatization. Moreover, the kind of violence exercised by the exposition of names or lustration in general was, in fact, never denied. The question was rather to what extent that suffering was deemed necessary, and for whom.

In a public discussion between eminent Polish historians, tellingly titled “Transparency must hurt” (Jawność musi boleć), Antoni Dudek expressed the view common to many proponents of the Wildstein List and lustration. He argued that given

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148 There is also the difference that unlike in most cases of rightwing populist mobilization, the ‘enemies’ in this case were not immigrant workers or poor, marginalized segments of society. They were the factions of the dominant class.

149 Available at: [http://www.archiwum.wybory.pl/Archiwum/1,0,4289842,20050205RP-DGW_Jawnosc_musi_bolec,.html](http://www.archiwum.wybory.pl/Archiwum/1,0,4289842,20050205RP-DGW_Jawnosc_musi_bolec,.html) (last accessed 15 August 2015)
the condition of half-destroyed archives, the exposition of the names was never an easy task and would inescapably inflict suffering on some innocent people. It would have some social costs, but for the truth, that violence was necessary. As for the names disclosed by the Wildstein List, Dudek invoked a personal example: “There are also three Antoni Dudek in the List, but it is fine with me. What are you really worried about? If you did not have something to hide, you would not be worried.” To which Andrzej Friszke responded, “You are too young to be worried.”

As I discussed earlier, the idea that worrying is a sign of secret guilt has been widely shared by the anti-communist proponents of lustration. It found one of its strongest expressions in the words of a sociologist Andrzej Zybertowicz, who claimed that the Wildstein List, in fact, performed a therapeutic function. The weak and the broken, he claimed, were unable to admit the truth, having lost their moral capacity under communism to tell the truth. With the Wildstein List, they were now given the chance to expiate their sins and guilty conscience and ‘come out’ clean. Such purification was necessary not only for individual redemption, but also to clear society of the “pathological” elements and rebuild a normal, morally pure, corruption-free nation. It is important to underscore that for all these rightwing intellectuals, including Wildstein, the victim of communism in whose name they spoke and to which they equated the Polish nation had the absolute moral right to exercise violence even if this might produce a few thousand ‘collateral damage.’

As we will see below, this language of collateral damage has been often invoked to morally justify the accusations that wrongly implicated people. Before moving to that discussion, however, I want to highlight one more point about the transparency claims
central to the accusations and ‘revelations’ from the archives. That is the historical role and structural location of the secret in the formation of the modern normative idea of publicity. This idea has been particularly promoted by the groups that embrace the tenets of parliamentary democracy, especially the view of electoral voting as the expression of moral judgment and choice (recall also Wildstein’s vision of truth and justice).

As Jodi Dean (2002) cogently discussed, the norms of publicity, central to Enlightenment thought and modern concepts of the public sphere, public opinion, and reputation (e.g., John Locke, Jeremy Bentham, and Jurgen Habermas) relied on an idea of the secret, against which they conceived a “unitary public,” defined by the democratic features of openness, critical attitude, rational discussion, and freedom of expression. The “lure of the secret” or the promise or “fantasy” of full disclosure played a key role in the growing popularity of these redemptive approaches to information – as if the only thing that is needed for an egalitarian-emancipatory democracy was simply more (access to) information.

In a similar vein, Reinhart Koselleck (1998) highlighted the historical role of the secret (secret society and knowledge) in the cultivation and self-disciplining of Freemasonry—which notably contributed to the formation of a critical bourgeois public, including intellectuals, literary circles, and the ‘new riches’ excluded from political power—against the absolutist state. The secret existence of these groups, seemingly withdrawn from the political society, had constituted the condition of possibility for their emergence as a critical public that had the capacity and authority to pass moral judgments against political power. Their secret society and knowledge of things was not considered to contradict the idea of open bourgeois society.
With regards to lustration, the secret also had an indispensable location. The existence of secret communist agents ‘in our midst’ had made possible the invocation of different type of publics or counter-publics against the secret. It arguably made little difference if the existence of the agents corresponded to real living persons, some documentary traces, or rumors. In fact, the ambiguity materialized by the missing files provided even more fertile soil for the political reproduction and management of suspicion, which already had been there as an essential part of modernity, be it socialist or capitalist.

The discussions following the Wildstein List highlighted the relationship between secrecy and truth. The deeper the secret, the more truthful it was. The truth-value of the SB/IPN files had been disputed in many arenas, including the court, media, and historical scholarship. On different occasions, the former SB officers gave interviews and court testimonies, revealing their conspiracy tactics of falsifying names and manipulating information. Their statements were not sufficient, however. Antoni Dudek suggested in the aforementioned conversation, “Transparency must hurt,” that for the act of falsification to be true, there must still be evidence in the archives. The registration records that the SB had prepared for its own uses must reveal the truth about SB’s secret intentions. In other words, Dudek, like many other historians and prosecutors, argued that at some point, the notoriously deceptive secret service must be able to tell the truth to itself. The registration records, produced for its internal use, provided the secret path to that inner, ultimate truth. The model here was, as it were, psychoanalysis, the act of bringing to light the secrets of the security service from the dark. While the documents produced by the SB for external use (for the population) could be false, the SB must have
told the truth to itself and ‘confessed its guilt,’ as it were, through these internal documents. It was, then, this view of layers of secrecy and the documents’ capacity for revealing truth that marked the lustration arrangements. But it was also this fidelity to the registration records that generated the Wildstein List, which exclusively relied on those records.

**COMMISSIONING TRUTH AT A UNIVERSITY**

Even though it produced the most expansive panic-rumors, the Wildstein List was neither the first nor the last agent list scandal. By the mid-2000s, the Polish media was increasingly soaked in a sensational mode of communication and tabloid newspapers, owned by West European, mainly German, companies. As Rafał Pankowski (2010) observed, this resulted in the further “tabloidization of politics” that strove to milk covetous secrets for quick profit. The media sector increasingly became a field of bitter lustration battles. In the meantime, the IPN became more tightly integrated into political struggles. After the Wildstein List scandal, the IPN director resigned and a new search began. Ironically, the competition between the two candidates was marred by a false allegation of collaboration of one of the candidates. It was not possible for the candidate, Andrzej Przewoźniak, to prove himself innocent in a short time. Discredited by a mysterious leak from the archive, he lost the competition to Janusz Kurtyka, known for his firm support for the political line of the rightwing PiS party. Later, the lustration court cleared Przewoźniak, but it was too late.

This was not the only vocal event about alleged secret agents at the time. From 2005 to 2008, roughly corresponding to the rule of the PiS-led government, there were a series of sensational revelations from the IPN archives. Here, I want to focus on one
agent list of 21 names, published on the 23rd of October, 2005 by the far right weekly *Gazeta Polska*. The list had important local and national consequences for the issue of lustration in both academic and media circles. In 2003, a veteran “Solidarity” activist and an academic at the Jagiellonian University, Barbara Niemiec, applied to the IPN to obtain a victimhood certificate. After obtaining it, she asked the IPN to decipher the names of the agents involved in her surveillance. The file compiled on her was almost totally destroyed. But the archivists were able to identify some of the agents by checking the registration records of the SB. Niemiec then gave those names to the weekly for publication.

In her interviews with the journalists, Niemiec said she had revealed the names because those people defiled the country’s most brilliant academic institution and betrayed their colleagues, nation, and the state. But she said she did that also “to help expiate those people’s secret guilt.” Bronisław Wildstein supported Niemiec’s decision, arguing that such expositions would hopefully “break down the defense of former agents and the [general] resistance for revealing the files.” Niemiec did not see the concerned archival material, however. She trusted the IPN’s judgment. The agent list created urgency for the university and political authorities to clarify the situation. At the time, the rightwing government was already preparing a new lustration law that would include all the academic institutions. The Minister of Education laconically said, “Lustration is a grave problem. The former agents may still be steered (*sterowani*) from the outside [meaning Russia]. The young generation cannot be educated by those people.”

The Rector initiated a special ethical commission (*Komisja dz. Etyki*) of 15 professors from the university. Krzysztof Krolaś, from the Institute of Physics, chaired
the commission. During our meeting, he quickly assured me that the commission’s work had been very limited; it faced both temporal and documentary limitations.¹⁵⁰ The commission had to present its findings about named individuals in a short time. Yet, most of the archival materials the commission had to evaluate were missing. They were either destroyed or not yet discovered by the IPN.

Krolaś said that the commission was established to respond to a “media burden” (*media obciążem*). He was not upset about Barbara Niemiec’s act. He said he understood her; it was “desperation” (*bezsilność*) that drove her. “In Poland, “he said, “there was no settlement of accounts (*rozliczenie*) and no one took responsibility for the past wrongs. Niemiec wanted to do something about it.” It was sad that this act sometimes implicated the wrong people, but it was, he suggested, necessary.

He showed me the copies of the documents he got from Niemiec. There was a list of names with plain identification information like father’s name and birthdate. There was no information about what they had done as an agent. I also saw the copies of the reports Niemiec received from the IPN. They were visibly disparate and fragmented, perhaps because she was allowed to see only the exact pages where her name appeared. Krolaś said it was very challenging for the commission to make sense of the documents.

But Krolaś was also satisfied with the commission’s work. There was one case about which he particularly wanted to talk. It was someone whom the commission successfully cleared of the allegation of collaboration, or so he thought. The commission asked all the named persons for a letter of explanation. Unlike other people who were dead, did not respond, denied, or trivialized the matter, one person, he said, had written them a long, eloquent letter to explain the circumstances under which he had had to meet

¹⁵⁰ All the information comes from our meeting on June 1, 2011.
the secret service. This elderly professor also came to the commission to testify. “He was very honest and respectful toward the commission. He asked for forgiveness,” said Krolaś and added, “We understood him. After the commission’s work ended, he met me to thank the commission and say how it had relieved him of his guilt. What more can you expect from our work?”

I personally knew that professor long before he appeared before the commission and I also knew those who knew about him. But let me first concentrate on a case that made the commission’s work particularly dreadful. It involved a colleague Krolaś knew closely. Only a few doors separated their rooms in the department. That man also sent a long explanation letter to the commission, in which he explained how he had met the SB and the kind of information he reported. He insisted that he had to answer the questions in order to obtain a passport and that those questions about his foreign trip (e.g., where he will stay, the purpose of his visit, the people he will contact, and some more specific questions about the particular individuals who were of interest to the SB), he argued, were inconsequential. Krolaś categorically denied that – like the lustration prosecutors – arguing that any information given to the SB was potentially harmful.151 After a pause, he added:

We actually understood his point. He collaborated to go abroad and make a scientific career. I can see that. We even sympathized with him (współczuwał z nim), but how stubborn had he been? If he had stayed silent and had not made a public scene, if he had not gone to the newspapers, and if he had admitted to his collaboration, we could have understood him. He then would not be the chair of his department, but I would gladly take care of his students. His behavior was too...aggressive. He even went to the court and all that.

151 When I asked about the commission’s definition of collaboration, Krolaś said they had to drop their previous criteria of “collaboration,” which required collaboration’s materialization in the form of reports or other informational action. There weren’t enough documents to maintain or uphold that definition (the material constraints) and the commission (historians) was not able to access them in a short time.
I could not personally meet that professor; I think he did not trust that I would listen to his side. But I followed his case as closely as I could and had been in touch with the journalists who reported on his case. It was true that he had chosen the long path of a public and legal struggle against his disclosure as a secret agent. He publicly complained that he and his mother had been referred to as a “black sheep” by the priest of the church, which they regularly had been attending. A popular teacher, he also elicited the students’ support. In the meantime, he discovered that the IPN also had documents concerning his victimization by the SB. But he was denied the title and the access to those documents, because he had been suspected of collaboration. He was not going to give up, however. He sought to initiate a self-lustration trial in order to access the documents and make his case public. He started an on-line blog, where he had been meticulously uploading his correspondence with the IPN and the court, as well as the archival documents he had obtained for years. He kept denouncing the IPN and the rightwing groups trumpeting for lustration. Krolaś knew well about that local warfare that had been going on nearby for more than half a decade. This kind of warfare was hardly unique; such media revelations or accusations of collaboration left behind a number of people, who kept struggling through the court or outside of the court.

If this was the dreadful case, what did the successful one look like? A number of colleagues of the elderly professor (who had confessed to his collaboration) told me that he had been visibly affected by the revelations and kept telling everyone in the department about what he had done or not done. No words seemed to quell his desire to explain himself. Thus, I was cautious to meet him even if the event seemed to have settled almost a year ago. When I finally brought up the subject of lustration (which was
extremely popular at the time), he only spoke about it in impersonal terms. He skeptically inquired about what it meant to conduct such lustration 15 years after the regime change. “The entire aim of lustration,” he said, “was to make people sorry” and complained that the government did not let his generation pass away in dignity. He said, “The secret service took advantage of people’s weaknesses. You may be a skirt chaser, alcoholic, sick, drug addict, or homosexual. They used that against you.”

I knew some of the professor’s students, indeed, generations of students. His passion for art and knowledge had inspired so many students, and they were visibly animated by the revelations. One of them recalled,

Suddenly we learned that our old, tiny professor was, in fact, an agent! He is a valuable teacher and knows his stuff very well. But the news dropped like bomb…Our Sultan [his nickname] was an agent [she repeated]. He told a lot about himself, but I did not want to hear it. Once he called me to his office and rambled about lustration…But can you believe that our professor was a James Bond? Our cute, harmless looking Professor? He denied it, but I think he did it [whispered]. You see, our department finally became famous!

I had read the security file of the professor at the IPN reading room and thought that he was, in fact, an agent. He was asked to inform about the daily routines and problems of a visiting foreign lecturer, whose life, according to the counter-intelligence service, was in grave danger. That lecturer was from a certain Middle Eastern country.

**OF CAREERISM AND OPPOSITION TO LUSTRATION**

The commission’s work lasted for a year and ended with the report it presented on the 25th anniversary of martial law, 13 December 2006. The report identified the suspected

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152 Personal communication with the professor June 2, 2007.
153 Personal communication with the student June 14, 2007.
academic workers with pseudonyms and stated its decisions on an individual basis. It paid special attention to the act of confession, highlighting the letters from the professors that expressed regret and asked for forgiveness. This expectation of confession had been common to lustration and, as I will discuss below, was central to the protests around the legal process.

I have come across many people (professors) who had been revealed as agents or confessed to their collaboration, and ended up in one way or another leaving their institutions even though they were not legally required to do so. Rumors typically accompany the revelations, circulating them until they are registered as a social fact. It was the rumors that seemed to express the social force of lustration. Veena Das observed in her study of communal violence in India that rumor produces the events in the act of telling; language transforms, “causing things to happen as if they had happened in nature.” (2007, 119) Rumor spreads things, as it transforms them. Such a powerful movement, as we have seen, had also been integral to the social life of the media revelations and allegations of collaboration.154

I want to underscore that by focusing on the violence of the allegations, I do not mean to trivialize or dismiss the experience of victimhood of those people who come to denounce their betrayers. Bronisław Wildstein and Barbara Niemiec may see themselves as having the moral right to denounce other people. Not every victim thought the same way, however. For instance, Ewa Miodońska, a revered veteran oppositionist at the UJ, whom the SB had targeted as it did Barbara Niemiec, even refused to join the university’s commission of inquiry. At any rate, the historical record suggests that it is not rare that

154 Note that not every allegation of collaboration generated ostracism; certain UJ academics who had been revealed as secret agent, could enjoy the support of their colleagues standing in solidarity with them.
“victims of violence are capable of violence themselves” (Enns 2012, 1) and that the distance between the victim and the perpetrator may be at times minuscule, especially when victimhood becomes a political force, appropriated by the state forces or the purificatory nationalist movements in the service of nation-state building (see Mamdani 2001). What I want to underline is that the living experience of victimhood is often malleable and changing, subject to social-political processes, personal revisions, and interpersonal relations. Being a victim, as anthropologists show, is not only an experience that is fixed once and for all in the past, but it also poses the question of becoming and inhabiting a world in the present and its ensuing dilemmas and contradictions lived through the ordinary life (see e.g., Crapanzano 2011; Das 2007; Merry 2006).

Krzysztof Krolaś may have rightly observed that Niemiec did what she did out of a sense of “desperateness” and alienation. Be that as it may, it is also not possible to overlook her well-known political aspirations for the far right, the “League of Polish Families” party, which was at the time part of the rightwing coalition government pushing for radical lustration. In fact, Niemiec’s list operated in the context of an increasingly vocal mobilization around the issue of lustrating the educational, media, and religious institutions, institutions that were not subject to lustration before. In 2006-7, three special commissions were formed: the Association of Polish Journalists (SPD) established a “Truth and Reconciliation Commission” (Komisja Prawdy i Rozliczenia), the Roman Catholic Church established “Care and Memory” (Troska i Pamięć), and several intellectuals formed the collective “Conscience and Memory” (Sumienie i

155 Certainly, she was not the only rightwing activist in touch with the IPN. There had been ex-dissident rightist politicians, who were suspected of conducting research at the IPN to gather compromising information against their opponents. See “The Morality of the Victim” (Moralność Pokrzywdzonego), Gazeta Wyborcza, 5 January 2005.
They all became involved in the issues of lustration, but none of them generated an alternative public platform to the official lustration procedure.156

Why did the rightwing government’s lustration project forge so much skepticism or opposition? Here, I will mainly concentrate on the opposition around the lustration of education institutions, especially the universities. As far as the new lustration law was concerned, the criticisms were about the ambiguous and broad definition of “collaboration” that included any act of giving information to the SB157; the removal of the judicial means of self-defense (i.e., courts) and the IPN’s monopolization of the lustration process. But the skeptics also saw the new lustration law as part of the broader context of the punitive and surveillance measures deployed by the government to police public morality and control the media and educational institutions.

Specifically, the academic workers invoked the violation of academic freedom and the autonomy of the universities, pointing to the labor code that protected the workers from the government’s arbitrary actions. Some of the oppositionists also invoked the historical ethos of the intelligentsia to rationalize the resistance to state power. This ethos, parts of which we studied earlier, can be dated back to the late 19th century and has been reproduced since then through various “underground” and “flying” universities.

156 The SPD’s “Truth and Reconciliation Commission” functioned as a pro-government lobby for the lustration of journalists. Media agencies affiliated with it sought to conduct lustration examinations of their employees and presented it as a sign of the moral credibility of their publications. This was going to create market pressure on other media agencies. The Roman Catholic Church’s “Care and Memory” investigated the clergy’s past links and settled the disputes in its own circles. “Conscience and Memory,” led by renowned intellectuals like Władysław Bartoszewski, Karol Modzelewski, and the Archbishop Józef Życiński, had a short public life.

157 The new lustration law included the category of “human information sources” (OZI), the borders of which did not seem clear to many people. The category encompassed a range of titles given by the SB that were less formalized and more temporary human contacts of the SB, such as “operational contact,” “trusted citizen,” “citizen help.” Likewise, the definition of the “journalist” used by the new law was too broad; it considered a journalist anyone who ever published or sent something for publication. Curiously, the legislative employed the broad definition of the journalist constructed by the repressive party-state in 1984 during the martial law.
(Mencwel and Sierakowski 2010). Karol Modzelewski, for instance, kept associating
rightwing lustration with the purges initiated by the worst years of martial law in the
1980s. The aim was the same: command obedience and control and repress the
opposition.\textsuperscript{158} Another eminent scholar, Hanna Świda-Zaremba, lamented that they were
all considered suspects and were forced to prove their innocence. In a law-governed
democracy, she suggested, no one could be forced to accuse oneself (samooskarzenie).
Other scholars invoked the citizenship right to protest or to civil disobedience when the
state law conflicted with one’s conscience.

In my trip to Poland in 2007, I was able to observe firsthand the tense
environment and the growing opposition at the universities. But I also noticed that not
every academic opposed lustration. For instance, a junior academic in his mid-30s told
me that it was high time for the old to leave; they had benefited enough from the past
regime and continued to enjoy their privileges. They drove luxurious cars, had nice
apartments, and travelled abroad. Now it was the young academics’ turn.\textsuperscript{159} Below, I will
discuss further his point on privileges. Another academic said, “In Poland, we have a
pathological democracy that did not come to terms with the past. That is why we need
lustration now. These people cannot behave as if they are 14 years old. They all have
grey hair.”\textsuperscript{160} President Lech Kaczyński said in April 2007 at a critical moment:

What is the problem of filling out a small form if you did not do anything
wrong? The sincere person would not hesitate to declare, “I did not
collaborate.” It is said that dignity is threatened [by lustration]. No, what is
threatened is dignity, because only agents are threatening. This is the
essence of the issue. […] If you consider yourself an intelligentsia, you

\textsuperscript{158} Personal communication with K. Modzelewski, May 4, 2011.
\textsuperscript{159} Personal communication with T. Z. I don’t want to reveal his full name. 25 May 2007.
\textsuperscript{160} Personal communication with Zdzisław Krasnodębski 16 May 2007
should state, “I did not collaborate.” But if you collaborated, your appeal to the ethos of the intelligentsia is nothing but a far reaching abuse.¹⁶¹

One of the main sources of opposition to lustration, in my view, was the anxiety of being implicated by the lustration process, being exposed or subjected to a virtually limitless moral-political examination conducted by the state, which was at the time dominated by the rightwing political currents. This anxiety was mixed with other concerns and feelings, including the sense of uncertainty about what constituted ‘collaboration’ and the ‘guilt’ of collaboration, and the sense of injustice concerning the nihilistic evaluation of the complexities of past lives and the brutal and cynical discrediting of the communist past in the service of new state-building. The opposition was part of a struggle against the juridification of memory and the direction of popular resentment toward the beneficiaries of the former regime and later the transformations, the intellectuals.

Let me briefly illustrate this point. The issue of lustration had a far reach into the past, provoking memories and prompting self-examination. For instance, an elderly woman, who at the time was teaching at a business school, told me how she was anxious to fill out her declaration, because she was unable to recall the people she might have spoken with in the past. “I was a very social person at school, hung out with people, went to parties, and said all sorts of things. I know I was not a collaborator…but do I need to be ashamed of myself because I don’t remember whom I talked to?” Moreover, she wanted to say something more about the past, thinking that what was really at stake in lustration was the moral discrediting of her past life, including the PRL’s education institutions:

¹⁶¹http://m.wyborcza.pl/wyborcza/1,105226,4055054.html (last accessed 20 April 2015)
It [the PRL] was not that bad [she whispered]. Of course, some people had awful experience. They were in the opposition and treated horribly by the secret service. I was not [she looks embarrassed]. I did not take part in any political group, socialist or anti-socialist. But frankly, I enjoyed my studies a lot. We had great teachers and learned many languages, French, German, Russian…. Recently, I spoke a lot about those times with my mother. Sure, we lacked many things, but the PRL also provided a sense of future. Both my parents were elementary school teachers. My father died when I was 16 years old. My mother raised me and my sister alone. Sometimes I think…how can a single woman, a teacher, raise two children by herself? Obviously, we did not have much. But we never had much [before the war] and were not much worse off than other people…. Back then, people did not think so much about money. We knew more or less how we will die. Now, people all the time think about money, savings, investments, or ways of getting credit.

SG: Yet, there were some people who were more privileged during communism, say, the party elite…

She: But they knew that this was not good. To have privileges was nothing to boast about in public. People are now shameless in exposing their riches… They like to drive expensive cars and talk about how much they make.162

This kind of expression of pride in the socialist education system and the criticism of social inequality was not so rare. The more the government denounced the past, the more the academics, as it were, highlighted the brighter sides of the PRL that enabled mass literacy and upward social mobility for many people.

But the same PRL was also held responsible for creating privileges and indeed, the populist government, as mentioned, invoked the lustration of education institutions (and intellectuals) to ostensibly dismantle the reproduction of inequalities of power and class. The language of careerism pervaded the discourse of lustration. What did careerism mean? For the rightwing government and the proponents of radical lustration in general, careerism meant opportunism; it referred to the egoistic pursuit of self-interest at the expense of loyalty to one’s friends, kin, and the nation. The careerists, silently or vocally,

162 Conversation with the professor 28 May 2010 at Massolit bookstore in Kraków.
supported the communist regime, which was defined as alien and against the sovereignty of the Polish nation, when other persons sacrificed their lives and fortunes for the nation. The accusations of careerism framed the historical and structural inequalities in the language of resentment and betrayal.

Karol Modzelewski told me, “What does lustration have to do with one’s capacity to observe the stars? I do not understand. Aleksander Wolszczanka is the biggest Polish astronomer after Copernic.” Yet, Wolszczanka, who had been living in the U.S. and working for NASA, was unable to find employment in Poland. Due to his past links with the foreign intelligence department of the SB, he could not be a “moral example” for the students. Somewhat impatiently, but revealingly, Modzelewski continued, “Do not forget that this man is from a small town in Poland. The PRL was his country [PRL był jego kraj] and he got his education here. He wrote some reports about what he did abroad. Now this man cannot come back here.”

The issue with Wolszczanka highlighted a range of discourses traversing lustration. For some nationalist proponents of lustration, going abroad was already a suspicious activity. ‘One could obtain a passport and go abroad to pursue a career because he was their man.’ Whatever one achieved in life, this was due to a secret pact with the communist state. Just as the secret pact explained one’s past and present success, it also explained one’s ‘failures.’ Certainly, many (talented) people had been laid off in the past for political reasons. Particularly the militarized party-state of the 1980s sent many suspects and ‘enemies’ of the Polish nation to prison, exile or the street. There is no reason to doubt some people’s bitterness about their missed chances and impoverished

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163 Modzelewski May 4, 2011. This view was common among the proponents of lustration, who considered the issue of lustration as the most important defining feature of one’s moral integrity. Personal communication with Andrzej Rzepliński June 16, 2011.
life circumstances. It is also not hard to see, however, how this sense of inequality and its reproduction in the present was appropriated by the nationalist populist mobilization into a resentful anti-elitist language, fixed, as it were, on the omnipotent powers of the secret service.

Furthermore, the issue with Wolszczan underscored the ethical-political implications of approaching the PRL as a foreign occupation, as rightwing proponents of lustration often did. Any entanglement with the structures of the communist state was unacceptable, or so it seemed. They imagined a Polish nation that was at all times at war with the occupation. In their nihilism, they longed for a life larger than life and often conveniently denied or overlooked their own social and political origins in the communist regime. In fact, this nihilistic approach provoked an unproductive hypocrisy toward the proponents of lustration, especially the young anti-communists. During field research, I was often told that the great moralizers of today did not bother to take any risk in the past to confront the communist state. It was those anti-communists who had ‘missed’ the chance of being ‘heroes’ by not spending even an hour in jail who now insisted on national purity and patriotism and blamed people for moral weakness. Because they did not risk anything, I was often told, they did not know what it meant to act and thus, easily reached sweeping moral judgments about other persons. But even then those anti-communists’ treatment of the cases of collaboration seemed partial; Kaczyński’s

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164 In this categorization of the enemy, the three million members of the Party were also included. They were not “secret” collaborators; they openly collaborated with the regime. Some rightwing groups and President Kaczyński reiterated this view, thereby intimately linking lustration and de-communization.

165 The reference is often made to Lech and Jarosław Kaczyński, Roman Giertych, and other young lustrators e.g., P. Gontarczyk. Conversation with Agnieszka Sadecka and her family, 29 June 2010.
documents (allegedly an obligation letter that he signed) were supposed to be false while others’ documents were true.\footnote{See, for instance, the cases of Zyta Gilowska and Jadwiga Staniszkis, who were cleared.}

**CODA: ON THE POLITICS OF TRUTH-TELLING AND AVOWING LOYALTY TO THE STATE**

I want to conclude this chapter on the politics of truth, history, and victimhood by focusing on one last but very crucial source of antagonism around the rightwing lustration. It concerns the dynamics of power that are set in motion by the very organization or technique of lustration examination. In this respect, the practice of avowing loyalty to the state and the linguistic construction of the lustration “statement” \((oświadczenie)\) are important.

The Polish word \(oświadczenie\) may also be translated as declaration and testimony. The lustration statement also retains those meanings. If lustration is about truth, how is the lustrated subject supposed to ‘tell the truth’ about himself or herself through that statement? How does the statement organize the act of truth-telling? The Polish philosopher Jan Woleński offers a detailed analysis, focusing on arguably the key sentence of the statement: “I declare that I did/did not collaborate” \((Oświadczam, że (nie) współpracowałem/łam)\). Lustration authorities, he argues, exclusively focus on the second part of the sentence, whether the lustrated person states he or she collaborated or not. Thus, they expect the subject to state seriously \((na serio)\), fully conscious of what he or she did in the past. That is how one could be evaluated as a “lustration liar” in the first place, as someone who intentionally sought to deceive the authorities. The lustrated subject was not supposed to “joke” (2007, 114).
Perhaps in response to the gravity of lustration, the graphic artist and professor at the Academy of Fine Arts Eugeniusz Get-Stankiewicz organized a “happening” in 30 March 2007 in the city of Wrocław. As the news report reads, he “publicly lustrated himself on a grand scale. His lustration statement was 3m x 5m” and weighed 20 kg. He hung it at the National Museum. “I used the official document, but had to improve its aesthetic because it was so ugly. The IPN employees need more art,” he said.167

The lustration examination rests on the assumption that the authorities already have access to the truth sitting in the IPN archives. Thus, the real focus of the examination is not the historical truth, as is often claimed. It is the truth-telling of the subject, whether the subject is capable of telling the truth about himself or herself. One has to give an answer to the prosecutorial question: “was it you?” Any answer to the question subjects one to the sovereign, which has the power to ask the question and examine one’s truthfulness.168

Michel Foucault (2014), in his late lectures, explored the historical and ethnological aspects of the relationship between “purity and truth-telling.” He was particularly preoccupied by the idea that the rituals of truth-telling or avowal of wrongdoing were required to purify oneself and initiate moral recovery. Avowal was not, however, simply a declaration, making the unknown known, but entailed a certain cost or risk for the subject of avowal. In the long history of the juridification of truth that Foucault studied in his lectures and other works, he showed how the practices of avowal

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167 See [http://wroclaw.gazeta.pl/wroclaw/1.35771.4026533.html#ixzz3WGuzZu53](http://wroclaw.gazeta.pl/wroclaw/1.35771.4026533.html#ixzz3WGuzZu53) (last accessed 2 April 2015).

168 Karol Modzelewski, with his well-known directness and rigor, told me that filling out the lustration statement was like answering the question if he was a rapist in the past. He took it as an offensive question that the government tried to oblige him to answer. He felt implicated by the question and any answer meant the recognition of their power. Personal communication May 4, 2011.
or truth-telling had become a matter of obedience, inscribed in the unequal relations of domination and examination (between the subject and the king, man and God, and patient and doctor). In this movement, a new form of truth of oneself (a deep secret truth) and of knowledge of the individual subject (the psychology of the “dangerous individual,” that is, the mad and the pervert) had been produced, institutionalized, and put to use by a wide range of authorities, religious, legal, medical, and political. The society was to be defended against the impure, abnormal, and the criminal.

Indeed, the language of pathology, as we have seen, pervaded the lustration discourse. The organization of lustration through oświadczenie precisely focused on the risk that the lustrated subject was obliged to take in telling the truth of himself or herself. He was to state it without knowing if there was proof in the archive. As some vocal proponents of lustration often said, lustration was needed to cure the sick and clear the pathologies of democracy. Communism polluted and deprived people of telling the truth and ‘living in truth,’ so lustration was required to purify and heal those people.

But this point is still not sufficient to fully grasp the dynamic of power (and antagonism) set in motion by the lustration oświadczenie. It is important to underscore the central position of the state here. In this respect, I want to refer to a passage from Ernst Kantorowicz’s famous opposition to the oath he and other academics were obliged to take as an employee of the University of California in 1949-1950. It is striking to observe the similarity between the problems of that oath and those of lustration. Kantorowicz, a favorite scholar of Polish conservatives and an eminent historian of the state, wrote,

“If you are not a Communist, why can’t you sign the oath?” How often has this question been asked and still is asked?....Both history and experience
have taught us that every oath, once enforced, has the tendency to develop its own autonomous life. At the time of its introduction an oath formula may appear harmless….But nowhere and never has there been a guaranty that an oath formula imposed on, or extorted from, the subjects of an all-powerful state will, or must, remain unchanged. The contrary is true. All oaths in history that I know of have undergone changes. A new word will be added. A short phrase, seemingly insignificant, will be smuggled in….The consequences of a new oath are unpredictable. It will not be in the hands of those imposing the oath to control its effects, nor of those taking it, ever to step back again. [...] It is the harmless oath that hooks; it hooks before it has undergone those changes that will render it, bit by bit, less harmless. Mussolini in Italy of 1931, Hitler Germany of 1933, are terrifying and warning examples for the harmless bit-by-bit procedure in connection with political enforced oaths. [...] 

The crude method of “Take it or leave it”—“Take the oath or leave your job”—creates a condition of economic compulsion and duress close to blackmail. This impossible alternative, which will make the official either jobless or cynical, leads to another completely false alternative: “If you do not sign, you are a Communist who has no claim to tenure.” This whole procedure is bound to make the loyal citizen, one way or another, a liar and untrue to himself because any decision he makes will bind him to a cause which in truth is not his own. [...] [As Dante, quoting Aristotle, has remarked] “Every oblique action of government turns good men into bad citizens (emphases added).”

My point is not that lustration is a measure of McCarthyism or that the PiS-led rightwing government is fascist. But this passage, I think, well illuminates the problems of the lustration examination, namely, the complex dynamics of state power that takes on a life of its own, and a certain type of truth politics that generates “bad citizens,” a truth politics that looks innocent, as it often does, and speaks in the name of victims. It is one that judicializes and moralizes history, memory, and life, and flattens the heterogeneous experience of victimhood.

This dynamic of state power and truth politics, this chapter has shown, has been central to the contentious social-political life of lustration. In the next chapter, I will...

169 http://www.lib.berkeley.edu/uchistory/archives_exhibits/loyaltyoath/symposium/kantorowicz.html (last accessed 15 August 2015)
further this analysis by concentrating on the self-lustration court proceedings of a certain academic.
CHAPTER SIX  NAMING THE SECRET AGENT: LAW’S SUSPICION, ARCHIVE, AND AMBIGUITY

On 10 August 2007, three months after the landmark decision of the Constitutional Tribunal regarding the unconstitutionality of the lustration law, the historian Stanislaw Januszewski received a phone call from the rector of his university. The rector inquired about the recent publications that named the professor as a secret communist agent. Concerned about the allegations, the rector demanded he resign. Januszewski unambiguously objected. It was the professor’s word against the word of the director of the Wroclaw branch of the Institute of National Remembrance (IPN). The rector told Januszewski that he had no reason to doubt the truthfulness of the revelation. Facing the professor’s stubborn objections, however, the rector told him to quickly take care of the issue. Until then, he was not allowed to teach.

The Ethical Commission of the university began to investigate the issue. After five months, the Commission stated that it was unable to reach a conclusion and the professor should apply to the court to clear his name. Clearly, it was Januszewski’s burden to prove his innocence and regain his academic rights. But going to the court was also important for another reason. Since he was suspected of collaboration, he was not allowed to access the IPN documents that implied his collaboration. Initiating a lustration proceeding would then let him see those documents.

In his appeal to the lustration prosecutor, this is how Januszewski explained his reason to initiate a self-lustration (autolustracja) proceeding. The prosecutor worked at the same IPN branch that identified him as a secret agent. She was to evaluate the decision of the state institution that employed her. Not surprisingly, she upheld the IPN’s
decision and confirmed that Januszewski was a secret agent. If the IPN occupied a double position in this process, so did Januszewski. He was both the accused (lustrated) and the accuser. Not only was he to wrestle with the arguments of the IPN archivists and historians who disclosed him as an agent, but he also had to face the IPN prosecutor’s claims. To add another layer of ambiguity to the legal process, the court proceedings were also marked by long periods of waiting for the witnesses or the archival material and by recurring disputes about the authenticity and reliability of the evidentiary material, as well as about the method of identification followed by the IPN. Different forms of organized and disorganized suspicion ceaselessly wandered around its object. Virtually anyone involved in the trial was an object of suspicion: certainly the lustrated person, but also the witnesses, the IPN, the judges, as well as me, the researcher, and the Helsinki Human Rights Foundation of Warsaw, which observed the proceedings. Was Januszewski sincere about his claims, or was he trying to obscure the archival evidence and mislead the court? Was the accusation of Januszewski a political setup or conspiracy targeting a relatively unknown ex-dissident scholar who had no means to unambiguously refute the accusation and publicly disseminate his viewpoint? Were the security reports shown to the court as evidence reliable, or were they fake and misleading? Were the former SB officers who testified in the court as expert witnesses truthful, or did they have a secret, hideous agenda? What did the Helsinki Human Rights Foundation and I seek to achieve by attending the rather unpopular court hearings? Were we trying to impact the court’s decision by exerting pressure with our presence?

This chapter focuses on the self-lustration trial of Januszewski to explore the intersection of law’s suspicion, archival politics, and the legal-political treatment of
ambiguity. It examines the mechanisms of suspicion, the practices of unmasking and naming, as well as the social-political and epistemological problems of evidence and truth-making. It may be said that the style of questioning stated above is not specific to the trial of the professor or even to the lustration cases or accusations of collaboration. I agree with this view and highlight that suspicion is, indeed, integral to the practices, discourses, and institutions of modern (state) law. But studying lustration proceedings, I suggest, offers a valuable insight into ways in which law’s modes of suspicion work and intermingle with different and less organized or institutionalized forms of suspicion that operate beyond the formal-institutional domain of law. Studying these forms of suspicion by focusing on a low-profile court case sheds important light on wide ranging social effects of lustration that are largely understudied.

What are the forms of suspicion that coalesce in the lustration proceedings? First, the mechanisms of suspicion relate to the phenomena and accusations of collaboration or treason; second concerns the forms of suspicion organized by the modern state law, with regards to the problem of indeterminacy or ambiguity. As we will see, the combination of the two in lustration set in motion a powerful dynamic of suspicion of betrayal that calls into question the very possibility of community.

The anthropologists, Tobias Kelly and Sharika Thiranagama suggest that suspicion is “the default condition of social and political life” (2010, 17). This is so because social and political life is bound up by fragile, multiple, and conflicting allegiances and commitments (religious, sexual, kinship, and national) that often put people under intense pressure and “produce particular mixtures of complicity and ambiguity” (ibid.). Betrayal is a constant possibility in social and political relationships
and is rarely clear-cut or ethically straightforward. Acts of betrayal or treachery, suggest Kelly and Thiranagama, are often ambiguous, as they are a product of contingent choices one makes and actions one performs under uncertain historical conditions and in view of multiple and conflicting allegiances. Besides, what may seem disloyal at one time may change across time and be subjected to different evaluations in different moral frameworks. While this contingency, fluidity, and ambiguity of loyalty may incite popular suspicions of betrayal, it is the modern state that draws on and mobilizes these suspicions to expand its power into the intimate spheres of life and assert itself as the sole authority that demands absolute loyalty. Suspicion of loyalty is, then, a modality of state power that regulates and polices state-citizen relations. In this regard, contexts of state building offer vivid manifestations of this power and the way it traverses the social body. “Histories of nation- and state-building,” Kelly and Thiranagama write, “never simply take place in the abstract but are also intimate histories of kinship, sexuality, and friendship” (11). In what follows, we will be concerned with one such history, the intimate history of social-political transformation from state socialism.

Thus, this is one entry point for this chapter to engage the theme of suspicion. While Kelly and Thiranagama’s account helps explore this theme by focusing on the phenomenon of betrayal or collaboration, it does not consider the role played by law in organizing and reproducing suspicion. Their account may be usefully complemented by Hussein Agrama’s ethnographic study of law in Egypt. Defining modern (liberal) state law as organized suspicion, Agrama (2012) shows how the practices and institutions of law produce different forms of suspicion, as they expand into more and more domains of everyday life, accompanying the similarly expansive “regulatory power of the state” (35).
One of the driving engines of lawmaking is to settle suspicion and ascertain ambiguity. But the law paradoxically fosters even more suspicion and ambiguity in an attempt to overcome them. Agrama writes,

Ongoing suspicion over legal manipulation and legal loopholes tends to foster legislation intended to cover those loopholes and prevent such manipulations. And yet increasing and increasingly complex legislation opens up more potential loopholes and possibilities for manipulation, thereby fostering ongoing suspicion and distrust. Thus the law proliferates and becomes increasingly entrenched as suspicion and distrust about it also spread (35).

Furthermore, “[t]he ongoing proliferation of the law into aspects of everyday life,” argues Agrama, “creates exceptional situations and instances of indeterminacy where it becomes difficult to distinguish what is legal from what is not, and where a wide range of actions subsequently come under suspicion” (142). Indeed, it is through the creation of these indeterminacies that “sovereign power is enabled to assert itself in social life with ever-greater force and capacity” (ibid.).

My analysis of the lustration law will expand on these two accounts of suspicion, ambiguity, and power. If the suspicion of betrayal is a major theme of lustration, the suspicion over legal manipulation and loopholes pertains no less to the practice of the lustration law. The so-called ambiguity of treachery or collaboration with the former secret service becomes further intensified and reproduced by the ambiguities concerning the evidentiary process. The special position of the IPN, the highly restricted public access to the IPN archives, the remarkably destroyed and the hotly disputed secret service or IPN documents for their misleading content, the paradoxical reliance on these documents and the testimony of the former SB officers, they all contribute to the proliferation and intensification of ambiguities or legal indeterminacies. As Agrama
suggests, it is through the creation and determination of these ambiguities or indeterminacies that sovereign power asserts itself. These ambiguities and their shifting boundaries and determinations are objects of a permanent legal-political struggle.

Our study of Januszewski’s trial will explore the intimate social effects of that struggle on those who participated in the lustration proceedings. I will begin with a discussion of how Januszewski was first identified as a secret agent to show the sort of evidence used for this purpose. I will then describe the courtroom setting and examine the testimony of an ex-dissident witness, who was one of the central objects of the security reports. This testimony and that of the IPN historian open up law to the questions of history and memory. In this regard, the themes of the archive and documentary practices are central. Finally, we will discuss the former security officers’ testimonies and the suspicions hovering over them and their relation to the court and the person of Stanisław Januszewski.

**NAMING THE SECRET AGENT**

I collaborated neither with the political police (*policja polityczna*) nor with the Polish Party (*Polska Partia*). I chose to be free rather than secure. For my [oppositional] activities, I never expected a trophy, either. After Poland regained (*odzyskać*) independence (*niepodległość*), I did not intend to pursue a political career (*nie budowalem własnej polityki*). For me, the real satisfaction was that my fellow citizens (*wspołobywatele*) regained their freedom; I am delighted if I contributed to it, in however tiny a way.170

In the court hearings, Januszewski often repeated this rhetoric of self-presentation that hinged on the post-1989 ideological discourse of freedom, sacrifice, and national independence. Since 1968, he said he had been in trouble with the secret service. He had

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170 Court hearing, 9 January 2009. Note that my account of the hearings is based on my observation and the relevant court transcripts I gathered from the defendant and the Helsinki Foundation for Human Rights in Warsaw. Thanks to Paweł Osik for his help.
been arrested many times and twice served a jail sentence for his subversive activities and involvement in student protests and dissident organizations. Januszewski claimed that unlike other dissidents, he never sought to capitalize on his oppositionist past to pursue a political career. He knew well that it was his moral person that was the focus of his lustration trial. When he became suspected of collaboration, his sincerity, truthfulness, and loyalty to the new state and the rule of law also became an object of suspicion. Thus, the rhetoric of self-presentation he employed rather seemed like a necessity to claim and ensure his moral and political belonging to the new polity.

What was the main body of evidence that identified Januszewski as a secret agent with the pseudonym “Hołyński”? As a rule, every secret agent had a personal and a work file, but “Hołyński” currently had neither of them. It had been destroyed in the 1980s, though it was not clear why and when exactly. However, some of “Hołyński”’s reports were found copied and scattered in different secret service files. Besides, at some point the person called “Hołyński” allegedly dropped that pseudonym and obtained different ones. There was also the registration record prepared by the SB that showed the professor as “Hołyński,” but the problem was that that record also contained some false information: the residential place and the occupation of Januszewski were wrong. It was, in other words, a ‘half-true’ record. All these documents then constituted the main body of the archival evidence. They were contrasted or corroborated with the testimonies of the witnesses, including an IPN historian, a graphologist, three retired SB officers, and a veteran dissident, who participated in the events described in the documents.
The testimony of Krzysztof Grzelczyk was particularly important, as he was the person who first publicly denounced Januszewski and turned it into a local media event. Let me quote at length how he described his discovery of who was “Hołyński:”

I first met Mr. Januszewski in 1978 when we were both in the Movement for the Defense of Civil and Human Rights [ROPCiO]. A few years ago I obtained my victimhood status from the IPN and applied to see the SB documents about myself. In accordance with the law, I then requested the personal data of the related SB officers and their secret collaborators. Seeing those documents, I became fully convinced about the persons who had figured in the book Cryptonym Wasale and the web-site www.czuma.pl…. On the website, those who had collaborated were marked in red. The name of the lustrated person [Januszewski] was also in red. In the book, it was also unambiguously stated that he was the secret agent who used the cryptonym “…Hołyński.” Besides, the IPN gave me a document, which identified “Hołyński” as [Januszewski]. Moreover, I recalled some of the events described in “Hołyński”’s reports and was able to figure out who was “Hołyński.” There was one conversation [described in the report] between me and Januszewski. The conversation concerned my studies…and Mr. Januszewski back then offered me help. [Thus, it must be he who wrote the report.]\(^{171}\)

This is how Krzysztof Grzelczyk made his discoveries. Clearly, he was not a lone investigator or reader of the concerned documents. Many of his views were either confirmed or suggested by the IPN, by its research publications and identification documents. Besides, he conducted his research in light of an ex-dissident’s website that red-listed the secret communist agents.

I do not mean that Grzelczyk’s findings are thus invalid because he consulted those sources. I do not suggest that the authentic truth can only be unearthed by the labor of a lonely individual detective. What I want to highlight is the effect of those sources on the assessment and construction of the facts, that is, the weight the findings of the state institutions and the authority the people with correct scientific and moral credentials exercised. In an evidentiary process beset by inconclusive ambiguities and unfathomable

\(^{171}\) Court hearing, 27 May 2009.
secrets, it is these institutions and authorities that anchor and suspend – even if temporarily – the mechanisms of suspicion. Below, we will discuss this point in more detail.

But there is more to Grzelczyk’s testimony. It turned out that Grzelczyk had been, in fact, closely related to the IPN. He saw the relevant IPN documents between 2005 and 2007, during which he wrote a book called “Kaskader” that was published by the IPN in 2007. The IPN Wrocław employed him from June 2008 to April 2009 and for several months he even acted as the institution’s deputy director. Thus, Januszewski’s struggle against Grzeczcyk’s accusation may well be seen as one against the IPN, which monopolized the access to the SB documents and the process of identification of the secret agents. As mentioned in previous chapters, the IPN was integral to the lustration process; not only did the lustration prosecutor work at that institution, but also the documents used as the chief source of evidence came from the IPN.

However, it became clear that Grzelczyk’s assessment of the archival documents was not so straightforward. He could not reach most of the documents concerning him, because they did not exist any longer. Curiously, Grzelczyk also mentioned in his court hearing that he was alleged to be a secret collaborator in the late 1970s, when the SB pressed him to sign a “loyalty letter” (loyalka), which he said he refused. Yet, the SB spread rumors about his alleged collaboration for provocation purposes. When he read the documents, Grzelczyk said, he discovered that the secret service devised an elaborate plan to produce leaflets that denounced him as a secret agent. He learned that it was Jacek Kuroń who at the time sealed the issue by stepping up for Grzelczyk and defending him
against the allegations of collaboration. In the 1990s, Kuroń, as may be recalled, was also highly critical of lustration, which would use the SB files.

Grzelczyk said he did not notice any forgeries or “false documents” (falszywki or falszywe dokumenty). Yet, he also claimed that the report concerning his interaction with the SB, which he had in order to obtain a passport, was inaccurate. It was a report about “what [Grzelczyk] should have said, but not what he actually said,” as he put it. Moreover, there were also misleading documents like the leaflets generated by the SB about his collaboration. More generally, he said he was unable to recall all the events described in the documents. He was also not sure if the documents he had seen were originals or copies.

In short, Grzelczyk’s testimony unwittingly suggested that neither his discovery of the secret identity of “Hołyński” nor his reading and assessment of the IPN documents was so unambiguous. Indeed, it was precisely the margins of ambiguity implied in his testimony that were going to move to the center of the disputes during the court hearings. The disputes mainly concerned the proper method of identifying the author of the documents, the partiality of the IPN in interpreting the documents and providing the evidentiary material, as well as the status of those documents, the question of their fakeness or their misleading content. All these issues circulated and reproduced the suspicions over legal manipulation. The fact that Krzysztof Grzelczyk was a powerful conservative politician only intensified the entrenched suspicions over the political manipulation of the IPN and the entire lustration process. Grzelczyk was known to have accused several other people of collaboration during critical political moments, presumably, to increase his moral-political credibility based on anti-communism – which
did not mean that his accusation of Januszewski must be wrong. In any case, once the legal process began, it had to come to some sort of a conclusion. But the settlement of the bitter disputes also demanded a hard work of memory, which Grzelczyk also admitted. One’s memory did not register the events in the same way the security documents did, but the documents still had to be verified by the witnesses. Yet, memory also had something else to reveal than what those documents ever did.

**THE MEMORY OF A FRIENDSHIP**

I don’t need to ask the SB officers or see their documents to decide who my friends are. I already know my friends.

Jacek Kuroń

It is easy to discern the disparities that marked the court proceedings. Unlike Januszewski, Krzysztof Grzelczyk was a powerful public figure. He had been affiliated with rightwing political currents and served as the head (wojewódz) of the Dolnośląsk region (southwest Poland) from the conservative “Law and Justice” party between 2005 and 2007, precisely when he worked at the IPN on his books and the IPN published those books in which Januszewski figured as a secret agent. Unlike the court hearing of Grzelczyk, other hearings did not receive media attention. One can also observe a disparity in the way the prosecutor and the defendant attended the case. There was, on the one hand, the prosecutor who stood still, silent, and confident – the table in front of her was clean and tidy all the time. On the other hand, there was the attorney and the professor who sat together in great excitement. Their table was constantly flooded with

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172 A well-known remark of the eminent dissident Jacek Kuroń, which was shown in the film, “Night of Change” (Nocna Zmiana) directed by Michał Balcerzak in 1995 about the overthrow of Olszewski’s government in 1992. The film portrays Kuroń as a ‘twisted’ figure bordering to perversion.
paper; during witness examinations, it was not rare to see the professor passionately searching for documents. Moreover, there were three judges on the bench, the presiding judge in his late 40s standing in the middle. Over time, their table also became covered with documents, mostly files from the IPN. At each hearing, the presiding judge spent about half an hour to read aloud the signature numbers of the new files to the secretary, who typed them to the court file. As usual, the transcript did not include the questions unless the defendant petitioned for the inscription of the question. The reader of the court transcript typically sees only the answers. Likewise, the transcript did not describe the courtroom interactions, as those were not considered as part of the facts to be established.

Thus, the transcript of the testimony of the key witness Adam Pleśnar did not say much about the dynamic of his courtroom examination. A lawyer and historian in his mid-70s, Pleśnar figured as the object of some of the reports and, therefore, was summoned to evaluate the reliability of those reports. Below, I focus on the dynamic of his examination, which also shed light on the broader circumstances of the proceeding and the meaning of the allegation of collaboration. Specifically, I focus on the relationship between Pleśnar and Januszewski:173

The Judge (J): How did you learn about the issue (sprawa)?

Pleśnar (P): I read an article in a local daily…in which the author plainly accused the colleague (kolega) Januszewski of collaboration with the SB… But I don’t exactly remember the content of the article… Besides, two persons informally told me that [he] was a collaborator. [The judge asks him to speak slower]

In addition to the documents I got from the IPN, I read in four different IPN books that Januszewski was a secret collaborator… I know three of the four IPN authors, but cannot evaluate the information they presented, as I don’t know exactly the issues and documents they referred to.

173 Court hearing, 21 May 2009
[He begins giving at some length the reference information from the books, where he encountered Januszewski’s name.]

J: May the witness speak slower?
[He pointed to the secretary who was trying to type his testimony]

P: Pardon me. I am carried away by my emotions, by this emotional situation.

J: What do you know about the lustrated person?

P: I cannot evaluate the documents presented in the book, but I have tried to work on my own to be as objective as possible. I received documents from the IPN… after qualifying for a victimhood status. The documents concerned my own person, meaning the reports in which I figured. The information provided by the Wrocław branch of the IPN showed that Januszewski performed under the cryptonym or pseudonym Hołyński...

J: [After Pleśnar’s long citation of documents, the judge impatiently repeats the question] What do you know about the lustrated person? You know about Mr. Januszewski, right? Can you tell the court about your own knowledge of him? Does the witness understand my question? Is my question clear?

P: I want to say that we have been friends (My jesteśmy przyjaciółmi) for the last 32 years. The entire issue for me is very delicate and difficult. Not only are we friends, but also our families are. I met Januszewski at the end of 1977 when he participated in the activities of ROPCiO and RWD (The Movement of Free Democrats), which I represented in Wrocław […] Until the founding of the “Solidarity” Trade Union in 1980, Januszewski showed exceptional brilliance and offered insightful analyses of the social and political situation. As a historian, he was interested in the documentation of different [oppositional] circles. He was very lively and often went to different cities to participate in the meetings. […] He had been friendly to me and to my family.

When I was again fired from work, a special committee was established to petition the head (wojewódza) of the Wrocław Region to find me a job. To my amazement, the petition worked. Januszewski was friendly to me and to my family [he repeats]. At that time, I had just gotten married and had a little child. My wife was studying in Warsaw. On 13 December 1981 [on the day martial law was declared], I was detained. He was the first person who came to see my wife to ask, “How can I help you?” That is all that I have to say about the case of Januszewski (3-4, emphases added).
This fragment from the examination of Adam Pleśnar, indeed, set the overall mood and line of questioning. On the one hand, there was the plethora of archival documents, about which the witness was again and again asked to comment, and, on the other, Pleśnar was asked to express his own opinion about the issue. While he often said he was unable to recall the events described in the reports and assess the authenticity of the reports, he aspired to tell the truth that formed his memory. But that truth was neither the one about the documents nor the one about a possible attempt to shape his memory by the IPN employees, the claim asserted by the defense. Facing the judge’s questions about the documents, Pleśnar admitted that he did not remember many things any longer.

Somewhat remorsefully, yet confidently, he said,

I am an old man and my memory is not as sharp as it was before. I don’t want to make up (konfabulować) things, I wouldn’t like my private feelings to affect my assessment of the facts. I know that I have the duty to tell the truth, but I cannot qualify (zakwalifikować) that truth. I wouldn’t like to unknowingly (bezwiednie) hurt Januszewski and damage his prestige. We are friends (My jesteśmy przyjaciółmi). Please understand my concerns about telling the truth, which I don’t know.

However, the examination of his knowledge about the documents did not end there. He was too precious a witness. Both the defense attorney and Januszewski himself pressed Pleśnar for further reflection. His answers were most of the time a short “I don’t know” (Nie wiem). Januszewski also had a hard time in formulating his questions and often faced the judge’s sharp “I reject the question.” He was visibly excited to see Pleśnar only a few meters away standing in front of the judge. Skipping the formalities, Januszewski constantly addressed the witness as “Adasiu” (the diminutive form of Adam) or “ty” (the second singular). The bench silently watched his interaction with Pleśnar, but the presiding judge finally intervened when Januszewski jumped over the
wooden structure in front of his table and appeared next to the witness. Januszewski had some photographs in his hand and kept whispering things that the rest of the court could not figure out. Sometimes a question came out, “do you remember, Adasiu?” Pleśnar seemed surprised and helpless. Soon the judge warned Januszewski about the rules of conduct as if he was talking to an uncontainable but charmingly naughty high school student. Januszewski was to present the material first to the judges, then to the witness. It turned out that he had shown a few photographs taken during the meetings described in the report. But in any case, the photographs failed to enliven Pleśnar’s memory. At times, the judge rejected Januszewski’s question and Pleśnar seemed grateful. At other times, Pleśnar wanted to say something about the question. The judge then warned him, “You don’t have to say things. It is fine if you don’t remember. Just say I don’t know.”

Pleśnar was not comfortable with the situation, however. When the judge asked him to sit down, thinking that he may be tired, Pleśnar said, “Your Honor, at least let me continue to stand up. My physical strength will be the only proof of my reliability as a witness.” A simile appeared on everyone’s face. Finally, before he stepped down, Pleśnar wanted to say a last word. In a tired and trembling voice, he said, “High Honor, Januszewski is my friend and will always be my friend regardless of the decision of the court, whether he was Hołyński or not. The documents that I saw are to me nothing more than the relics of a bygone medieval age.” A smile again shined through the courtroom. Of course, none of this appeared in the court transcript. They were, obviously, not a part of the factual evidence that informed the legal judgment.

We are friends. My jesteśmy przyjaciółmi. Jacques Derrida (2005) conceives friendship in a relationship of secrecy, truth, knowledge, and political justice (52). It is a
relationship that traverses one and the other person, constituting the very possibility of community (as Aristotle saw it). If friendship rests on an uncertain ground, as one never knows entirely the other person, it is also about “knowing-how-to-keep-silent.”

“Friendship,” Derrida writes, “does not keep silence, it is preserved by silence. […]
Friendship tells the truth – and this is always better left unknown” (53). Hence, in a sense, friendship rests on the truth of a secret loyalty, the suspension of the suspicion of a friend’s betrayal, and the speech that has to “breathe with an implied silence,” which affirms not only that truth of friendship, but also the disjunction between one and other, their distance, alterity, and separation. “How can you be together to bear witness to secrecy, separation, singularity? You would have to testify where testimony remains impossible. You would have to witness the absence of attestation, and testify in behalf of that absence.” (55) A friend keeps silence. But what is keeping silence among friends if not the “substitution” of “testimony for know-how, faith for the test, `fidence for demonstration, the perhaps for certainty, [and] the other for the same” in the rupture or interruption (ibid.)?

May it not be a glimpse of this friendship in the silences of Pleśnar’s testimony, in his insistence on the truth that he knows, and in his substitution of ‘fidence’ for demonstration in the face of rupture that was brought about by the allegation of Januszewski’s collaboration? Perhaps Pleśnar’s testimony was not so much about the secret betrayal, but about the loyalty to the secret that made them friends.

What was that secret? What unfolded in the courtroom was perhaps not merely a private affection or emotional state, as friendship has come to be understood in modernity (the friend is the person one likes). Rather, friendship, as Alasdair MacIntyre (1981)
suggests following Aristotle, is a social and political relationship, an embodied and
shared recognition and pursuit of a good that is “essential and primary to the constitution
of any form of community” (155). ‘‘Law-givers,’ says Aristotle, ‘seem to make
friendship a more important aim than justice,’ and the reason is clear. Justice is the virtue
of rewarding desert and of repairing failures in rewarding desert within an already
constituted community; friendship is required for that initial constitution” (ibid.). If this is
ture, then, the question arises: Which path will the court follow in its judgment? How will
it consider and evaluate evidence? For which justice and for whose friendship?

THE EXPERT HISTORIAN AND THE TRUTH OF THE ARCHIVE

That law and memory are dialectically related is widely noted. Just as memory informs
law, law, in different ways, for instance, through hate speech regulations, shapes the
contours of memory; it determines what can be said and how that can be said. Adam
Pleśnar’s witness testimony, as we have seen, highlighted the important conundrums
regarding the act of testifying. A lawyer by profession, Pleśnar should have known well
that courtroom examination revolves around the assumptions about the reliability of the
witness, both physical and mental, and that he was subject to a test of strength that
qualifies his knowledge. At one level, his testimony suggested how the act of
remembering is open to influence from ‘outside.’ The scientific and institutional authority
of the state documents shown to him and of the IPN books he gathered carried a certain
weight on his capacity to remember as a reliable witness. Regardless of the intention of
the IPN, Pleśnar was clearly preoccupied by what he considered as the norms of legal
evidence; his self-knowledge of the issue was largely determined by the books and his
interactions with the IPN employees – recall the well-rehearsed opening narrative of his testimony. Initially, he confined his knowledge to the documents. However, later Pleśnar insisted more rigorously on his ‘subjective’ understanding of the issue, his and Januszewski’s friendship, which critically engaged the social normative ground of the lustration process.

In his well-known reflections on the archive, Jacques Derrida suggests that the archive is beset by an internal contradiction that he calls “archive fever.” While the archive comprises a recording and preservation-memorization apparatus, it is also marked by a death drive, which incites forgetfulness and amnesia, and eradicates “that which can never be reduced to mnēmē – the archive, consignation, the documentary or monumental apparatus” (1996, 12). The archive “annihilates” certain kinds of memory, above all, spontaneous memory, “alive and internal experience.” Indeed, “the archive,” writes Derrida, “takes place at the place of the originary and structural breakdown of the said memory” (ibid.).

Even if we do not fully subscribe to this stark opposition between memory and archive, Derrida’s account of “archive fever” sheds important light on the way the lustration law uses the IPN archive. In the cross-examination of Adam Pleśnar, we observe a similar tension. On the one hand, lustration seeks to fix the relation between words and persons or things by drawing on the authority of the state archive. On the other hand, such archival evidence, as we have seen, also meets the challenge of the memory of a friendship that is incommensurable to the state archive. Such memory is or cannot be enclosed by the SB documents even if it may be stimulated by those documents.
But friendship unsurprisingly was not the focus of the court. The focus was rather on the identification of the authorship and the authenticity or reliability of the evidentiary documents. As in other lustration trials, the IPN historians played a key role in this regard, as they had the necessary institutional position and scientific credentials to access the little known and highly disputed archival documents and exercise the hermeneutic right to interpret them. Through their expertise, the IPN archive “spoke the law,” as Derrida would say. In so doing, the intimate link between law and history manifested itself. As Derrida famously remarked, the word “archive,” in fact, suggests not only the “commencement” and ordering of (historical) knowledge, but also the “commandment” of law, a “nomological” order. It is in the interstices of law and history that IPN historians typically testified in the lustration proceedings.

The historian expert witness of Januszewski’s trial was the young historian Grzegorz Waligor, in his early 30s. Unlike the hearing of Pleśnar, his testimony took the form of the dry voice of the expert, personally unrelated to the case. It was no less accompanied by the wandering, incessant work of suspicion. He said he first met Januszewski in 2000 when he was working on his master’s thesis on the ROPCiO. Januszewski was the person responsible for the documentation of wide-ranging oppositional activities in Wrocław, running a personal archive on the subject in his house. Since the IPN at the time had not finished accumulating and organizing the SB documents, Waligor was largely dependent on Januszewski’s archive. But Januszewski, observed Waligor, was uneager to help him. While carefully guarding the archive, Januszewski also declined Waligor’s request for an oral history interview on the opposition. Waligor later heard from certain other ex-dissidents that Januszewski may, in
fact, have been a secret collaborator and had something to fear today – as we have seen, both Grzelczyk and Pleśnar had also heard about these allegations before. In short, such unwillingness of the professor, combined with his colleagues’ suspicions of betrayal, largely informed Waligor’s first impression of the professor. In fact, he never met him again. Of course, the historian stressed in his testimony that the allegations of collaboration and his unhappy encounter did not color his evaluation of the secret service reports, which the IPN made available to him from 2002 onwards.

Waligor claimed that he was able to unambiguously identify “Hołyński” as Januszewski.\(^ {174} \) Since Hołyński did not have a personal file, Waligor relied on 20 reports signed by Hołyński that he found scattered in different security files. How did he determine the author? First of all, the writing style and quality of the reports, Waligor suspected, matched the high intelligence and educational background of Januszewski. That Januszewski was an intelligent and erudite man implied that he could have written the well-composed reports of “Hołyński.” Moreover, the specific content of the reports guided Waligor. Knowing the participants of certain meetings described in the reports, the historian could identify who may be the author of the reports. This identification rested on the calculation of probabilities and elimination of unlikely suspects. This method was not so straightforward, however. For instance, this is how Waligor identified the author of the report on a meeting attended by high profile oppositionists: “Aleksander Hall was already lustrated; [Andrzej] Czuma and [Kazimierz] Janusz recently received a high medal from the state (wysokie odznaczenia państwowej). Thus, the only remaining person is Januszewski.[…] Besides, none of the other persons was able to steadily report on the meetings in Wrocław, as they visited Wrocław only for specific occasions.” In

\(^ {174} \) Court hearing, 21 and 26 May 2009.
another case, Waligor excluded Adam Pleśnar from the list of suspects in a similar way: “Mr. Pleśnar has got a victimhood status from the IPN, therefore, the likelihood of him being Hołyński is minimal.”

We can observe how the work of interpretation of documents and calculation of probability relied on the assumptions about political, legal-institutional, and scientific authorities that are external to the specific content of the documents at issue. The evaluation of past suspects was notably filtered by the present acts and statuses of the persons concerned. In the evidentiary process, whether in the court or on the historian’s desk, the expertise of the IPN, legal institutions, and other medal-giving state institutions are often invoked to overcome the margins of uncertainty and sort out the unlikely suspects. Let me give one more example. To the question about the IPN’s “identification note” (nota identyfikacja) that names Januszewski as “Hołyński,” Waligor answered in the same vein. He mainly trusted the expertise of IPN archivists, who accessed the registration lists and prepared the official document. For this particular information, the historian mainly relied on the knowledge of the IPN employees and the well-known politician, Krzysztof Grzeczyk.

Such reliance on the institutional authority of the IPN and high-profile public figures was not an exception. As we have seen in the previous chapter, the young historian Pawel Zyzak also relied on the research of the IPN historians in his work on Lech Wałęsa. In scholarly research, citation is certainly common and the use of prior research is often indispensable. In his book of names and reports, as Waligor maintained, he cannot check each and every person – besides, he had limited access to the registration lists, which were accessible only by the IPN archivists. In a sense, one was at the mercy
of the archivists. But for such ambiguous cases, this combination of inaccessible registry lists and the reliance on the findings of prior research and the opinions of morally and politically credible figures prepared the ground for a reproduction of dubious findings until they become hard and indisputable facts by virtue of their sheer citation and circulation (they become dead certain ‘after the fact’ and plunge the object of inquiry, the alleged collaborator, into a hall of mirrors).

Finally, let me mention another important line of reasoning followed by the historian. It involved the assessment of the narrative of the reports. Of particular importance were the reports that the author referred to himself. Waligor approached these reports to collect clues about the author when the report, for instance, read that, “That was Bruski, who was somewhat active in March 1968; we even became friends back then.” Waligor read this as an evidence of “Hołyński’s” participation in the 1968 protests, which Januszewski also attended. But for the reports in which the name of Januszewski was cited as the third person singular, Waligor suggested that this must be a special conspiracy tactic to mask the author of the report (e.g., a report the counts Januszewski among the participants of the meetings). My own reading of different agent files during my archival research confirms Waligor’s observation. Yet, the inconsistency in his approach to the reports was remarkable. Sometimes they were treated literally and sometimes ‘tactically,’ meaning something else than is written there.

What was Januszewski’s response to those claims? Like Waligor, he was also plunged into the world of reports and probabilities and sought to develop an alternative interpretation of them by working on the ambiguities implied in the reports. He mainly argued for the non-human or composite authorship of the reports of “Hołyński.”
According to him, the SB officers produced the reports on the basis of wire-tapping or other non-human information sources. It may be that “Hołyński” was the figure invented by the SB officers, under which they brought together and synthesized the various information they gathered on the opposition. There had already been vocal lustration cases, in which the former SB officers noted the tactical invention of some agents for conspiracy or provocation purposes, especially in the 1980s. This line of argumentation was, therefore, common in the lustration proceedings, which does not mean that it was simply a cover-up. As we have seen, Krzysztof Grzelczk also became an object of the SB’s allegation of collaboration for provocation.

Adding more ambiguity to this complex evidentiary material, the defendant also challenged the authenticity of the documents. If the reports examined by the court were copies, where were the original archival materials? Waligor rightly pointed out that the copies did not mean that they were not originals since the SB also made copies for its own purpose. So some of the copies were, in fact, ‘original copies.’ But this argument did not convince Januszewski. In a world of copies, copies of copies, how could one trust that the IPN or someone else targeting him did not manipulate the documents, for instance, by placing his signature under the evidentiary material through the technique of “copy-montage” (kseromontaż)?

Thus, the court hearing about the forensic report that compared the signature of “Hołyński” with that of Januszewski was anything but peaceful. Januszewski claimed that the “graphologist” was biased in his report, as this man was regularly employed by the prosecutor in the lustration cases. He was their man. Besides, the sample signatures to be compared were selected by the prosecutor and the criterion of selection was not clear.
While the forensic report indicated a certain match of signatures, Januszewski disputed that the expert could not reasonably conduct a fair test on photocopied documents. When one is driven by suspicion, there seems to be no end to the disputes. Suspicion became particularly intense when the material at issue was secret and came to the court in photocopies.

THE TESTIMONY OF THE FORMER SB OFFICERS

But the suspicion at issue here, I emphasize, was not simply the subjective disposition of Januszewski. It is deeply rooted in the law’s suspicion that manifests itself in different forms. It is, for instance, embodied by the judges’ inquisitive approach to the parties attending the trial (the parties’ possible attempt to manipulate law) and by their critical attitude toward the evidentiary material (the anxiety over possible loopholes). However, law’s suspicion cannot be contained in the judges’ conduct or even in the courtroom, as it spreads over and impacts the social practices and relations that come under law’s scrutiny (Agrama 2010).

Lustration and its court proceedings have been absorbed into an intense environment of suspicion. This partly results from the endemic lack of trust toward the actors and institutions conducting lustration. The IPN has been commonly accused of being the political instrument of rightwing parties and engaging in some political and legal manipulation. Likewise, the groups who have been critical of lustration are also accused of engaging in some political conspiracy or legal manipulation. If the IPN was suspected of manipulating evidence, Januszewski was also suspected of manipulating evidence or diverting the court’s attention. These twin suspicions, in my view, largely
result from the ambiguities inscribed in the process of lustration, the space of ambiguities, which both sides of the lustration aim to define and seize upon. While a part of these ambiguities are produced ‘externally’ as an effect of the larger social and political-economic transformations, much of the ambiguities internal to the lustration proceedings result from the widespread doubts and anxieties about the content of the SB files, especially concerning their reliability or truthfulness. As mentioned in previous chapters, since the early 1990s many scholars challenged the alleged omnipotent knowledge of the SB and the promise of full revelation that would come with the disclosure of the files (e.g., Friszke 2011).175

Lustration’s extensive usage of the SB documents or today’s IPN documents as chief evidentiary sources makes inevitable the law’s reliance on former SB officers as key witnesses. After all, it was these officers who generated most of the documents used by the court today. It used to be their archive. Yet, the appearance of the officers as expert witnesses could well augment the paradoxes and ambiguities already in play in lustration proceedings. Did these officers tell the truth? Were they any more reliable than the files that were put to use? Would they betray their prior loyalties and duties to keep things secret? There was no single answer.

In his ethnographic study of witchcraft in postcolonial Cameroon, Peter Geschiere (2006) pointed to the ambiguities generated by the legal trials involving witches. Fighting the witches and witchcraft has been a matter of performing sovereignty for the state of Cameroon. Being a witch was firmly outlawed. Yet, the legal dealing with alleged witches has created endless problems. How was the law to prove witchcraft and identify

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175 The eminent historian of the opposition, Andrzej Friszke (2010) often underscored that the files were not sufficient to construct a comprehensive account of the events or persons that they described. They needed to be supplemented by other sources of knowledge, including different archives and oral histories.
the witch without being absorbed into the ambiguous categories of witchcraft and the floating and fuzzy definitions of a witch? It seemed that the law’s disposition toward precision and fixation was of no match to the indeterminacy and versatility of the popular beliefs about witchcraft. To manage such problems, the courts typically summoned witches (nganga) as key witnesses. It was these witnesses who were to tell the court if the witch in question “left his body at night to fly off to a meeting with his fellow witches” (227). The witness could know this precisely because he or she was also a witch. Thus, his or her testimony boldly highlighted the incapacity of the state law to address the problem of witchcraft. As Geschiere observed, it indeed drove the law to its limits.

Similarly, certain lustration trials, especially that of Januszewski, also challenged the law from within, pushing it to its edges in the face of indecipherable secrets, wandering suspicions, and immutable uncertainties. Three retired SB officers showed up for Januszewski’s trial.176 One of them was a woman in her mid-70s, who had worked in the administrative department. During the hearing, she hardly ever recognized the documents that carried her signature and often denied that it was her signature. She also challenged the authenticity of the documents shown to her. Later, however, it turned out that the witness thought she was looking at the original documents when the court file largely consisted of photocopied material; this point visibly irritated the presiding judge, as it probably informed her entire assessment of the evidentiary material.

It was not clear whether the officer was confused out of anxiety of giving a testimony or because her memory had become feeble over time, making her too defensive and suspicious, or because she was uncomfortable about the lustration process and the judicial usage of those documents. In a similar vein, the retired SB officer Marian

176 Court hearing, 16 October 2009.
Kieszkowski, 78 years old, also challenged the authenticity of some of the evidentiary material. But his testimony was far more important, because he was actually the key officer who recruited and handled “Hołyński,” allegedly Januszewski. Both he and Januszewski knew each other, information that added another layer of ambiguity to the whole thing. Let me first describe his description of his relation to Januszewski, which was indeed the major issue of the lustration proceeding.

The encounter of Captain Kieszkowski and Januszewski dated back to the late 1960s. At the time, the SB officer worked as a supervisor at the Ministry of Interior in Warsaw. He was responsible for overseeing security controls and checking and investigating citizen complaints and denunciations, as well as the information conveyed by the state institutions across Poland. During a visit to a power plant in Wrocław, the director of the plant asked him if they could offer help (udzielić pomóć) to an employee, whose son was arrested and expelled from the university. The man wanted to know why his son was in prison. During the hearing, Kieszkowski revealed one of the pragmatic principles of the SB, “In principle, an electric employee and a parson stood for the ‘turret of the region’” (“wiezyczke powiatu”). Thus, they were to be approached with special care. Januszewski’s father was an electric engineer. Because of the frequent electricity cuts, the regional office (Komenda Powiatowa) was at the time concerned about improving their relationship with the power plant. Thus, Kieszkowski could not but accept the request for help.

In his investigation, Kieszkowski managed to discount the two-year long prison sentence meted out to Januszewski in 1967 for singing drunk on the train a song that was deemed injurious to the nation. The SB officer sought to recover his student rights and
annul the decision about his expulsion. To sort out these matters, he said he invited Januszewski for a talk (rozmowa). He met Januszewski a few more times because, Kieszkowski said, the regional cell of Wrocław asked him to make sure that he wouldn’t be in trouble. For this purpose, he invited Januszewski to Warsaw several times. He covered his travel expenses through the SB’s official budget. In the meantime, Kieszkowski increasingly “liked Januszewski and got interested in him,” as he worked on the youth. He said, “I often went to the youth festivals in Poland and abroad. He was necessary for me because he knew the student environment and some foreign languages.” However, Kieszkowski said, he never asked Januszewski if he knew where the SB officer worked. Later, Kieszkowski obtained his chief’s permission to employ (zatrudniać) Januszewski at the Ministry— not as a secret collaborator, but as a regular employee. He began preparing the required documents, which contained personal information about Januszewski, as well as information about the possible benefits of employing him. He gave this emergent file the cryptonym Hołyński. 177

Why did Kieszkowski pick the name Aleksander Hołyński, the Polish historian of aviation? He said that like Januszewski, he was also interested in aviation and plus, he knew that Januszewski was a historian, so he coined “Hołyński” to refer to their relationship. He placed some documents under the file “Hołyński,” documents that were produced through his interviews with the people living near Januszewski’s place of residence, through occasional intercepting of phone calls of Januszewski, as well as through tapping some of the locations Januszewski frequented. In short, he followed the

177 Note that the cryptonym was given to a case, the operations or issue-oriented investigations, whereas pseudonym referred to a person.
usual procedure of background check conducted about a future employee, be it security officer or secret collaborator.

Due to Kieszkowski’s serious illness, things took a different turn, however. He took a break from work when he got hospitalized in 1976 after a heart attack. In the meantime, the file disappeared; he said he had no idea how the file ever went to the Wrocław SB department or to what end it was put. Kieszkowski had more to say about that department, however. He said that department was already critical of him for being too lenient on Januszewski and for trying to employ someone like him with visible enmity toward the regime (wrogo stosunkowany). But it was precisely for this reason, so Kieszkowski claimed, that he aimed to register him. He sought to “secure” (zabezpieczyć) Januszewski, to use the jargon of the SB. In other words, the SB officer claimed that by registering him, he sought to protect Januszewski from the brutal security officers who targeted the oppositionists.

This was how Kieszkowski described the main reason for his so-called zabezpieczenie. Another reason was more bureaucratic. To be able to cover Januszewski’s travel expenses (they met about 10-15 times), Kieszkowski said he had to somehow register him. Furthermore, it was not always Kieszkowski who called Januszewski. The latter also tried to reach him. One particularly dramatic occasion concerned Januszewski’s newborn daughter in the early 1970s. When she got fatally sick, he asked for help from Kieszkowski, who then made a few phone calls to the Ministry of Health to obtain the necessary medicine and doctor. She eventually recovered. During the hearing of Kieszkowski, she was sitting only a few meters away from him.
It is important to note that in contrast to Kieszkowski’s complex plans for Januszewski, the latter did not seem to know what was going on. Januszewski said he never knew about the cryptonym Hołyński, he never understood that Kieszkowski worked at the SB, and he even did not get Kieszkowski’s name correct. During the hearing, Januszewski said that all the time he thought he spoke to Marian Knyziak from the Ministry of Higher Education. Kieszkowski confirmed that he, in fact, invited Januszewski to Knyziak’s room at the Ministry of Higher Education, because no one knew him at the Ministry (in any case, Knyziak was also from the SB). Moreover, he introduced himself as Marian without saying his last name and told Januszewski to call him not “Mr. Director” (*Pani Dyrektorze*), but “you” (second singular, *ty*). After a while when Januszewski went to the Ministry of Higher Education to request help (*pomoc*) for his daughter, he again saw at the door the name Marian Knyziak, but never suspected that there were two Marians.

In short, Kieszkowski argued that even if Januszewski appeared on the SB’s registration lists, he was not conscious of it and had never been a “secret collaborator” in the sense the SB defined the term. True, they met each other, but it was a different kind of relationship. And the history of the file “Hołyński” was even more complicated. It disappeared into oblivion, Kieszkowski suggested. With this narrative, the former SB officer frontally challenged the way the lustration prosecutor documented his pre-trial examination. He rejected that he ever said, as the prosecutor claimed in her indictment, that he recruited Januszewski as a secret collaborator. But when the judge inquired why he signed the protocol of his examination, he said he was sick at the time and trusted that the prosecutor would have it correct.
Finally, Kieszkowski, on many occasions, either did not recognize his signature on the documents or entertained the possibility of forgery of some of the evidentiary material. For instance, he suggested that after his hospitalization, someone from the SB may have copied his signature and pasted it and used it for different purposes. The copies of copies might have proliferated without his knowledge. He suggested that there was room for imagination in writing up reports and at times, the information gathered through tapping or interception may have been compiled in a report by employing a narrative form as if it was obtained through conversation. In brief, there was considerable room for imagination, improvisation, and conspiracy tactics in the SB’s production of documents (which did not mean the reports were false). Finally, he claimed that he did not recognize some of the conspiracy locations where he allegedly met Januszewski.

In short, Kieszkowski’s testimony strongly challenged the hard facts the court aspired to while it reinforced the arguments of the defense about the ambiguity and unreliability of the documentary evidence presented to the court. It was not possible to ignore the disturbance felt by the bench and the prosecutor. Yet, the last witness, again a retired SB officer, this time an expert on technical things like arrangement of conspiracy locations for secret meetings, testified that the locations indicated by the reports, in fact, existed. Formally, the SB officers, he said, were required to refer to their information source and the margins of improvisation were quite narrow. After this elderly man’s testimony, the bench took a deep breath. The prosecutor relaxed on her chair, as the defense became nervous again.

SUSPICION BEYOND THE COURTROOM
It was not rare that former SB officers’ testimonies contradicted each other in the lustration trials and fomented and reproduced the mechanisms of suspicion already in play in those trials. The space between what was on paper and what the officer did was fraught with unresolvable ambiguities. This space, in which many security institutions and state bureaucracies across the world operate, also seemed to provide room for legal and political manipulation in the lustration proceedings. If Kieszkowski was so upset at the lustration prosecutor’s appropriation of his pre-trial testimony, why did he not dispute it earlier? Or did he later change his mind? What was the true nature of the relationship between Kieszkowski and Januszewski, given that they met each other several times in the past? Would not this relation morally count as “collaboration,” regardless of the exact technical or legal category in which Kieszkowski aspired to register him? Did Januszewski really not know about Kieszkowski’s work at the SB, or did he pretend not to see it or inquire about it? One may reproduce further this sort of questions that come from the vicinity of the lustration discourse.

Here, I am not interested in investigating these questions or offering a definitive answer, which is impossible. Instead, I want to highlight the social force of the mechanisms of suspicion that were reproduced by the lustration proceedings. My observation of the proceedings was also enveloped by those mechanisms. Let me mention one scene. Whenever Januszewski and a former SB officer talked or stood together in or outside the courtroom, the ‘secret’ link between the two seemed to suggest itself. It was as if a scene from the novel by Witold Gombrowicz, Cosmos (1994), where he so eloquently described the proliferation of ever expanding and secretive links among persons and things. After Kieszkowski’s cross-examination, I saw him and Januszewski
smoking a cigarette in front of the court building. It was a usual chat about how things in Poland were not getting any better, but the manner of their interaction suggested an intimacy between the two that did not escape my attention. What was the precise source of this intimacy? Was it because both of them were outgoing and talkative persons, as I think they were, or was it something else? Was there really an ongoing secret pact between former SB officers and their agents, as the pro-lustration groups insist?

Januszewski must have quickly noticed my (and other standing persons’) inquisitive eyes, as he quickly finished his smoke and left Kieszkowski. I have seen other cases, where the lustrated persons also avoided physically appearing together with the retired SB officers. The guilt of those officers was contagious and association with them was dangerous. But I was also suspected of being a secret agent. Perhaps realizing my suspicion of him, he wanted to assure me that he never consciously talked to any secret service in Poland or elsewhere. He then inquired about my own links with the secret police and half-jokingly said, “It is the C.I.A. that was today interested in lustration. Otherwise, why would an American education institution ever pay my bills?” He asked me about my views on the U.S. security operations in Afghanistan and Iraq.

My conversations with his daughter, Asia, were marked by a similar dynamic of suspicion. Inasmuch as I appeared suspicious, she also was not convinced that I was fully on their side. As soon as I brought up the name of Polish aviation historian Aleksander Hołyński in our conversation, I noticed that we seemed to be back to the courtroom. Obviously, her father knew about the historian and he was interested in flying small airplanes. And Asia also flew with her father in the past. But the name Hołyński was forever doomed. From our conversations, I noticed that the entire family had been
absorbed by the lustration proceedings. She said her mother could not come to the hearings, because they were too painful for her. Asia’s husband told me that for years the entire family had been talking about the case. Asia heatedly remarked that their family name was at issue. Her father’s reputation had been deeply damaged and they were all implicated in it. It was shameful. It was also sad that her father’s career was overshadowed by the accusation.

A lawyer by profession, Asia meticulously studied her father’s court case. Before every hearing, she, Januszewski, and the attorney discussed their arguments and decided which IPN documents to request from the court. Asia and Januszewski often complained that it was very expensive to photocopy pages from the court file. One page cost one PLN (app. 30 cents). Sometimes she referred to the proceedings as a professional; at other times, when I referred to Januszewski as the “lustrated person” or as “Mr.” (Pan), she emphasized that Januszewski was her father (mój tato) – it was her father who was on trial. Asia carefully instructed her father about how to articulate his arguments and what questions to ask. She watched her father closely during the hearings. It was as if Januszewski was acting out for her in the court, trying to impress her with his probing questions and prove that he could make it. Sometimes Asia responded to her father’s somewhat poorly articulated questions with an audible “Oh, Gosh” (oj jejku). The judges usually watched this ongoing interaction silently and sometimes they too appeared amused by it.

In our conversations, Asia often protested: why was it that the security reports on her father were supposed to be true while important politicians’ files were fake – she referred to the files of Lech Kaczyński and Małgorzata Niezabitowska? Both she and her
father often highlighted the complicity between the SB and the IPN. They reiterated the widespread suspicions about the political instrumentalization of the IPN and the impossibility of holding the IPN accountable for its actions. They had not been allowed to see the documents that were held against her father.

During the court proceedings, Januszewski tried very hard to see the concerned documents. In every hearing, he ordered new archival material. As the traffic between the court and the IPN became intense, the court file tripled its size and reached something like 12,000 pages. Januszewski had been visibly perplexed by the task of studying the evidentiary material. He bitterly complained to me that all his life had been overwhelmed by the work of reading the documents and preparing for the court hearings. His academic research came to a halt, as he couldn’t find time to do anything else. Either he waited too long to obtain the documents, or he had too much to read.

How did Januszewski evaluate the reports, which he spent so much time studying? Was his reading of the reports any different than that of Krzysztof Grzelczyk and Adam Pleśnar? Like them, he seemed to have a hard time recalling the events or meetings described in the reports. He often tried to compare the content of the reports with his archive of the opposition. He sometimes used photos and leaflets to refresh his memory. In the meantime, he seemed to be conducting his own historical research. While he used his archaeological skills to discover the depths of the archives, he applied his aviation experience to explore the cloudy skies of evidence. He suggested that the security reports were mostly half-true. They contained both true and false information, because they were largely based on hearsay or rumors.
Thus, he wondered how the judges, who were not only much younger than he, but also did not have any idea about the informational content, could ever evaluate the reports. He skeptically noted that the judges were specialized in organized crime or mafia-related cases. And he was concerned that they would treat his lustration case in the same manner, that is, to track down the hidden criminal networks and so on. Certainly, the dominant representations of the SB as a quasi-mafia network justified his concerns about their treatment of his case as a mafia case.

But there was more to the disagreement between Januszewski and the judges. As a historian, he argued for a broad reconstruction of the social-historical context of the reports to evaluate their contents. Instead, the bench often underscored that the judges were not historians and did not conduct a historical investigation of the opposition, so they cannot request so many IPN files, which at any rate arrived slowly. What the court understood by context was limited to an investigation of the identification of “Hołyński” (and related pseudonyms) with Januszewski. The court was not concerned with establishing the truth of the historical events and actions, or deciphering the identity of other people involved in security operations. The court was not even concerned with finding out who may be “Hołyński” if it was not Januszewski. In brief, the focus of the case was on Januszewski and his relation to “Hołyński.”

As Carlo Ginzburg (2002) noted, the divergence between judicial and historical investigation is not always so decisive. He coined the term “judicial mode of historiography” to refer to a certain trend of historiography that also reconstructs the past with the aim of identifying culpable individuals and distributing legal responsibility. This approach, then, privileged an event-centered and individual actor-based reconstruction of
the past at the expense of the contingent and abstract social-historical processes that shaped, if not generated those events. It typically took the viewpoint of the higher interests of the state. As I argued in earlier chapters, it was this judicial mode of historiography that marked the IPN’s historical research, including that of Grzegorz Waligor, the expert-historian of Januszewski’s case.

Conspiracy trials offer paradigmatic instances to study the problems of establishing proof. As Ginzburg (2002) suggests, they are marked by two major contradictory tendencies. On the one hand, conspiracy trials strive to “designate authorship or human agency to hitherto complex events, the gridlock of actions, contingently related to one another,” and, on the other, these trials “pacify one in the face of a seemingly invincible course of events and connections disarming one’s capacity to act…” (64-65). Thus, there is either the exaggerated sense of human agency (a person or a group steering everything behind the doors) or the effacement of any sense of human action. Moreover, there is also the problem of disproving innocence. If witchcraft accusations constitute an epistemological and even ontological problem in modern legal practice, as we discussed earlier, conspiracy also has been difficult for the legal courts to prove or disprove. Conspiracy, Ginzburg suggests, is rarely a singular phenomenon and tends to proliferate once one begins exploring it. In the same vein, the suspect of witchcraft or conspiracy may never be cleared of the accusation. Particularly at moments of political urgency, suggests Ginzburg, the court may well consider the absence of evidence (e.g., documents) as a proof of guilt. The absences or missing links are interpreted in a pre-existing framework and are evaluated on the basis of their “compatibility” with that framework. Ginzburg coins the term “logical proof” to describe
this type of rationalization of the proof. “Logical proof,” he writes, “becomes necessary in dealing with the individuals who destroy, conceal, or alter evidence.” (105)

Across history the mafia trials, conspiracy trials, and the trials of terrorism, indeed, offer such occasions – the occasions that also reveal the intertwined relationship of law and politics. Thus, perhaps it does not come as a surprise that the lustration trial of Januszewski, held in the style of a mafia or conspiracy trial, displayed a similar dynamic of judicial suspicion and rationalization of proof, as well as the entanglement of law and politics. Reflecting on his trial, Januszewski said, “I was punished in the past for my opposition to the communists. Today I am again punished, this time by the communists’ papers. Such is the caprice of history.”

CONCLUSION
In this chapter, we have examined different forms of suspicion in play in the lustration trial of Januszewski. Aside from law’s modes of suspicion that crystallized particularly in the evidentiary procedure, we also have seen the ways in which suspicion worked through less institutionalized forms between the people related to the trial. What were then the socio-historical and structural factors that contributed to the exercise of the myriad forms of suspicion?

I have concentrated on two major factors. The first one concerned the IPN’s peculiar position in the lustration proceedings. The state institution both accommodated the lustration prosecutor and provided the evidentiary material to the court. This double role of the IPN had been an object of much suspicion. Besides, the IPN enjoyed a special legal status, which exempted it from public oversight. That special status was supposed to
guard the IPN against political intervention, but in doing so, it paradoxically contributed to the consolidation of the rightwing political currents that had come to dominate the personnel of the institution. We have seen that Krzysztof Grzelczyk, who denounced Januszewski, had been officially affiliated with the IPN and had been an influential politician. Besides, the IPN historians and archivists typically played a central role in the lustration proceedings. All these factors made Januszewski (and his family) extremely suspicious of the potential legal manipulation and political instrumentalization of the issue. Certainly, none of the suspicions were specific to Januszewski. His arguments indeed drew on the widely known criticisms of the IPN and lustration.178

The second factor focused on the judicial usage of the former SB or IPN documents to establish proof. In addition to the law’s well-known modes of suspicion that were manifest in the judges’ attitude to the litigants and the litigants’ perception of the court, I have highlighted that the lustration law’s reliance on the much contested and compromised archival documents as its chief source of evidence inadvertently reproduced the authority of those documents and took part in the irresolvable ambiguities, secrets, and tactics that generated those documents. Furthermore, this reliance disallowed the consideration of alternative sources of evidence and alternative criteria of making legal decisions. The testimony of Adam Pleśnar, his memory of friendship, became legally useless since the lustration procedure operated on the categories of the SB/IPN. Moreover, this reliance on the SB/IPN documents made inevitable the use of former SB officers as expert witnesses. But this came at the cost of intensified suspicion and ambiguity, which paradoxically underscored the incapacity of

178 Thus, Januszewski and his daughter often referred to the problematic lustration cases of Leszek Moczulski and Małgorzata Niezabitowska to ground their criticism of the legal process.
the existing legal procedures to deal with the complexities and contingencies that marked the evidentiary material.

What all these factors have delineated is precisely the space of sovereign power. It is through the suspension of those suspicions and uncertainties that sovereign power asserts itself. None of the criticisms and ambiguities mentioned above ever come to an end by themselves. They require a political intervention from within and from without. The legal uncertainties concerning proof, for instance, are rationalized in a pre-existing framework, in light of the hegemonic nationalist reconstructions of the past. Or, the court made its decision in accordance with the well-established political positions on the issue of lustration. In other words, the lustration law was not subject to political instrumentalization from outside – any law indeed may be seen as such, but it was the internal structure and mechanisms of the lustration law (e.g., the specific evidentiary procedure based on the security documents; the IPN’s peculiar position) that opened it to political influence.

This political influence was clearly manifest in the court verdict of Januszewski. On the 26th of April 2011, three and a half year after his self-lustration proceedings started, the judges pronounced him a “lustration liar,” reiterating more or less the narrative constructed by the lustration prosecutor. The retired SB officer Marian Kieszkowski’s court testimony was not given attention. Instead, his first testimony compiled during the pre-trial examination was highlighted. The verdict also relied on the IPN historian Grzegorz Waligor’s testimony to assess the archival material. It was his scientific expertise that counted. According to the verdict, Januszewski had agreed to collaborate with the SB in prison in exchange for a shorter sentence. He further delved
into the world of secret collaboration when he sought help from the SB to find medicine for his sick daughter. He then continued his collaboration, informing on his colleagues on the opposition. During martial law, he finally broke contact with the SB. Looking somewhat sympathetically at the accused, the bench expected Januszewski to display remorse and confess his entanglement with the SB.

As the legal historian James Q. Whiltman noted, the judges of early modern Europe often expected confessions from the accused not just to establish truth. “Requiring condemned persons to confess was also a way of compelling them to take responsibility for the judgment passed upon them, thus lifting the responsibility from the shoulders of their judges.” (2008, 23)\(^{179}\) Perhaps part of this early modern Christian technique echoed in the lustration cases, many of which were marked by irresolvable ambiguities and legal uncertainties, which visibly placed the judges in a morally uncomfortable position. But Januszewski did not grant the judges the moral comfort they seemed to seek. He did not show a sign of remorse nor confess his betrayal. Instead, he reiterated his counter-arguments and heatedly accused the IPN of manipulating the evidence and taking part in a conspiracy against him. Krzysztof Grzelczyk, who denounced him, allegedly used him to increase his moral credibility and prove his loyalty to the nationalist anti-communist party, of which he was a member. Januszewski then asked if all his years in the opposition, his victimization by the communist state did not mean anything today. If the court reiterated the lustration prosecutor’s conclusions, Januszewski also reiterated his rhetoric of self-presentation.

\(^{179}\) In the same vein, James Q. Whiltman showed that the procedures of proof (judicial suspicion) historically was less about the guilt or innocence of the accused and more about the judges’ moral authority to pass judgment.
But what or whom did Januszewski, indeed, betray? Adam Pleśnar, whom Januszewski intimately knew, said they were and will be friends; Januszewski’s family and especially, his daughter dramatically supported him; Krzysztof Grzelczyk’s accusation was not about his actual suffering as a result of Januszewski’s alleged reports, which was in any case hard to legally prove, but it was about the fact that Januszewski was a secret communist agent. That was also the position of the court and the IPN. Januszewski mainly bore the moral guilt of belonging to the category of the secret agents. In accordance with the lustration law, his betrayal was to the Polish nation and the new state that stood for it. As is often the case, the experience of such accusation was lived in the intimate sphere of social relations, on which the state was built.

On the day Januszewski was found guilty, General Czesław Kiszczak, one of the key authors of the martial law of 1981-1984, was once again acquitted of criminal charges. For more than a decade, Kiszczak had been taken to the court to account for the murders of the miners during the famous strike at the Kopalnia Wujek. Kiszczak also was known to be the officer who gave the infamous instructions to the SB in the 1980s that allowed them to manipulate information and the sources of information for strategic purposes. Like the judges of Januszewski’s case, the judges of the Warsaw Court stated that they were not historians and they could not rectify history. But unlike them, the judges underscored that there was not sufficient evidence against the General Kiszczak. The rule of law, they stated, obliged them to respect the principle of the presumption of innocence.

Carlo Ginzburg noted that in 1939 an Italian jurist – Fascist and pro-Nazi – argued that, “In the case of judicial uncertainty, [the judge] will rely on the principle in
dubio pro re respublica, which replaces…the ancient principle of in dubio pro reo. In a case of uncertainty, the source of legal procedure…becomes the ‘healthy feeling of the populace’” (2002, 120). In the case of judicial uncertainty, was it the raison d’etat, the “higher interests of the state,” or the presumption of innocence of the suspect that is to be invoked? What to do with judicial uncertainty and how to define the threshold of doubt has been of high political importance. Yet, it was precisely in this area that Januszewski was found guilty while Kiszczak was acquitted. While the benefit of doubt was not granted to Januszewski, Kiszczak has been enjoying that ‘privilege’ for decades as the man of the state.
CHAPTER SEVEN  FACING HISTORY: SPECTACLES OF JUSTICE AND THE BODY OF THE ACCUSED

Truth is not a matter of exposure which destroys the secret, but a revelation which does justice to it.

Walter Benjamin\textsuperscript{180}

The face is at once the irreparable of being-exposed of humans and the very opening in which they hide and stay hidden. The face is the only location of community, the only possible city. And that is because that which in single individuals opens up to the political is the tragicomedy of truth, in which they always already fall and out of which they have to find a way.

Giorgio Agamben\textsuperscript{181}

Figure 4 “Dismantling Kapuściński”

\textsuperscript{180} Quoted by Michael Taussig (1999, 2).
\textsuperscript{181} Giorgio Agamben (2000, 88.9-92.3).
Let me begin with the smile of the world renowned Polish journalist, Ryszard Kapuściński. What could be a better analogy for the transformation his smile has undergone than the smile of the Cheshire cat in *Alice in Wonderland* that persists alone, even when its body is no longer present? “’All right,’ said the Cat; and this time it vanished quite slowly, beginning with the end of the tail, and ending with the grin, which remained some time after the rest of it had gone. ’Well! I've often seen a cat without a grin,' thought Alice; ' but a grin without a cat! It's the most curious thing I ever saw in my life!'”  

Kapuściński’s smile still lingers in the air after his death in early 2007. His posthumous disclosure as a secret communist agent added shades of ambiguity to his charming smile, which is often noted to have played a key role in his numerous conversations with activists, militants, and common people that inspired his famous

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182 Quoted by Žižek (2012, 26). See also Gilles Deleuze (1990) for his reflections on *Alice in Wonderland*.
literary-journalistic accounts of Third World revolutionary struggles and despotic regimes. Exposing his ‘secrets’ has shattered his smile and broken his face into pieces as though in a mirror by the throw of a stone (Figure 1). In place of the youthful smile of the revolutionary, there is the moral autopsy of the dead man. Gone is Kapuściński in the company of his comrades in arms in Angola with the smile of the collective that looks forward to the future (Figure 2). Now we see him with the individuated and disintegrated smile of the old man of a bygone ‘totalitarian’ era. Is this, one wonders, the visual testimony to the truth that is supposedly revealed by the files of the former secret service? After the sudden exposition of the secret, the smile is plunged into the murky depths of a hermeneutics of suspicion. How truthful was it? Had it always been deceitful? When did it lie? The smile is always something other than what it appears to be, as Artur Domosławski (2010) suggested in his biography of the journalist. It now assumes the task of illuminating the dark quandaries of Kapuściński’s moral life, as though, it had been waiting for lustration deep inside his skin, or inside the 60 mile-long former secret service archives.

Why has the face come to play a central role in lustration? What makes the face particularly useful or manipulable for this purpose? The visual representation of Kapuściński’s lustration as the ‘destructive’ discovery of his untold betrayals in the face is certainly not unique. Indeed, lustration requires much face-reading and mirroring of the self, and has left behind a number of dismantled faces and broken mirrors. The connection between lustration and mirrors seems obvious at first sight, given the etymological links between the two Polish words. The word for lustration, lustracja, meaning meticulous examination, is close enough to the word for mirror, lustro. In fact,
this link has been inviting popular allusions to lustration as self-examination in the mirror
or more precisely, the examination of one’s self-image in the moment when one faces oneself in the mirror. Lustration, in this sense, conjures a face-to-face examination scene for its subject, on the path to discovery of his or her inner moral truth. However, the subject rarely holds the mirror; it is often the young lustration prosecutor, the young self-righteous historian, or the post-1989 sensational media that does it in the name of ‘victims of communism.’

What interests me in this chapter is how the popular employment of the face or defacement practices by lustration raises questions that interrogate the limits of publicity and confidentiality, transparency and secrecy, and truth and certainty. The discussion of Kapuściński’s media lustration is powerful because it encapsulates these themes that concern many other people who also have become part of postsocialist “spectacles of justice.” In this respect, it would be revealing to consider further the coverage of the well-known Catholic weekly, Tygodnik Powszechny, which carried Kapuściński’s defacement on its front cover (Figure 1). Focusing on those issues, the weekly aimed to intervene in the debates around the exposure of Kapuściński’s secrets by Domosławski’s biography: his secret lovers abroad, his “fictitious” (untruthful) rendering of historical facts in his books, his falsification of his family history (his father’s being a Soviet captive during the Second World War), his militant activism in the Third World, and his ties with communist intelligence services. Most of these secrets were publicly known before their exposition as “secrets.” However, even though only a few people were surprised at the “revelations,” the book was still able to stir a huge debate. I quote at some length the
following comment by Father Adam Boniecki, the editor-in-chief of the weekly, as he highlights the themes central to this chapter:

The biography of Kapuściński had enormous [publicity]....The media discussions do not ever cease. What is it that so moved the readers of the book and even those who have not read it but know it only second hand? Is this – as some suggest – a response to the demolition of a myth? A display of outrage about the reckless violation of the boundaries of human privacy? Or might it be something else? ...

The debate [about the book] concerns many issues ranging from the regulation of journalistic inquiry to the price of moral compromise....In the alleged or real weaknesses of the Great Writer we often recognize our own weakness and breathe with relief: even he, this great man, was not that great. Thus, there might not be any greatness. Where we think we see it, this might only be an appearance, the product of our own creation, the concealment of the truth about ourselves, or confabulation. However, I am fully convinced that the greatness of Kapuściński is confirmed in the book, but in a paradoxical fashion. Thanks to the huge work of Artur Domosławski, Ryszard Kapuściński emerges not as a monument but as a living person.

[Nonetheless] the book has left me with an implacable feeling of injury (przykrość). Like [others] I also have had the impression that “Domosławski everywhere airs ill (zło), not missing any occasion to examine his Master and unearth his weaknesses and errors ... [Why this feeling of injury though?] Certainly, it is not because of the discovery that Kapuściński’s life had not only lights but also shadows. I have lived long enough to know that such is the life of every human being. The source of injury was that I would not like any of those who are close to me and whom I love, to meet such an operation on their lives (operacji na swoim życiu). Every one of us has a part of his history, a personal sphere (strefa osobowości), which one cannot wipe out but keeps secret. Must all weaknesses, all errors, all sins be exposed (before the court of Last Judgment) for public view? I am convinced that they must not. That is why...there are questions that I never ask. To no one. Not even in confessions. What are those questions? Where is the border? No law could ever determine that.

I know that when the issue concerns “public” persons there are different views.... [However] my old fashioned views call for a large measure of discretion. Careful (spokojnie) handling does not mean producing dehumanized monuments; it means great care, when I have before me others’ wounds (kiedy mam przed sobą cudze rany) [emphases added].
With these words, Father Boniecki has pointed to the complex ethical problems involving the boundaries of knowing or exposing the other person’s secrets. He is unambiguously critical of the “operation on one’s life” such as lustration, the destructive exposition of the secret. Invoking the well-known Christian conception of man as essentially a fallible being (do not the mistakes and sins define the human life?), he calls into question how to identify “the public” in one’s person and life, and where to draw the line between knowing and not-knowing in matters of personal dignity, injury, and being-together-with-others, whether in life or death. He suggests another form of engaging one’s secret than mere exposition, the possibility of another truth.

In this sense, I conceive the face as a material and discursive plane, which articulates these issues of secrecy, visibility, and knowability integral to the ethical-political constitution of community and the operation of law and power. As I will discuss later, notions of the face – and defacement as the face’s negative but most “revealing” moment (Taussig 1999) – summon a long history that builds on the Platonic and Aristotelian assumptions about binaries like surface/depth, exterior/interior, visible/invisible, and lie/truth, which have been recast for centuries by Christian traditions, Enlightenment thought, and secularization process. While drawing on this long history, I also have found particularly useful Georg Simmel’s (1958) and Giorgio Agamben’s (2000) evocative reflections on the role of the face in social communication and the making of common life in modern western society. Each, in his own conceptual apparatus and historical context, explored the possibility of “society” (Simmel) and “community” (Agamben) in the intersubjective or political space formed by the face’s communicative capacity (“communicability”) and its mode of visibility.
Understood as a location of exposition, a being that never corresponds to its appearance ("there is always another secret"), the face, Agamben suggests, lies at the core of political struggle and state power that builds on “taking possession” or “control” of appearance. This is especially the case in capitalist democracies flooded by media spectacles (e.g., corruption scandals, the loves of celebrity, the porn star’s body, and war images). Defacement then operates in this field of the spectacle that not only pertains to the mass production and dissemination of appearances, but also refers to a certain mode of representation of social time and history, its reification into dead images to be passively consumed by the spectator citizen. In this regard, I argue that moral autopsy has become a dominant method of truth inquiry corresponding to this spectacular exposition or production of the secret marking lustration. As we will see, moral autopsy is at work, whether in postmortem disclosure of secret agents, exhumation process, and photographic or theatrical rendering of one’s life.

In what follows, I focus on the defacement practices undertaken by nationalist anti-communist transparency or memory projects in order to create publicity for their radical lustration policies. I have already highlighted in earlier chapters that this publicity is largely based on the political production of fear of betrayal that divides society into clear-cut victims and perpetrators on the basis of dubious evidentiary material uncritically extracted from the IPN archives (e.g., the Wildstein List). This strategy also aims to cultivate a certain social desire for the secret truths to be revealed by those archives. It does so mainly in the naturalist language of the pursuit of justice (i.e., presentation of lustration as a natural response to the popular demands for justice) while striving to monopolize the field of justice and production of history. Here, I continue to explore the
question of how the pursuit of justice by rightwing nationalist groups has turned into a national security policy. What are the effects of lustration on the intimate and corporeal life of its citizen-subjects and the communication of historical experience? How does one come to embody or “facialize” the national enemy or “communist crimes”? What does the body do in figuring one as a traitor and what are the gaps involved in the process of figuration of one into an abstract national symbol as a victim or perpetrator? How do accusations of betrayal and expositions of secrets from the archives participate in remaking the new democratic body politic and public, which is supposed to be transparent and accountable? What forms of violence do these expositions conceal or displace, as they reveal a “secret truth,” the so-called communist violence?

I begin with the public exhibitions of “The Faces of the Security Officers” and the recent exhumation of a long dead young oppositionist by the IPN. Both end with an unsettling conclusion or disruption that points to the broader political, legal, and socioeconomic conditions under which they operate. They also highlight the major publicity strategies for lustration, the discourse of transparency, truth, and justice, and how these strategies work in practice. I will then conclude the chapter by focusing on a performance about the experience of a family, a member of which was accused of being a secret communist agent (Wojciech Dzieduszycki) shortly before he died. Drawing on the recent literature on Ernst Kantorowicz’s *The King’s Two Bodies* and my several year conversations with the family members and reading of the relevant secret service files, this final section explores the relationship between law and memory, courtroom and theater, knowing and judging, and nation building and personification or incorporation of the enemy.
WE HAVE SEEN THEM BEFORE

For half a century of communism we passed them on the street, saw them in Krakow’s market square, often without knowing about their profession. Now we are showing their faces – the faces of the Secret Service (UB/SB) functionaries who served for the Soviet Union and the Communist Party, aiming to tame the society and harming Poland and the Poles.¹⁸³

Exhibiting publicly the faces of the enemies or unmasking them in public arenas is nothing novel in world history. It is no secret that the field of vision has always been a topos of state power. Show trials, public executions, and public spectacles of the “criminal,” “condemned,” or “enemy” choreographed for the eyes of “the people” are central to the constitution and the visible manifestation of sovereign power. As Michel Foucault (1995) eloquently describes in Discipline and Punish, it is where power constitutes itself as sovereign, incorporating seemingly the will of the people, their “curiosity” and “vengeance” into its mechanisms of punishment and violence. It interpellates them as spectators complicit with the ceremony of violence that proceeds in daylight. This does not mean, however, that the invisible operation of power in the dark is less important a public manifestation. The birth of the modern prison, Foucault highlights, points to the separation between judgment and punishment as court and prison, another distribution of light and secrecy and of publicity and scandal. It points to the emergence of a new level of abstraction in the mechanisms of penal violence, one that takes place in a cell isolated from public view and is not entirely knowable by the public. This invisible exercise of power purports to present itself as more “civilized” and “humane” than the power that relies on the spectacle.

In the last decade, many state-run national memory institutions are founded in Eastern Europe to join the global efforts of writing a history of violence. This was not simply the “return of the repressed.” It was also meant to reinvigorate patriotism on the basis of national sacrifice and victimhood and redraw the boundaries of the nation. Those who tracked down the “enemies of the people” were to come back as the treacherous enemies of the nation such as the head of the first Soviet secret service, Cheka, Feliks Dzierżyński. The demolition of his statue in Warsaw was a huge public spectacle, a performance of what would have been his “execution,” as Katherine Verdery (1999, 3-9) observed. Likewise, in many exhibitions of the Polish Institute of National Remembrance (IPN), his photographed face covered boards as the monumental example of the worst treasonous Pole. If unmasking secret agents of imperialism was a popular activity in the Soviet-type socialist regimes, the public exhibitions of “communist agents” have drawn no less attention of certain people, often the elderly, in the period since those regimes fell. Scholars have often noted that duplicity and a public-private split characterized the mentality and behaviour of the citizen-subject of “totalitarian” Eastern Europe. By exposing the faces of the former agents, then, the exhibitions were supposed to reconcile the split. They have promised a return to the unitary self in full transparency, incorporating the spectator citizen into the body politic of the new sovereign state. To the extent it is exhibited, the internal history of the former state security, the invisible state history, was to be “witnessed” by the citizens of new Poland and integrated into their personal histories. However, what the spectator citizens saw was not the body of the condemned or a live execution of the criminal in flesh and blood, but the photographed faces of the former security officers.
The majority of the exhibitions took place in 2006 and early 2007 in the public squares of numerous cities and small towns of Poland. They include the capital Warsaw; the southern and western cultural and commercial centers Kraków, Wrocław, and Poznań; northeast towns by Lithuania and Belarussia such as Białystok; eastern cities such as Lublin and Przemyśl by the Ukrainian border, as well as small towns in the center and villages on the Carpathian Mountains by the Slovakian border. The IPN organized the exhibitions as part of the education campaign during the rightwing coalition government. As mentioned before, during this period the rightwing government proposed patriotic education reforms and de-communization policies that included purging from the school curricula the Polish authors that did not fit to the norms of heterosexual Polish patriotism, tougher and more widespread lustration that would include the entire education and media institutions, and cleansing names associated with communism from the public space.

Each IPN exhibition stayed open at least a month and displayed the photographs of around a hundred former state security officers (often of high rank) who were employed by the former Ministry of Interior in the place of exhibition. For instance, the Kraków exhibition showed the photographs of Krakow security officers, so that the visitors could recognize their faces. The photographs were juxtaposed with brief “career information” (biogram) of the officers. They were extracted from the personal files of the officers, which the secret service compiled to supervise its employees. These personal files were and are still not accessible by the officers themselves. Now one can see and take photos of the pictures from these files in public exhibitions, enlarged and plastered on huge boards.
The exhibitions stirred many contending views. While some criticized them harshly, others found the exhibitions necessary. They gained remarkable publicity and instigated a great deal of face-reading. A viewer of the Rzeszów exhibition was reported to say: “This face tells me something. I recognize it. And the other one does not look strange, either (O, ta twarz coś mi mówi, poznaję. Ten też nie jest mi obcy). I came here to find out about concrete names and faces of those who interrogated me...”184 Another viewer of the Białystok exhibition: “Here I found the pictures of my two acquaintances. I learned that they worked for the state security, denounced, and were not punished. This public stigmatization is probably the most humiliating for them.”185 Not everyone was of the same opinion. Another visitor of the same exhibition said: “What is all this for? It is already the past. This exhibition is of no use to anyone. The young do not understand and the old need to forget.” Some of the young people I talked to about the exhibitions also made similar comments and even went further, underlining how the IPN exhibitions forcefully invaded the public space. They likened the exhibition of the faces to an obscene political pornography that was imposed on their sight. Some well-known former worker dissidents such as Lech Wałęsa and Władysław Frasyniuk also viewed the exhibition negatively. Frasyniuk, for instance, compared the Wrocław exhibition to the Soviet practice of exposing enemy faces in the press and asked polemically when the IPN would organize a public shooting of the unmasked people.186 Furthermore, I also observed that the exhibited faces instilled fear in those who saw that the men who contacted them some decades ago were actually secret service officers. The exhibition

184 http://wiadomosci.gazeta.pl/kraj/1_34309_4196018.html (last accessed 26 December 2012)
185 http://wiadomosci.gazeta.pl/kraj/1_34309_4231371.html (last accessed 26 December 2012)
186 http://wiadomosci.gazeta.pl/kraj/1_34309_3512158.html (last accessed 27 December 2012)
left these visitors wondering whether they might have been registered as a “secret collaborator.”

Why have the exhibitions produced many conflicting reactions? How is it that many oppositionists who had been under close surveillance could be very critical of the exhibitions? Do they simply ‘have something to hide or fear,’ as radical nationalists often claim? How could those nationalists who did not play a major role in the opposition, publicly claim to be the true voice of the ‘victims of communism’? Then, what may be the role of the face in all this, in the articulation of conflicting views of the exhibitions? While I cannot claim to fully engage these questions here, let me venture some tentative ideas.

As I have been arguing throughout the dissertation, the question of who does what and how, and in the name of whom is a political question not simply of the past, but of the present relations of power. It is a question that takes us to the heart of representative democracy and particularly, what is referred to by scholars such as Claude Lefort (1986) as the “empty place” of “the people” in whose name a democratic government claims to rule. Any democratic political struggle has to speak this language of popular sovereignty and claim to be the true voice of the people, which it calls into being by invoking and struggling for it. What matters here is how this claim is made, through what forms of political action, rhetorical strategies, or associations of events. That is also why the seemingly unrelated elements of a political struggle are indeed part of the broader struggle and understood as such by the relevant actors or the public. Here, and in the following section, I analyze the role of the IPN exhibitions as a publicity strategy and their effects on the formation of political will.
Likewise, the meaning of the transparency or justice pursued by the IPN exhibitions is not self-evident. It is articulated through other elements with which it functions in ideological discourse, as Ernesto Laclau (2005) suggested drawing on Volosinov’s seminal study on language. This is one reason, in my view, why the spectators never viewed the kind of transparency projects endorsed by the IPN in isolation, but saw it as part of the broader nationalist project of cleansing and building a “corruption-free,” Christian Poland. In contrast to how transitional justice or human rights experts often assume, one never sees the image or exhibition of this kind in a ‘face-to-face’ setting. There is no such unmediated ‘pure justice’ of the exposition of the secret or an abstract ‘ethical scene’ that can be isolated from the totality of sociopolitical and economic relations in which it is staged. One’s perception of this kind of exhibition is necessarily mediated by the antagonistic political struggles that envelop it while being irreducible to it. And as I will discuss in the next section, this is manifest most vividly in the disruptive force of the real that strikes the exhibition and claims its reality.

PHOTOGRAPHY AND DEFACEMENT: “LABOR OF THE NEGATIVE”

Exhibiting the hidden history of the former security apparatus and redeploying its artifacts of power in order to facilitate a break from the past generates unexpected reactions. This may be partly because such exhibition and redeployment runs the risk of complicity with what it intends to overcome. While seeking to mobilize fear and hatred of the past, it also reveals inadvertently and perhaps, unconsciously, the fragile constitution of the current ideological order of “postsocialism.” It is the disruptive force of the real, or what may be called, labor of the negative that materializes this fragility.

187 I borrow the term “labor of the negative” from Michael Taussig (1999).
Photography and the face play an important role in the social reception of the exhibitions and the labor of the negative. They are part of the contingent effects produced by the exhibitions. Public defamation through defacement seems hardly striking to anyone who has acquired moral intuition in western society. One sometimes saves and sometimes loses face under difficult conditions, or when subjected to a test of truth. As is commonly noted, the face has been historically entwined with questions of identity, honor, shame, and humanity in the western world.\(^{188}\) Facialization of history, the representation of history in the form of a series of faces, has a special valor in the liberal historical discourse on the former East Bloc. While drawing on the popular phrases in transitional justice literature such as ‘facing history or injustice’ it also indexes a will to render legible what has been considered the ‘faceless totalitarian regime.’\(^{189}\) If “socialism with a human face” was a popular slogan of the 1960s to rescue socialism from becoming an anonymous bureaucratic machine, the postsocialist facialization of history seeks to foreclose the possibility of a future socialism by memorializing ‘communist crimes’ in the form of criminal faces.

For centuries the face has been thought to make visible what is invisible, reveal one’s inner truth or guilt, qualify one’s moral and social standing, and place one in a racial hierarchy as in ancient or modern physiognomy.\(^{190}\) Facelessness also pointed to certain problems. The medieval historian Valentin Groebner (2008) argued that when

\(^{188}\) The face has a different status and signification in Buddhist and Islamic traditions. See, for instance, Hamid Dabashi (2000); James T. Siegel (1999). Furthermore, the face, especially in the West, has been invoked to “humanize” history by highlighting human agency. This is the case with the endeavors undertaken by archaeologists and “medical artists” to reconstruct the faces of important kings in history (e.g., King Philip of Macedon). The facial reconstructions are supposed to offer something to historical knowledge or representation, which would otherwise not be possible.

\(^{189}\) See e.g., Martha Minow’s (1998) classic work.

\(^{190}\) The face has been taken to represent who one really is, or the essence of one’s political or moral motivations. As Groebner (2008) suggested, the scholarly culture of 14th century Europe tended to see “facial flaws” as signs of sin.
horror or violence appeared so indescribable, when it was so terrible, it was often called “faceless” (its victims are also “anonymized” as faceless). To be sure, a central element of the historical discourse on the face is the question of visibility and its relation to the secret. Located at the crossroads of visibility and invisibility, the face closely associates truth with visibility, transparency, or the exposition of the secret. Modern state apparatuses have capitalized on the seemingly “discerning” capacity of the face to identify secrets and capture the truth. However, as much as it is a tool for fixation, a point of arrival, the face is also a point of departure. The movements (e.g., gestures) that make up the face are so contingent and elusive that the face often seems at once “the mask and window to the soul” (Taussig 1999). As much as it tells us about the power that strives to make its subject population more transparent and legible, the face also points to the ever-presence of duplicity and illegibility (“two-facedness”), which could be used strategically to divert the gaze of the state (Nelson 2009). Turning back the strategy of identification and capture to the state itself, pictures of faces are employed in many political protests in Argentina, Chile, or Turkey to demand accountability for state violence by pointing to certain individuals (the faces of victims to commemorate them and those of perpetrators to expose them).

Yet, unearthing perilous truths and bringing the secret into the open by “exhibiting” it is often marked by uncertainty or unknowability. This is not only because of the ambiguity of the face. Uncertainty creeps in even when there is no room for spontaneity, no actual face-to-face encounter between the former security officer and the spectator. The IPN had already attempted to fix the meaning of the photographs of security officers’ faces before the viewer ever saw them exhibited: *They are the*
perpetrators whom you have seen on the street without knowing who they really are. The use of photography for this purpose hardly seems surprising. The eminent art historian Alan Trachtenberg (2007) wrote:

The face showed the person, traces of personal history and what lay inside: dispositions, desires, and inclinations. Photography encouraged scrutiny of faces for clues to meaning, signs of intentions: the medium seemed a second eyesight, capable of ‘fixing’ ephemeral facial gestures for close and even closer examination…Understood as a picture with a tale to tell, the photographed face seemed a surety that persons were knowable in their visage, the image offering a surrogate for face-to-face sociality in an increasingly distended order (69-70).

Fixing that meaning is no less difficult than unmasking the face, however.\textsuperscript{191} Even when photography claimed to index reality and perform an objective “face-reading” (as physiognomy claimed to do), it failed on a number of points. It was not enough to take a picture of the face. The “harsh literalness” of the photograph, if unmitigated, would be rather misleading.\textsuperscript{192} “Because the camera portrays the false as truly as it does the true, the portraitist had to strive for a ‘natural’ (undissembled) expression of faces and bodies.” But this did not exclude the usage of artifice. Many photographers built portrait studios, “surrogate theaters,” where the face could perform itself and be rendered truthfully as in a “natural” setting.

If photographs played an important role as a surrogate for face-to-face relations uprooted by modernity, what interests me here is how they function in IPN exhibitions as “surrogate theaters” or spectacles of justice in “postrevolutionary” Poland. Far from being a procedure of justice shaped by citizens through their active participation, the spectacles of the photographed faces of the security officers were first and foremost a

\textsuperscript{191} See Gaston Bachelard (1971) and Claude Lévi-Strauss (1982).
\textsuperscript{192} In this sense, this “harsh literalness” may be compared with the harsh literalness that characterizes the reading of the files by lustrators.
state spectacle of justice organized with the support of the populist rightwing coalition government and guarded by the new “democratic” police. Never acknowledging its own violence, the state spectacle claims to pursue truth and justice for the “victims of communism,” educate the Polish people about recent history, and secure the Polish nation against its enemies. The shame it threw at the exhibited officers took the form of national security and patriotic pedagogy for the new Polish youth. The cruelty it associated with the photographed faces was that of the entire socialist past it held responsible for all the injustice and inequalities of Polish society almost two decades after the fall in 1989.

“Punishment-as-spectacle,” as Foucault described it, condensed judgment and execution into the single moment of public torture. The very publicity of the execution was supposed to reveal the secret soul of the condemned. It was not only to punish the convict to prevent future crimes, but to instill fear in the spectators who witnessed the violence of execution. It was to make these spectators complicit with the violence. “Not only must people know, they must see with their own eyes. Because they must be made to be afraid; but also because they must be the witnesses, the guarantors, of the punishment, and because they must to a certain extent take part in it …. The vengeance of the people was called upon to become an unobtrusive part of the vengeance of the sovereign” (Foucault 1995, 58-59).

True, IPN exhibitions do not involve the kind of physical violence and spectatorship that characterized the public punishments of early modern Europe, which Foucault discussed. They operate under different norms or regulations of, say, publicity, transparency, individual rights, or state power. Yet, they also aim to mobilize people’s curiosity and vengeance and instill fear in the spectators and perhaps the general public,
especially those who might be concerned about their past links or interactions with the security apparatuses. The target was not only the former security officers, but those ‘out there’ who are yet to be exposed. However, as in “punishment-as-spectacle,” there is no guarantee for the intended effect of the exhibitions. The shame imposed on the criminal may always strike back and become the shame of law’s violence. The object to be destroyed may augment its haunting power in that very destruction. The secret that is exposed may reproduce its mystery in the act of exposition. And the face may grow “magical” qualities in the act of defacement (Taussig 1999). As W.J.T. Mitchell (1987) noted, the iconoclast is very much enveloped by the act of destruction, the “dialectic of iconoclasm.” Just as the spectacle of punishment of early modern Europe offered a site for different illegalities, popular protest, and the unpredictable reaction of the huge crowds that gathered in public squares, those IPN created were also not sure of their reception. For one thing, the IPN was well aware of the widespread criticisms of the exhibitions, especially regarding the kind of justice they claim to dispense. Besides, the IPN was concerned with how to guard the exhibitions against the former security officers, who might be contriving to attack them.

Finally, an attack of remarkable magnitude hit the exhibition in Katowice, the city which was once considered the heart of socialism, famous for its mines and industrial facilities, and now one of the most underinvested and forgotten cities of Poland. Many unemployed miners today dig their apartments’ basements for gold, or work at bootleg mines around the city (Rakowski 2009). Katowice was and still is known for militant worker activism, having been host to a number of miner strikes for more than three decades, one of which was brutally suppressed in the 1980s. It was March 2007 during
the heat of the rightwing de-communization proposal when the head of IPN Katowice branch opened the exhibition by making explicit that the exhibition must be seen as part of the broader effort at identifying the secret collaborators who might be among the visitors:

John F. Kennedy said that it is necessary to forgive enemies, but never forget their faces. Public opinion now concentrates on the secret collaborators… but we also consider it important to remember those who worked openly…..We do not have here anyone who is morally innocent. Even though only some of them actually committed crimes, they were all functionaries of the system (system).193

Ten days after this speech five people (one female, four males) between the ages of 16 and 29 attacked the exhibition in the dark of the night. The exhibition took place at the main market square in a relatively affluent area and displayed some 84 faces on huge boards. The police reported that it was pure vandalism. “Without any premeditation” the “drunkard hooligans,” so they are called, destroyed almost half of the exhibition. Making “strange noises,” they cracked 16 out of 32 iron boards, tearing even the corners and legs. The IPN spokesperson promised to finish fixing the damage in a week. Until then half of the boards would have to stay as empty rectangles with no pictures, as “transparent” as a window. In passing, the media report mentioned that while vandalizing the exhibition, the “hooligans” also shattered the windows of an expensive Mercedes that was parked nearby.

What is most revealing in this defacement of the exhibition (that, in turn, defaces former state officers) is not that the exhibition paradoxically augments the power of the secret that it attempts to expose. Nor is it the way the IPN’s transparency or memory project ended up generating more suspicions than revelations. Could these people really

193 http://m.onet.pl/wiadomosci/kraj/kujawsko-pomorskie.95g2y (last accessed 22 February 2013)
have been hired by the exposed officers? Or was it really pure vandalism, meaningless violence, as the mainstream media and police suggested? I want to suggest another interpretation, beyond conspiracy theories and the trivialization or pathologization of the issue by referring to alcoholism. What is most revealing in this attack, in my view, is nothing other than the windows of that expensive car that was destroyed “accidentally,” the car of which there is no secret, except the secret of commodity fetishism and primitive accumulation that Marx discusses in *Capital*. What is revealed is no less than the violence of accumulation by dispossession, in David Harvey’s (2003) terms, the symptoms of rising social inequalities, alienation, and unemployment. It is no less than the manifestation of the contradictions of postsocialist nation-state building, which at once promised ‘freedom for all’ and, at the same time, deprived millions of its citizens of livelihood and the possibility of living a decent life, labeling them, in Zygmunt Bauman’s (2013) words, the “collateral damage” of transformation. In other words, what is revealed by the destruction is nothing but the violence of the invisible hand of the free market, the secret of which has been lying in the open for a long time.

**THE FALL OF THE YOUNG OPPOSITIONIST**

One of my central contentions in this dissertation has been about the partitioning of justice into disparate ‘historical’ and ‘social’ spheres. By this partitioning the structural violence of capitalist transformation is pushed aside, and “communist crimes” or the “legacy” of communism is considered by the postsocialist hegemony to hold the secret key to all current social injustices and inequalities. To counter this, I want to emphasize that the social is not simply collateral but historical and that it is not possible to consider
historical or transitional justice without the social. If we are to understand the conditions of reproduction of current injustices and inequalities, we need to examine the points of articulation between capitalist violence and “communist violence” or better, the mechanisms of power that outlived the fall of state socialism. In this sense, the destruction of the Katowice exhibition reveals one notable moment of such articulation in which the labor of the negative, whether in the form of defacement or as the attack of those excluded from the postsocialist symbolic order (“unemployed,” “hooligan,” “drunkard,” all other precarious fragments of new class formation) finds expression through the disruptive force of the real. It is a moment that reveals the material and ideological boundaries of the new body politic and the public secret of capitalist violence.

Michael Taussig (1999) defines public secret as “the secret we know not to know” or alternatively, the secret we publicly know but do not speak about (the silences we publicly share). Kapuścinski’s “secret” links with intelligence services or the glaring social inequalities we are silent about may be considered public secrets. In this section, I focus on another public secret that extends from the socialist to the postsocialist era. It concerns the exhumation process of a well-known young oppositionist, Stanisław Pyjas whose unresolved murder has been a powerful symbol used by anti-communist groups. Similar to the exhibitions of the faces of the security officers, the exhumation of Pyjas is also a state spectacle of justice organized by the IPN to assert national sovereignty over the secrets of the past. As has been widely noted by scholars, state burials, reburials, or other rituals for the dead are fundamental instances for imagining the nation, making a national time and space, and memorializing it. The former East Bloc is no exception, having been a fertile soil for dead body trafficking across national borders and time.
(Verdery 1999). Who belongs to whom, whose dead body belongs to the new public, Republic, and whose does not has been of strategic importance. If the former secret service officers are already dead, as it were, before they die (they are conveniently expendable, their faces could be exposed on boards as the enemies of the nation, and their retirement pension could be slashed as part of the “surplus” population inherited from the past), the dead oppositionist could never die. This is partly because the secret that is supposed to be discovered by the exhumation is never simply that of the dead body, but is about the present relations of power. In what follows I want to understand what the exhumation and especially, the evidentiary and testimonial function of the face or “facial injury” tell us about these relations of power and the legal and moral ground of nationalist victimhood politics. I am particularly concerned with the rhetorical strategies and devices (e.g., historical metaphors, cinematic productions, images) employed by rightwing nationalists to generate a public interest for lustration and to claim to ‘speak for the Polish nation’ in their battle with secular liberals, some of whom used to be or are still highly influential ex-dissidents.

On May 7, 1977 the Jagiellonian University student of Polish philology and a member of the newly formed Workers’ Defense Committee, Stanisław Pyjas, was found dead by the entrance gate of an old building close to the main square of Kraków. From the very beginning his dead body started breathing a political life. Over the last decades it has become a precious object of mourning and hope. It has illuminated as much as it has concealed. While the dead body has promised to materialize and expose the dirty secrets of the political regime that killed him, it has failed to provide a satisfactory clue (from the forensic point of view) as to the cause of its own death. This ambiguity has played a
central role for anti-communist nationalism. To gather support for their de-communization policies or political programs, the rightwing have often invoked the dead body to concretize the unhealed wounds of the nation.

Since the fall of communism, different scenarios have been constructed to shed light on the circumstances of Pyjas’s death. The investigation conducted in 1977 by socialist Poland’s prosecutor concluded that it was an “unfortunate accident” that killed him that night. It was his fault. Drunk, he fell from the stairs. This did not convince many of Pyjas’s friends, who knew (at least, now they say they knew) that the secret service had been observing and intimidating him. It must be the UB/SB that murdered him. That much was already stated in the reports’ of the secret informer, which I discussed in Chapter Two. So was the fact that the investigation was politically important for the academic community and students’ perception of the then-current Gierek government. By opening the way for a truthful investigation, the party would have demonstrated its capacity to govern and rule over the security apparatuses. Instead, the results of the investigation paved the way for the founding of the “Student Committee of Solidarity” (SKS) and contributed to the erosion of the party’s authority in Krakow’s higher education institutions.

In 1991, as one of the first constitutive acts of the new Republic, a new prosecutorial investigation was conducted. The investigation did not require the reexamination of Pyjas’s dead body by medical court experts. It relied on the material already gathered during the 1977 investigation. At the outset the prosecutor, Krzysztof Urbaniak, ruled out the possibility of a straight fall from the stairs or a hit on the staircase’s barrier as the cause of Pyjas’s death. Urbaniak explained in an interview in
2011 that there was no spine or skull fracture that would suggest a fatal fall. Moreover, the photographs, taken right after the incident, highlighted that he had suspicious injuries on his face, which could not have been caused solely by the fall. Urbaniak asserted that Pyjas’s dead body must have been brought from somewhere else to the location to give the impression of a fall as the cause of his death. He must have been beaten to death, the court established. The legal proceedings did not last long, however, due to the lack of material evidence. It was not possible to identify any individual perpetrator responsible for the murder. Speculations and suspicions have abounded. Many suspected a certain (now dead) alcoholic ex-boxer, hired by the UB/SB to beat the student oppositionist.

In 2001, Bronislaw Wildstein with other former SKS members denounced Leslaw Maleszka as a secret informer in a letter published in the popular center-right daily, Rzeczpospolita. After an initial period of denial, Maleszka, who was close to Pyjas and Wildstein in the 1970s and was active in the opposition throughout the 1980s, admitted to having been an informer. In spite of the campaigns against him, Maleszka kept his job at Gazeta Wyborcza, the popular liberal or center-left daily. For the anti-communist rightwing media, Maleszka has come to embody betrayal and moral perversion while Pyjas has become the ultimate figure of the innocent victim. Wildstein’s public self-representation and political views deeply reliant on the heroic fight between the good and the evil, have contributed to this depiction. He has fashioned himself as a witness who cannot and will not let anyone forget the ‘communist crimes.’ On the one hand, there is the beautiful, youthful Pyjas with unfulfilled promises for the future, and on the other, Maleszka of absolute perversion and decadence: his cranky look in thick glasses, protruding teeth, and dirty mouth stuttering and swearing. This is how Maleszka is

recorded in front of the hidden cameras and contrasted with Pyjas and Wildstein in the award-winning documentary-fiction film *Trzech Kumpli* (Three Buddies). Besides interviews with Maleszka, Wildstein, former security officers, and many other related people, the film employed an extensive use of fiction to visualize and reenact the relationship of the three buddies in the 1970s. Each was ‘realized’ by an actor with similar looking faces. At the heart of the film was the quasi-biblical scene involving the secret betrayal of Maleszka and Pyjas’s death, followed by the revelation of Pyjas’s facial injuries as the clue to the mysterious circumstances of his death. In the triangular relationship of the old buddies, it is Wildstein who appeared to bear the moral burden of witnessing the lost glory of anti-communist opposition and the deceit of the shameless faceless enemies within who had secretly cooperated with the security.

Figure 6 The Scene of Secret Betrayal (the film poster)

The production of *Trzech Kumpli* coincided with the IPN officials’ growing interest in the circumstances of Pyjas’s death. It was 2008, right after the end of the
rightwing coalition government term, which tried to implement the firmest anti-communist policy since the foundation of the Third Republic and showed unwavering support for the IPN and radical lustration policies. The film suggested going beyond the face, trailing the facial injuries back to the dead body. It ventured the thesis that the cause of death may have been a gunshot or a beating, the trace of which may be found on the corpse. Maleszka was implicated in the murder by cooperating with the UB/SB. A few years later, in spring 2010, the IPN announced publicly that it was planning to exhume Pyjas’s dead body. Information about the methods and aims of the exhumation were carefully kept secret. The general public was not supposed to know anything more than the existence of an ongoing secret operation.

Pyjas’s family was not provided with any more information, either. They actually heard about the exhumation from the media. The news quickly gained a high profile in the media, which closely followed the controversial decision. The public memory was already fresh with the recent “failed” exhumation of General Sikorski by the IPN. Besides, the new liberal government was at the time reviewing IPN’s budget and its activities, which made the institution concerned about its status and expenditures. Under financial pressure, the IPN seemed to need publicity more than ever to prove that it was worth the money. In any case, a number of Pyjas’s family members, including his mother, sister, and cousin, objected to the exhumation, unconvinced by the scientific breakthrough the exhumation claimed to achieve three decades after his death. The

195 “Rodzina Stanisława Pyjasa jednak zgadza się na ekshumację,” Gazeta Krakowska, 23 March 2010
196 The exhumation ended up disproving all the guiding (rightwing) hypotheses about a possible Russian assassination of the Polish General during the Second World War. Instead, it confirmed the long held thesis of the historians that the General died in a plane crash. See for a discussion of recent Polish exhumations, Marcin Moskalwicz, “Polityczne Rituły Ekshumacji” at http://publica.pl/teksty/polityczne-rytualy-ekshumacji last accessed (16 March 2013).
mother consistently pointed out that she did not approve the operation, which meant uprooting their family graves, where Stanislaw Pyjas had been lying with other family members. Pyjas’s brother-in-law spoke skeptically: “Five years ago we buried the grandmother of Stasiek [the diminutive of Stanislaw] in the same graveyard where he and others lie. We saw then that even the coffin of Stasiek was not totally there because of the terrible moisture in the grave.” Stasiek’s body was not only an immortal political body, but one that also belonged to the family history, which followed a lineage of its own in time. The body was more than an anti-communist symbol of hidden communist crimes. It belonged to the earth that slowly devoured it over the years together with those near it in the grave.

After a few days something seemed to have changed. While Pyjas’s mother and some of his friends from the opposition (Boguslaw and Lilliana Sonik) remained skeptical, the sisters agreed to the exhumation. Later they said that they were at the time intrigued by the possibility of proving a gunshot as the cause of his death. Both were impressed by the film, *Trzech Kumpli*, and the thesis it presented by consulting newly found witnesses. The sisters proposed certain conditions, however. The exhumation was not going to turn into a media spectacle or be politically utilized. In the meantime, the IPN was now more prepared to impart information about the operation. The former head of the IPN, Janusz Kurtyka who died in 2010 in the tragic Smolensk plane crash told the rightwing daily *Dziennik Polski* that the aim of the exhumation was to ascertain whether Pyjas was killed as a result of premeditated murder or as an unexpected result of a beating by the SB. By using the new electronic topography technology the operation

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197 “Rodzina Stanisława Pyjasa jednak zgadza się na ekshumacje,” *Gazeta Krakowska*, 23 Marca 2010
was going to unearth the truth and ascribe criminal responsibility to everyone who took
part in the intimidation of Pyjas or lied in subsequent investigations until the present.\textsuperscript{199}

In other words, it was not only about catching the individual perpetrators, but also
identifying and incriminating all those who had been involved in the murder (possibly, all
the secret informers whose names were pronounced in the legal case) or complicit with it
by hiding or lying about it—virtually anyone who questioned or criticized these murder
claims.

Wildstein had been ardently supporting the exhumation. Though not an “expert,”
as he often said, he still believed that the operation was necessary. His was more than an
abstract conviction. He considered himself the ultimate witness to the truth of Pyjas’s
death. He saw the body of Pyjas right after his death. He saw the facial injuries with his
own eyes. But there was more. He also touched his body, the touch that today provides
him with the certainty he needed to believe in the necessity of the exhumation, the touch
that inflames his desire to fight a war against (former) communists and their secret
agents. As he said in an interview, “he bribed the morgue worker to see the corpse of his
friend. There, he conducted his examination with his own hands.”

It took more than two years to hear the result of the exhumation, which was
conducted in full secrecy. It reiterated almost the identical conclusion arrived at by the
1977 investigation: Pyjas died or more precisely “could have died” as a result of the fall
from the stairs. There was no material evidence to suggest that he had been shot or beaten
to death. Nevertheless, uncertainty crept back in. Might someone have pushed him down
the stairs? Or, could it be that he fell as a result of an unfortunate accident such as
stumbling on an uneven stair? The experts were not able to ascertain any of the versions.

\textsuperscript{199} “Ekshumacja Stanisława Pyjasa postanowiona,” 	extit{Dziennik Polski}, 23 March 2010
What I want to highlight here is not this unexpected and unsettling “result” of the operation. Nor is it the failure of “materially” proving the murder of Pyjas. What I want to highlight is the way the public “event” of the exhumation was produced.\textsuperscript{200} It is no longer a public secret that Pyjas was murdered by the former secret service. The result of the exhumation, most probably, will not change many people’s view and certainly, not the view of Pyjas’s family. As I noted, the family members never seemed fully convinced by the light this secret police operation was going to throw, upsetting the family grave and awakening all those who had been lying with Pyjas. It was not the drama of Antigone. This time it was Pyjas (and his dead relatives) who had to wake up to testify before the state for the buried secret of the Polish nation represented by the IPN. It was his dead body that was summoned by the state authorities as the victim of communism, where the Polish nation was to be imagined, secured, and purified of the secret agents. However genuine the IPN’s intentions may be in its “quest for truth” – and there is no reason to doubt this – what the institution has also ended up doing, among other things, was no less than producing remarkable publicity for itself at a critical juncture for its survival. It reasserted itself as a crucial public institution by displaying vigor and determination and generated an atmosphere of fear and uncertainty by publicly embarking on a secret investigation (see Crapanzano 2005).\textsuperscript{201}

\textsuperscript{200} In this I follow David W. Cohen and E.S. Atieno Odhiambo’s study (1992) of the burial of the Kenyan Lawyer S. M. Otieno.
\textsuperscript{201} Even if the exhumation focused on one particular body, the IPN certainly addressed it to the entire Polish public. In regards to its display of power, the exhumation may be compared to how torture works. As Vincent Crapanzano observed, “\textit{However couched in secrecy, torture must have a spectacular dimension to be politically effective}. Its occurrence, its possibility even, must be conveyed to the population at large, even if that conveyance is silence...Torture instills fear, pervasive fear, and terror, the object of which is more than pain and suffering, mutilation and death. \textit{It creates uncertainty and unpredictability} – a sense of the fully contingent that lies neither with a god nor destiny but squarely in human hands: those of the torturer and the powers behind him (or her)” (emphases added, 88).
The exhumation attempted to go beyond the face by digging up what lies beneath the visage, the facial injuries. If the face was not the evidence itself, it at least took on a testimonial function pointing to the broader political (and criminal) forces responsible for the murder, which could only be discovered by autopsy. In fact, I argue that autopsy stands out as the dominant method of truth inquiry in lustration practices. In a certain sense, one may also consider as exhumation the extraction of photographs and information about security officers from the archives and their public exhibition.\textsuperscript{202} One may liken the search for truth in the IPN archives to autopsy, as the truth is always a postmortem one, being revealed after the death of the object.

Certainly, this has much to do with the specific context of the “regime change” or “revolution,” which as a rule builds on the ashes or the ends of the \textit{ancien régime}. But I also want to suggest that this tendency toward autopsy as the method of truth is more central to our modern pathos of knowing and seeing than is usually thought. In an early work, Michel Foucault (1973) showed that the birth of the clinic in modern Europe also brought about a new relationship between life and death, and a new distribution of light and darkness in truth discourses. The new medicine asserted that a certain distance was necessary to unearth the truth of illnesses. The body came to be seen as a plane of symptoms, which were to be read carefully (Asad 1993; Scarry 1985).\textsuperscript{203} Accordingly, autopsy gained authority in the new regime of diagnostics for its capacity to reveal the truth about the body. Death offered an important vantage point from which one could see the entire life of the body in retrospect, “in full light,” as it were, and construct the truth

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\textsuperscript{202} Thanks to Katherine Verdery for this suggestion.
\textsuperscript{203} The relationship between the body, guilt, and truth is insightfully described by Talal Asad’s study of torture in medieval Christian Europe. The employment of judicial torture by inquisition, Asad observed, also marks a change in both “the direction of looking for truth and the practice of reaching it.”
\end{flushright}
of its life and the circumstances of its death. I want to emphasize that this model of autopsy, often recast in a distinctly moral language of Polish romantic nationalism (longing for national rebirth after the catastrophic end that elevates national victimhood and sacrifice), is remarkably dominant in lustration. The ideas about the visibility of truth (discerned in the face, bones, photographs, or secret files), the relations between seeing and knowing, and light and darkness, and the faith in the retrospective “discovery” of the truth about life after death, literally or metaphorically – all are central to the field of lustration. Indeed, it is these ideas that shape, consciously or not, one’s relation to knowledge and certainty, and the space between knowing and not-knowing in which one often vacillates, risks, and searches for a position for reflection. In the next section, I turn to the way this space is constituted by media and state spectacles of truth and is experienced by the family of an accused person, which waged, or rather had to wage an extra-legal struggle against the accusation of betrayal.

NEITHER KNOWS NOR REMEMBERS: NARRATING THE TWO BODIES OF THE ACCUSED

Wojtek Ziemilski’s (2010) one-man lecture-performance, Small Narration (Mała Narracja), brilliantly ‘fleshes out’ this space of knowing in its intimate political, corporeal, and affective dimensions. Besides its powerful mode of presentation, what is most stimulating is the way the performance explores the limits of this space by reflecting on the political and epistemological conditions of intergenerational communication of historical experience and guilt. He does so from a subject position that is different from the ones generally occupied by the cultural productions on former secret service archives.
He is not a victim of communism and does not seek to inhabit that position. Nor could he unambiguously be considered as a ‘perpetrator’ or ‘bystander.’ Wojtek’s position is different but not unique. The denunciation by the media and IPN historians of his grandfather, Wojciech Dzieduszycki, as a secret communist agent found the old man close to his deathbed, silent and distant. It also implicated his family and close associates in a paradoxical situation in which they felt the force or obligation to know what is there in the archives and at the same time, were not able to do it. They fell within the category of people whose access to the archives was strictly limited by the law on the IPN and lustration because of their association with the “accused” or “suspect.” The family members were not see what the grandfather wrote about or did as an agent. To see this kind of content, they were to consult the relevant articles published by the young professional IPN historians, who supposedly “knew how to read these documents.”

Under these circumstances, how was it possible to produce a meaningful narrative about the grandfather and make sense of the accusation, which implicated the entire family? Small Narration engages with this question. It tackles the possibility of constructing a narrative, even a small one with no particular beginning or end, when there is nothing to know or even to remember about a dead grandfather. In the face of the grand nationalist memory production and history writing that monopolizes these much coveted secret documents and authorizes the knowledge it generates with the insignia of the state, what can Wojtek or the family of the accused do? Not a sentimental defense of the dead grandfather, nor an account of his victimization to elicit sympathy from the spectators, nor a state spectacle of power like the ones I discussed in this chapter, Small Narration

204 Wojtek and his mother, Małgorzata often told me this bitterly. Even after a remarkable struggle to see the documents, Małgorzata was allowed to see only what is written on her father, but not what he wrote. Author’s conversation with Wojtek, 24 February 2011, Warsaw.
explores different possibilities of action and indeed, is itself a form of action, a political one. Yet it is one that constantly searches for its own object and grapples with the uncertainty of knowing and testifying to what it knows or sees. Who is the grandfather? Who is this grandfather interpellated by the accusation? Whose body, whose face is this? What might he have done, thought, and lived through? If there is judgment, this is about the unknown that is folded into every knowledge and memory of the grandfather.

There is something excessive about the body of the grandfather. It appears both close and strangely distant, feebly mortal and invincibly transcendent, sublimated or transfigured into the political body of the nation as a traitor, which is not allowed to rest in peace. It is these “two bodies” of the grandfather, to borrow Ernst Kantorowicz’s felicitious term, that interest me in this section. What concerns me here is the gap or interplay between the two bodies, the natural/mortal body and the immortal body/body political that is manifest in one’s suspicion or misrecognition of the other person, the other body. Through analysis of Small Narration, years of conversations with the family members, and reading of secret service files, I focus on the intimate sociopolitical life of these two bodies, the social experience of the grandfather’s deposition and his figuration into a national enemy. I explore what this life illuminates about the temporal and material continuities and discontinuities between the state and people and different generations in the context of a regime change.

Any attempt to ascribe a single title, profession, or adjective to the grandfather, Wojciech Dzieduszycki, will fail. He has been variously referred as aristocrat, engineer, actor, opera singer, journalist, cabaret playwright, or cultural critic. Born in Jezupol (today in Ukraine) in 1912, he started his career as an opera artist and engineer with a
specialization in agricultural production in Lviv. During the Second World War, he found himself twice in a concentration camp because of his links with the Polish Home Army resistance. His musical skills, discovered by the camp management, helped him escape death. After the war, like many other Polish people from former Polish territories, he moved all the way to the city of Wrocław in the West, which formerly belonged to Nazi Germany. As is often noted, postwar life was very challenging in many respects: the city required huge reconstruction after the devastating war, and food scarcity was a burning issue for many people. At this critical juncture, Dzieduszycki found employment in agricultural industry taking up a position at an important windmill that was responsible for the production and distribution of bread. Later in the 1950s, he got more involved in the artistic scene as a music and theater critic, director of the Wrocław Opera, and cabaret singer, which brought him enough popularity to travel abroad for shows. He was a popular figure with a recognizable face, voice, dance steps, and glamour so much so that in 1999, he was nominated by the city authorities as the “Honored Citizen of Wrocław.” In 2002, the city organized a 90th birthday celebration for him, where he took the stage again and sang his well-known songs.

After this point, common biographical accounts of Dzieduszycki take a different turn. His popular body in the open, variously appropriated by the people and for the people in his different titles, transforms into the menacing “creaturely” one, as though signalling the chiasmus that separates the real man from his public visage. To the series of his popular identities is added one inerasable one that tends to dominate all others: him as a “secret communist agent,” or as the IPN titled its research publication on “his case,” “Life in Hiding” (Życie w Ukrytu). The media exposition of Dzieduszycki seems to have
left a powerful impression on Wojtek and, especially, his mother, Małgorzata, who is a theater critic in her early 70s among other things. During our conversations both highlighted the following as the scene of exposition: in autumn 2006, the journalists in the company of an IPN historian roared into Dzieduszycki’s villa with cameras, where he stayed with his daughter and wife. Dzieduszycki (and everyone in the house) was to face the reports he wrote for the security. Some of the reports were in handwriting and carried his signature. He was asked to explain. He kept silent and said he did not remember. Neither did his wife nor Małgorzata respond to the journalists’ pressing questions. It was intense to have all this at home, Małgorzata and Wojtek told me.

The events were in the news everywhere. Most of the news employed the spectacular language of shock and tragedy, describing juiciely the fall of the old man from the past with the truth recently discovered about his secret identity in the archives. The tone was similar to the news about the defacement of Ryszard Kapuściński. This was supposed to be “the end of the myth,” “the last song of the aristocrat.” Some headlines underlined that Dzieduszycki denounced for gifts or money and was an exceptionally productive informer, who carried out all the tasks given to him (the head of the Wrocław branch of the IPN publicly underlined this). His reports must have brought harm to tens of people and injured numerous others, they highlighted. The focus was on the reports that conveyed information about people’s sexual orientation or erotic adventures.

What Giorgio Agamben observed for the Italian media of the 1980s (e.g., the prevalence of

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205 Conversation with Wojtek on 9 May 2010 and with a spectator of Small Narration who presented herself as a close friend of Małgorzata, 16 May 2010. Małgorzata also told me about the scene.
corruption scandals, celebrity love affairs, and porn stars) may also be said for the Polish media. Where the public slips into the private at any moment (he has Kafka’s *Trial* in mind, where the “courtroom borders on the bedroom”), he identified the corresponding “spectacular publicization of the private.” A “zone of indifference” between what he called the public and private is created by the spectacles of capitalism and state power (2000, 121).

Finally, the spectacular media news broke Dzieduszycki’s silence. Even though he said he still could not recall, he accepted all the consequences. He apologized for what he might have done in a letter he sent to the City Council, fragments of which were published widely:

> Recently I am reminded of a deeply painful and shameful part of my life. In 1949 I was forced to sign an obligation/loyalty letter (loyalka) and was made in this way a secret collaborator of the SB. I erased this fact from my memory so successfully that today I don’t know if I hurt anyone or whom I should ask for forgiveness. I believe I did not hurt anyone seriously, but perhaps I am wrong. With these words of repentance and apology, I stand with folded hands before the Lord and the Wrocław inhabitants and all who harbored confidence in me. Maybe God gave me such a long life so that I could bring these words out. I am sorry and apologize to Wrocław’s inhabitants.

The prize given to him as the honorable Wrocław inhabitant was taken back. Until his death in 2008 (during his last year of life), he did not attend any public events. It was not that no one showed support for him. Special magazine issues about him appeared, support letters were sent to President Kaczyński that noted, for instance, how brilliant a teacher he was in the Academy of Agriculture where he taught in the 1950s. Former dissidents underlined his contributions to the political opposition during critical moments.

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209 Another time Dzieduszycki told a journalist, “Today I do not understand any of this. Those were the times and I had to do it. I am very sorry for all those, whom I may have hurt.” See at: http://forum.gazeta.pl/forum/w.72.61085429.61096265.Agent UB hrabia W Dzieduszycki_setki_donosow.html (last accessed 21 May 2013)
like martial law. For some this did not seem to matter much, however. In contrast to the Polish Catholic nationalist morality based on victimhood and suffering that defined the mid-2000s, perhaps he appeared to have fared too well and enjoyed life too much (in spite of his concentration camp experiences) as a glamorous cabaret singer during the socialist period. In contrast to the dark image of the past drawn by the IPN based on what Eric Santner (2011) called “survival syndrome” (in which everyone had to suffer), his past existence suggested the possibility of a colorful life rich with love and enjoyment. His daughter Małgorzata told me many times how “he loved to be loved.” In the company of others, he was so radiant, singing, dancing, and spreading joy. Hence, the self-assured tone of certain media reports of his exposition as an agent. It was not possible to be happy and successful in those times without being wicked on the other hand. He had been too much. The popular resentment fostered by anti-communist nationalists found its final proof in the “secret” life of Dzieduszycki.

Something had to be done, Wojtek told me. It was not only that the family did not have the means to know what was in the IPN archive, but the entire family was stigmatized. In one of their visits to the cemetery, they found that the grandfather’s tombstone was missing. The caretaker later explained that he took it away because someone had sprayed in red “security” (ubek) and “communist” (komunista) on it. For some time it was not possible to locate where the grandfather’s dead body had been lying.\textsuperscript{210} The violence of “obscene words,” Santner suggests, lies not only in the meaning of the terms, but in the “very act of the delivery” (2011, 111). The violence of the “revelations” does consist not only in Dzieduszycki’s past ties with state security. The violence was exercised by the very act of delivery of the news by the media and IPN.

\textsuperscript{210} Conversation with Wojtek, 9 May 2010.
employees, the media spectacles, and the subsequent attempts to elicit responses from the family. It also lay in the act of “anonymous” defacement of the family grave.

It is not possible to overstate the importance of this experience of violence in the making of *Small Narration*. In this respect, the human body and particularly the grandfather’s, has become the material ground to articulate this experience. Reflecting on his performance, Wojtek said:

[With the accusation] my grandfather’s body has turned into something other than what it was before. No one needed him anymore. When the rumors spread in public he was already very old and sick, a dying body. One returns to the body, the older one gets. You slowly…become the body. This body walked a few years from one room to another in our house, following its daily routine. It was bare body. With the IPN publications and media coverage he became more than what he physically was at the time. He became a symbol, rhetoric…political in spite of his emptiness, his incommunicable self. When I tried to talk to him…he appeared not to remember. He only told me about a paper [lojalka] he signed when he was very young and that he wrote a few things about bad plays… I could not believe him wholeheartedly. “20 years of productive work and writing notably engaged reports to the SB” [he repeats the media headlines] and now he says he does not remember! Of course, he had some memory failing at the time, but I think he chose the easy way out: not to remember… [emphases added]

Another time Wojtek said: “What was I to find out about [him]? How can I ever get through that empty body lying in front of me and excavate the truth? The body creates a certain barrier. It is an opaque thing. Even though it looks immediate and somewhat accessible, like “just there,” we cannot know or access what is underneath. We must be content with the surface.”

It is precisely these themes of bodily opacity, surplus, unknowability, and memory that *Small Narration* explores. In its critical engagement with the IPN and media denunciation of the grandfather, the performance enters the field of moral autopsy.

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211 Conversation with Wojtek, 9 May 2010.
dominated by lustration. The body moves to the center to excavate the truth and time, and reflect on the possibility of communication. In a context marked by immutable doubts and suspicions, the body appears to provide the anchorage of certainty of truth, language, and experience, and mediate rhetorically the split that emerged between the grandfather (a person Wojtek is intimately related to) and “the grandfather” (a political figure or embodiment of an objective sign) (Crapanzano 2005). Small Narration begins with a handful of modern choreography clips to delineate this problem space of the performance. One of these clips depicts a naked female body constructing an emotional map of the frustrated sexual experience of the narrator. We watch her popping out colorful fluids (paints) from the body on a white surface, as she painfully recalls what happened in a hotel room. Another clip concerns the “raw” being of the aimless body devoid of any sense of utopia (understood as idealistic future). It lacks any theatricality, identity, or concern for representation. And the last one I want to mention shows an insect-like beheaded body, walking on its four legs, passing under a table, and moving along the wall. This body of the “unfinished self” or “lost identity,” as Wojtek called it in the performance, appears to interrogate the taken for granted views of the front and back, and the bottom and upper parts of the body. The clip ends with the fall of this “directionless” body on its (beheaded) head or bottom – depending on one’s point of view – by making a thick wordless bump.

I suggest that this paradoxical sense of familiarity and estrangement, excess and bareness, and givenness and inaccessibility concerning the body conveyed by the clips is

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212 This invocation of the body may not seem so surprising. As Vincent Crapanzano suggested, the body, “at once an object and subject of our (conscious) experience” plays a special rhetorical role, at least in the West. It is considered to mediate the “split in signification between the signifier and signified,” the split, which is variously evoked as the wound, trauma, or castration by psychologies (2005, 73).
best understood when we consider the passage from royal sovereignty to popular sovereignty, from the King’s Two Bodies to the People’s Two Bodies. The sociopolitical effects of the accused body of the grandfather, which is both too much (the surplus of meaning, waste) and too little (its somatic-semiotic nothingness), need to be investigated within this shift of sovereignty. “With democracy the concept of the nation replaced the monarch and sovereignty was dispersed from the king’s body to all bodies. Suddenly every body bore political weight…With the old sartorial codes gone, bodies were less legible, and a person’s place in the nation was unclear,” Melzer and Norberg observed (quoted in Santner, original emphasis, 2011, 4). Claude Lefort (1986) famously identified the defining feature of modern democratic society as the “empty place,” the absent center, which in principle can be occupied by everyone and yet belongs to no one. Even if Lefort retains his teacher Merleau-Ponty’s notion of the “flesh of history” to highlight the “primal dimensionality of the social,” Santner argues, he still does not fully address the “carnal or corporeal dimension of representation,” that is, the “political weight” and pressure, which every body of the citizen comes to bear with the shift from royal to popular sovereignty (4-5).

A discussion of Ernst Kantorowicz’s account of Richard II’s deposition based on his reading of Shakespeare offers a concrete image of this. Here, as in other parts, I rely on Eric Santner’s compelling work. Kantorowicz describes the “rite of degradation” performed on Richard as a “cascading” process “from kingship to kingship’s ‘Name,’ and from the name to the naked misery of man.” What appears at the end of this transformation or “metamorphosis” in the Kafkan sense, Santner writes, is a “glimpse of what remains once one’s entitlements to enjoyment have been reduced to the minimal
one to enjoy bare life.” In other words, “[w]hat remains at the end of Richard’s degradation is the appearance of the semio-somatic surplus that comes to amplify the human body when it is invested with a symbolic office, as minimally conceived as that office might be. What remains at the zero-level of investiture is, so to speak, just the fleshly substance of the surplus.” (2011, 48) Moreover, this deposition or deprivation is marked by horror. I quote Santer at some length, as I think this passage sheds some important light on the experience of Wojciech Dzieduszycki’s deposition from his former privileged status of the “honorable Wroclaw inhabitant” and his popular public persona:

The German word for ‘horror,’ Entsetzen, which literally means to de-pose or de-posit, did indeed at one time signify the act of removing someone from a position of authority, the undoing of their Einsetzung or investiture…[as in] the king’s capacity to install (setzen) and depose (entsetzen) bishops….Horror then places us in a semantic field of violent actions pertaining to the constitution and de-constitution of political and social realities; it can be understood as the experience of being violently thrown, removed, torn from one’s position or place, of an undoing – a flaying – of one’s symbolic skin….What is exposed/produced in the course of this deposition is not simply the natural body of the king deprived of his superbody but rather the leftover of sublime flesh previously figured by that representational corporeality. The rites of degradation metamorphose the body of the sovereign not into that of an animal but into that of a monstrous creature.

This “form of life” of the monstrous creature that remains after the deposition of Richard II is central to the somatic and semantic aspects of the degradation of Dzieduszycki (57). The horror of this experience is also the horror dispersed through Dzieduszycki’s aging body all the way to the young body of Wojtek. However, this horror concerns not only the family, but virtually any body occupying a public office or position of authority in modern democracy. We may now consider the clips of Small Narration in a new light. The juices that pop out of the female body may be seen as the fleshly substance, the surplus that remains after the narrator’s degrading sexual
experience in the hotel room. The raw body deprived of any sense of utopia may suggest the formless creaturely existence deprived of any hope. The beheaded insect-like body and its fall highlight not just the horror of deposition, but also the metamorphosis that might be waiting for every body down the road.

It will be argued that there lies a sea of difference between the deposition of Richard II and the defacement of Dzieduszycki, who is, after all, an ordinary citizen. This will be to miss the entire point, however. The displacement of the king by “the people,” which is often considered to define the space of modern democratic politics, did not simply mean the end of sovereign power. As Santner underlined, the procedures of “positing and deposing that formerly focused on the figure of the sovereign now transpire within the life of every citizen….the privilege and horror, the sublimity and abjection, of the flesh now belong in some sense to the fate of every member of the polity.” (61) Or in Foucault’s words, the “national redistribution of the substance previously localized in the ‘strange material and physical presence’ of the king also marked a shift in the modality of power that became dominant in modern politics” (55). This new modality, he suggested, involved a new “physics of relational and multiple power, which has its maximum intensity not in the person of the king, but in the bodies that can be individualized by these relations” (quoted by Santner 10, emphasis original). Then, can we say that the substance that previously made up the sovereign body distributed symmetrically or horizontally and individualized in the same way, regardless of class, racial, or gender relations, in modern democratic society? Eric Santner does not have much to offer on this question. His is a general discussion of the passage from the King’s Two Bodies to the People’s Two Bodies. I doubt that every body (e.g., the subaltern) would bear the same
political pressure or weight in any existing capitalist democratic societies. I do not think that those who destroyed the IPN exhibition in Katowice experience the political pressure on their bodies in the same way that Wojciech Dzieduszycki does.

Despite these blindspots, I think that Santner’s account is still compelling to think through the defacement experience of public figures or those who enjoyed public authority and exercised public power. His account is helpful to understand the way the risk and horror that accompanies every entitlement to office and privilege is condensed into one’s own body secluded from the social, and placed at the jointure of law and life, the process which becomes particularly vivid in moments of deposition and transformation. Hence, the aptness of Kafka’s story of metamorphosis for the transformation Dzieduszycki underwent. If *Metamorphosis* was concerned with the imprisonment of the human self in a room in the body of an insect and the character’s increasing seclusion and abandonment, the grandfather’s experience may be considered to imply the disjunction of his two bodies, the growing encapsulation within his own body and house and his sense of abandonment (Gil 1998). His multiple identities as an engineer, singer, critic, and opera house director were congealed into the identity of the betrayer. He is completely enveloped by the pressure that weighs on him, and has no more capacity to fight it in his old age. He has been severed from public life and reduced to, as Agamben would say, an “absolutely private person. Yet, what is privacy when all is out there in public?” (2000) Thus, his existence appears (at least to Wojtek) at once an excess and bareness, too transcendant and too concrete, too intimate and too distant, and too private and too public, having been caught by, in Jacques Lacan’s terms, “intimate nonbelonging” (his close associates’ misrecognition of him) and “extimate belonging”
(his exclusion from the political body as the enemy, as its constitutive outside) (quoted by Santner, 47).

If Kantorowicz’s King’s Two Bodies focused on the political problem of the separation of person and office and the continuity of the state beyond the natural or mortal body of the sovereign, as insightful commentators underlined, Small Narration foregrounds the discursive and corporeal effects of this separation and continuity. On the one hand, the grandfather has become nothing but the word of accusation, falling from the office he occupied until the age of 94 into the abyss of time, and, on the other, this experience became part of the family history, extending itself beyond the lived time of that person. Indeed, one of the central scenes of Small Narration shows Wojtek’s face marked by the text of the media news on the grandfather.

The naming of the grandfather made Wojtek reflect on his first name, which he shared with his grandfather (Wojtek is the diminution of Wojciech). In fact, the play begins with Wojtek’s humorous reflections on his name, how variously he has been called in different countries and languages (e.g., English, Portuguese, French), and how these variations on his name sounded to him. All these names were supposed to refer to him, the same person across time and space. Marcel Mauss (1939), in his seminal lecture on the “category of the person,” underlined that names in many societies (western or non-western) are considered to exercise a peculiar power that enables (bodily) communication between ancestors and descendants and between the lives of those who bear the same name. The perpetuation of names suggests the perpetuation of things and spirits and in some societies, like Kwakiutl, even the possibility of reincarnation (8). In societies where

213 See the thoughtful reflections of Winnifred Sullivan (2011) on Kantorowicz’s work.
214 Here, I do not have space to expand on the prolific theme of name or naming, which has been discussed by many scholars (Jacques Derrida, James Siegel, and so on).
Christian rituals of naming (“name days”) continue to be symbolically important, as in Polish society, one would expect that names continue to play a role in social communication and perpetuation of things. Add to this the physical resemblance of Wojtek’s face with the grandfather’s, which he highlighted during the performance by turning his gaze to the photograph of the grandfather (see Figures 12 and 13). His connection with the grandfather through his name and face suggests the extent to which he has been semiotically and somatically implicated by the accusation against the grandfather.

Figure 7 and 8 Photos from Small Narration (made by the author)
The naming of Wojciech Dzieduszycki did not leave language intact. If Wojtek’s name put an additional weight on him and marked him by the face, the language as a whole also seemed to be appropriated by the accusation: how ironic that it was his grandfather, who taught Wojtek how to read and write and that now the grandson had to read all those words about him, Small Narration underlined. “Though empty at home the grandfather’s body was at the same time flooded with discourse,” Wojtek told me, reflecting on his play.\footnote{Conversation with Wojtek, 9 May 2010.} Interpellated into silence for the deed he did not quite recall or understand any more, or so Dzieduszycki claimed, he traveled beyond recognition from one room to another in the house. He was sealed in an empty envelope. He was under siege from both within and without.

Small Narration then attempted to “take him back.” It aimed to reconstruct an alternative history of Wojtek and the grandfather on the basis of another language and archive or memory that would fall outside the sphere of accusation and the IPN. If the grandfather was already exposed and thus became the “location of politics,” in the words of Agamben, the play, then, struggled to “take possession” of that exposition. If the grandfather lost his face, that is, his capacity for communication in his secluded or enclosed world, the play strove to restore the “pure communicability” of the face by bringing the face to outside, as it appears by itself (uncovering the “great secret,” which the grandfather’s face was supposed to hide, was never the intention).\footnote{“My face is my outside: a point of indifference with respect to all of my properties, with respect to what is properly one’s own and what is common, to what is internal and what is external. In the face, I exist with all of my properties (my being brown, tall, pale, proud, emotional...); but this happens without any of these properties essentially identifying me or belonging to me. The face is the threshold of de-propriation and of de-identification of all manners and of all qualities - a threshold in which only the latter become purely communicable. And only where I find a face do I encounter an exteriority and does an outside happen to me” (Agamben 2000, 98.9).} In other words, Small Narration sought to carve a new space of expression and appearance, where the
common may be articulated and deprivatized: the grandfather enveloped in the act of accusation could be unfolded into the common; the IPN’s enclosure of knowledge about the grandfather (“nationalization of knowledge”) could be countered by making common what often passes as “private” family history or biographical information; the personal swallowed up by the nationalist history writing as another tragic figure of wretched betrayal could be inserted; the face defaced by the accusation could be made to appear as just a face in its nudity, nothing more and nothing less. In this sense, Small Narration was both restorative and therapeutic. It wanted to retain the common life (and death) that was hijacked by the violence of the accusation. It wanted to repair the communication between generations and between the family and the broader public. It wanted not allow the accusation to sit by itself, weighing down on the bodies of Dzieduszycki’s close associates. Likewise, it wanted not allow the accusation to be exploited by the media spectacles that aimed to seduce the readers into the enjoyment of demolishing a famous man.

To a great extent, the play managed to highlight and problematize these issues. It opened a new productive space for critical reflection and engagement. However, it could not have done what it did by comfortably inhabiting the space already posed for the accused (or their associates) as “perpetrator” or “victim” by the dominant public discourse. To transcend this binary, Wojtek had to carefully devise the mode of presentation of Small Narration. The outcome, in my view, was a Brechtian lecture-performance. Its probing questions and courageous explorations were accompanied by its direct, unsentimental, didactic attitude. It embodied a certain anti-theatrical and post-

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See Bruce Robbins (1995) for his discussion of the “nationalization of knowledge” on the atomic bomb secret and the accusation of the Rosenberg couple.
dramatic form, which deliberately kept distance from both the subject matter and the audience. This enabled it to de-identify the subjects of the performance (himself and the grandfather) and avoid playing on eliciting sympathy from the audience. It evocatively used fragments (on language and evidence) from Ludwig Wittgenstein’s *On Certainty*, projecting them on the screen and waiting in silence for the audience to do the reading. From the same emotional and intellectual distance, it projected video clips and family photographs. Furthermore, the ordering of the photographs was particularly important. When in an earlier version of the play, he started with the media coverage about the grandfather and later showed his images, Wojtek said with the wonder of someone who had just discovered a terrible secret, the grandfather appeared like a Nazi officer, the image the Polish audience immediately associates with it. Everything looked too sinister for him: the grandfather’s face and smile. For the rest of the performance, one then constantly sought for incriminating evidence. There was nothing left to see or think about. That is why he started with the abstract dance clips, he told me – to “open it up.”

Here I want to conclude my reflection on *Small Narration* by underlining the central role photography and visual media played as a rhetorical device in the lecture-performance. They were employed to evoke an impression and develop small narrations about all sorts of issues, especially about the memory of the grandfather and Wojtek’s relationship with him. Recently, visual media have drawn much scholarly attention about their capacity for transmitting memory. Marianne Hirsch (2008, 103-128), in her well-known study of “postmemory,” highlighted the central role photography plays in communicating the memory of an event to the generations who did not personally live through it or do not have a first-hand recollection of it. She takes her cue from the
memory of the Holocaust, the inter- or transgenerational transmission of which presents a challenge, as the survivors and victims pass away. What to call the fragmented stories, images, or impressions inherited by the generations who do not have a direct experience or memory of the Holocaust, or other “traumatic” event? Hirsch coins the term “postmemory” to refer to this.

It is not clear in her account if the same situation can be said of the generations who are stigmatized by the guilt of their ancestors. Would the postmemory of, say, perpetrator families bear the same structure as the postmemory of victim families? However, the major shortcoming of this “postmemory” framework, in my view, is its reified concept of “memory” or “trauma” and its taking for granted a “need” to recall that memory by future generations. It is, as though, what is meant by the object of memory or traumatic experience is so transparently and consensually constructed for everyone that what remains to be examined is only the way to transmit “it” to different generations. The object otherwise is *already there, fixed and lived in the past*. Or in the words of Vincent Crapanzano, it is “a single historically determinable, literally describable event,” indifferent to any of its performative and pragmatic reiterations at different moments for different purposes in time-space (2005, 91). In this sense, Hirsch’s account assumes a linear and topographical understanding of time, where the object of memory is located in the past and its transmission takes place in the present. Instead, what interests me is how the act of remembering is always already mediated, the object of which undergoes a

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218 This is how the object of “traumatic experience” is commonly considered. Crapanzano (2005) writes that psychologies like psychoanalysis, especially the “literalist ones that claim to liberate their patients from the effects of trauma by ‘leading’ them back to the ‘real’ traumatic experience” miss the central problem of “irreferentiality” of that experience (the “lack of a final referent”). Moreover, they fail to account for the “temporal and temporizing structure into which a “traumatic event” is brought” (91).
process of becoming in time-space operating within the field of power.\textsuperscript{219} Even when what is remembered is uttered in a repetitive frozen discourse, as Crapanzano highlights in his recent study on the Harkis (2011), this still reveals something of the sociopolitical conditions of remembering and articulating what is remembered. What interests me how is then the need, desire, or sometimes the obligation to remember is sociopolitically produced, channeled in particular directions, and framed within particular conventions, and how in the process of remembering or struggling to remember, new challenges emerge that reframe or reconstitute the object of memory.

These are all pertinent questions to \textit{Small Narration} and for my conversations with Wojtek and his mother, Małgorzata, about the accusation and the secret service files. As I will discuss more in detail in the following section, the desire to remember or know about the grandfather’s “secret past” has been, to a remarkable degree, mediated, if not fostered by the terms of the accusation. This put Wojtek in a particularly “tragicomic” situation, where he had nothing to know or remember about what the grandfather did or may have done, and yet, he had to come up with an answer and \textit{find a way out of where he fell}, as Agamben would say. That is how the play, instead of offering a big narrative, offered a number of small ones based on (among other things) ephemeral recollections of the time spent with the grandfather, who happens to be sixty years older than Wojtek. When it came to produce or transmit the past image of the grandfather through photographs, this did not mean to recreate the bond with the grandfather independent of the effect of the accusation. Photographs in themselves do not \textit{necessarily} create a bond

\textsuperscript{219} Crapanzano (2005) likens the “recovered trauma” to a “screen memory,” a “memory behind which lies another memory and behind that memory another and still another,” which highlights the problem of lack of a final referent, “condensing all the traumas of the individual’s life into a single, well-defined, well-located one” (93).
with the depicted person, or foster intimacy. They may well produce estrangement by highlighting the ineradicable distance that separates one from what one sees. As the art historian Hans Belting wrote, “once death has taken hold of the memory in a photograph, the loss of time is absolute” (2011, 153). In the same vein, once autopsy takes over the understanding of truth process or revelation of the secret, death takes hold of the memory and squeezes the life out of the person whom it meets in the files. Then, time is dead and the loss of time is absolute.

FROM ADJUDICATING MEMORY TO THE HOUSE OF THE OPPOSITION

In spite of Small Narration’s creative efforts to go beyond the terms of the accusation, the lecture-performance, to some extent, still functioned within those terms. This complicity of “the response” points to the broader relations of domination operating through the discourse on the socialist past. If one’s main “interlocutor” is the accusation directed by the media and the IPN, a combination of media and state spectacle, it would probably not strike anyone as a novelty to hear of the same prosecutorial questions or courtroom “defenses” from those implicated in the accusation. Indeed, a notable part of Small Narration engaged with the evidentiary material (the reports) cited by the IPN article on Dzieduszycki’s collaboration. The play grappled with the evidence, deconstructed it where possible, and speculated on what else may be in the files and what may be their relevance. The theater stage at times turned into the theater of the courtroom, where the audience is invited to evaluate the evidence and the counter-evidence presented. Unlike in the court, however, the verdict never came; it was indefinitely suspended. While Small

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220 Manipulability of the photographs or their usage for different political purposes have been widely noted by many scholars. See John Berger (1980) and Susan Sontag (2001).
Narration, in the main, is consciously skeptical of the whole enterprise of judicial examination, my conversations with Wojtek and to some extent Małgorzata revealed the popular force of the language of lustration. Interpellated by the accusation, one finds oneself within the terms of judicial mode of inquiry and sensational media coverage in spite of one’s skepticism of them. Memory, then, turns into a field of adjudication, conscience a scene of moral tribunal, and the “collaborator” an individual whose moral integrity is at issue to be judged against the darkest facts found in the files. In other words, moral autopsy becomes the rule of the day. The flesh of history, that creaturely substance (Santner) which remains in the body is to be extracted and exposed to cure or purify the new body politic from corruption.

Both Małgorzata and Wojtek told me that they had tried many times to see the files on Dzieduszycki, but were not allowed to. In fact, this, they suggested, had been an important part of their anger and indignation at the IPN. If they accessed the files, what would they like to know? How would seeing the files change their mind or heart? Is judging only a problem of knowledge? Is being able to judge a matter of being able to know? Wojtek said that he was convinced that his grandfather was neither an evil man nor an angel, or he must have been forced by the security to collaborate. Yet, he still “wanted to know what kind of evil [his grandfather] had committed, if he did so.” More precisely, he wanted to know “whether the grandfather went to England to finish a man, destroy him, perform the task given to him by the secret service, or whether he went there and had to report something because he really wanted to be there, and the report was so blatant, nothing big or special about what it said.”221 It would be fair to say that this style

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221 Conversation with Wojtek, 24 February 2011. When I first met him in May 2010, he seemed to be more concerned with seeing how the whole thing stands together itself to form his own subjective opinion.
of reasoning and what he wanted to know (what the grandfather did in England) derived from the reasoning the IPN article and major media coverage had presented (e.g., as the moral rubric for evaluating who is the “evil collaborator”).

I have given Wojtek and Małgorzata what I gathered from the IPN archives concerning Wojciech Dzieduszycki. While prohibiting them to see that material, the law on the IPN allowed me to do whatever I want with the information I collected from the archives. There was virtually no limitation on its usage. This also made possible the media publication of hasty accusations based on one’s debatable findings in the archive. Because I did not want to be the censor who would filter the reports to decide what is good for them to see, I took the risk of copying all I had. In my own way, I told Wojtek and Małgorzata what I saw as the common problems involving the accusatory reading of the files, and asked them to be mindful of these.

The files compiled on Wojciech Dzieduszycki testify to the destructive violence of the Second World War and Stalinist Poland. Not only do they shed some light on how the repressive security apparatuses operated during socialism, but the files were themselves part of the state technologies of social control. Out of a thousand pages from five files compiled under his name, I want to highlight the following to offer a sense of what the files say about his relationship with the secret service. As I noted earlier, he was imprisoned twice in German concentration camps during the war. Before he was recruited by the secret service (UB) in 1949, he had been denounced by his colleagues in the windmill, an industry that was under close surveillance against “sabotage” in the context of food scarcity. The denunciations mainly concerned Dzieduszycki’s complaints outside the narrative IPN reads into the files. After the course of his series of performances, he started speaking more about the kind of evil things his grandfather might have committed.
about the UB’s presence in the factory and their suspicion of him as class enemy. His recruitment was then both a test of loyalty (to see if he supported the regime) and a way to collect information about “secret agents” with international ties. However, the transcription of the meeting that led to his signing the obligation letter cannot be found in the files. Even UB officers at times complained about the lack of this paper, which would detail the course of the recruitment. During the 20 years of his “formal” cooperation, Dzieduszycki mainly reported about those involved in factory management and cultural activity, and particular individuals (including emigres) pointed out by the secret service. Even if he wrote hundreds of pages, he was usually evaluated as not hardworking or engaged enough.222

At our first meeting, when Małgorzata had not yet seen the files, she often told me with notable admiration that the main problem with her father was that he was unable to say “no” to anyone. “He was not capable of refusing anyone who wanted to see him or talk to him.” She warmly told me the following about her father’s complicated relationship with the secret service. I quote at length this colorful story:

Singing songs from prewar Lviv [today in Ukraine], even speaking about Lviv was not allowed at the time [the 1950s]. It was the “thaw” [1956]; you know, this was the time for the rehabilitation of a certain past, which was considered dangerous before, the past about which one would be better off not speaking: place of birth, prewar life, possessions… My father was very active in public radio and I guess, started singing songs from Lviv. He knew them by heart…Then there was the issue of recording these songs. One day he was arrested. You know, at that time the air was thick with conspiracy. It was sensed everywhere… Secret gatherings, shady deals, people with unknown connections, people without a past, name changes and so on. Wrocław was a haven for this and had always been suspected by the authorities. An old Home Army soldier, changing his name, could live here and no one would have recognized him….

So my father was arrested for secretly recording and duplicating the songs from Lviv. I know who made the arrest. It was the new local

222 See e.g., AIPN/Kr/0092387, karta 43
Party chairman (Województwo PZPR). Things changed rather slowly in 1956. The transfer of power was not so fast or smooth. Yes, it was another era, but what could be done with those who occupied important positions in the Stalinist years? They were not in leading positions any more, but had still long and deep ties. Eventually, some of them were sent to administrative exile. The former high rank Party members from Warsaw…were sent to the provinces. Wrocław was one of these places, the newly gained territory, the wild province of Poland. Back then it looked farther from Warsaw than it is today. Then, the new chairman of the Wrocław Party committee, a hardline Stalinist, wanted to arrest my father. The prosecutor prepared the case and my father was sent to prison accused of leading a conspiracy. He had a heart attack in the prison and was taken to a hospital. You know, the majority of the doctors were from Lviv. They took good care of my father [she smiled]. They all loved my father and his songs! [Her eyes shone with joy]. In their medical report they wrote that my father’s health was in a serious condition and cannot go back to the prison. The prosecutor did not have the slightest idea about what to do. The Ministry of Internal Affairs sent an investigator, who would look into the case and evaluate the medical report. The report was positive and my father was released for a month. Yet, the secret service trailed my father carefully noting whatever he did: he went to the coffeehouse, met people, sang songs, then went to another friend, had some drink etc. It turned out that my father was not that seriously ill [she smiled ironically].

The Ministry then sent another investigator to verify this observation. The second investigator looked into the case, testified for the validity of the medical report, and concluded that my father was seriously sick and cannot go back to the prison. The prosecutor was at a loss. In a few years, the chairman of the party changed and the case against my father dropped. You know [she told me suggestively] these investigators from the Ministry were SB officers. [Then she looked out from the window fixing her eyes at a distance] You see, the secret service officers could function in different ways. Sometimes it was like [she sought for the right word]…like having an insurance, I mean…in today’s terms.223

She repeated the word a few times and liked it even more. “Insurance” was appropriate, I gathered from her gesture. How did she know this story, however? It turned out that she detailed this story, reading the documents shown to her at the IPN. She then discussed it with those who could recall or know portions of it.

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223 Conversation with Małgorzata, 26-27 April 2011.
My reading of the files also highlights the ambivalent and even antagonistic relationship Dzieduszycki had with the secret service. If it says anything, and I think it does, he attempted at least twice to break with the secret service, once in 1953, the year Stalin died, and another in 1956 in the midst of de-Stalinization. In both instances, quite peculiarly, he claimed to be disclosed or “deconspired,” to use the jargon of the secret service, as a “secret agent” by Radio Free Europe. However, his handler in both cases trivialized this information, implying that this may be a trick he employed to break up with them. Finally, his “formal” exit came in the early 1970s when Edward Gierek became the First Secretary of the Party. In the meantime, other secret collaborators reported about Dzieduszycki’s increasingly public criticisms of the regime, especially concerning the 1968 protests. One of these reports alleged that Dzieduszycki must really have had good backing in Warsaw to get away with his critical stance and keep his job in that great season of mass purges. At another time, Małgorzata told me how Dzieduszycki’s relations with the regime enabled him to accumulate forbidden books. He contributed to the reading groups and held parties and discussion meetings at home, which many dissidents visited, borrowing books from his huge library. The books outlived the fall of socialism just like her father did. When Małgorzata asked him why he collaborated, the answer she thought she heard was nothing but the word, “books” (książki) – not a particularly easy word to pronounce.224

Postsocialist spectacles of justice, which function through the collaboration of the state with private and public media, have made a great deal of the former secret service files. If those who figured in the files had been made to act according to the script directed by the former socialist state, these spectacles also write their own scripts, in

224 Ibid.
which the figure is made to play a new role written for them. While the conditions that led one into a secret relationship with the former state have been made even more invisible today, what counts as truth has become the mere existence or “fact” of a secret relationship with the former state (often evidenced by one’s signature on the obligation letter). Restoration of justice only meant making this relationship public and fully transparent, but the dilemmas (some of which are still “public secrets”) that held together that relationship often do not make it to the spectacle.

The Romanian director Alexander Solomon’s documentary film, *The Great Communist Bank Robbery* (Marele Jaf Comunist) (2004) brilliantly investigates how security and judicial apparatuses made the suspects reenact the robbery they supposedly had made and confess their crimes according to the film script written by the communist authorities. By striking a “secret deal” with the state (which did not hesitate to employ torture) in exchange for their life, the suspects accepted all the charges before the cameras in this show trial. Yet, at some point, the suspects came to realize that they actually consented to their own public death, so Solomon suggests, as they would not be able to prove their innocence once authorities showed the film to the public in order to set an example of prosecution and induce fear in the spectators. In comparison to the great publicity of this film about justice, the suspects’s secret deal was destined to remain pale and obscure. Likewise, Wojciech Dzieduszycki’s “secret deal” remains largely obscure in current spectacles of justice, as the most sensational aspects of his reports (e.g., information on others’ sexual orientation or so-called intimate life) makes it to the public. In comparison to the publicity of media-state spectacles of the written word (its transparent factuality, obviousness, or literalness), what is unwritten, like the specific
course of Dzieduszycki’s signing of the letter, remains unthought. Today the files are not
read so much to understand the space of strategy that emerged out of secret collaboration.
They are not read to grasp how one’s collaboration allowed or served as “insurance,” to
borrow Małgorzata’s term, for the subject or another subject to undertake more radical
criticism or anti-systemic action.

Neither Wojtek’s nor Małgorzata’s reading of the files does seem to be concerned
so much with this strategy of collaboration. Nor were they particularly interested in the
space of politics implied by the act of collaboration, or the historical conditions of
collaboration. In this domain of practice that is flooded with emotional overloads,
sensational revelations, overdetermined meanings, and sticky moralizations, perhaps their
way of handling the files was not surprising. They were both in the battle, the terms of
which had been not of their own choosing; these terms had already been set by the
lustration discourse. They both wanted to know about the particular things that had
already been thrown out to the public, and confirm the truthfulness of what was already
known. In other words, it was not so much the desire to learn or know the unknown that
seemed to have motivated their reading. Wojtek wanted to confirm or verify the
information disclosed by the IPN publication and had a glimpse of some of the
denunciations his grandfather wrote about the individuals he knew from the family.

Małgorzata had a different take. For some time, she walked around with the copy
of the files and did not want to read them, she later told me. Partly with Wojtek’s
comments and on the occasion of my visit to her, it seemed to me, she decided to read
some. When I met her in her father’s house in Wrocław, she said that she was very
surprised by the fact that her father knew how to write in the official language of the
reports. She was also surprised that her father could write such things about his colleagues and friends, the man who had always been the last person to figure out the secret affairs between people around him. She was visibly shaken by some of her grandfather’s reports about his close associates even if she said she did not learn anything new from the files. She then recalled that her father had always been pessimistic about politics and did not like to talk about political events at home, a topic that made him look rather heavy. What he thought about political figures was a mystery to her. Likewise, he never seemed to her particularly uncomfortable with the great public debates about secret collaborators or files over the last two decades. He never spoke a word about anything alluding to his links with the former regime even though she thought she knew everything about him. She was again very surprised. Since our first meeting Małgorzata told me about the difficulties of maintaining the old villa she inherited from her father and organizing his books. She wanted to donate them to public libraries. After our last meeting, she told me that she felt strangely relieved of the burden of dedicating her entire time and energy to the house and books and defending him against the accusations. It was life, her father lived a life, so she too is living a life.

The figure of the secret collaborator occupies a peculiar position in the national body politic. Placed on the ever shifting (and contested) line that separates the inside from the outside of the national body, the secret collaborator appears more sinister and dangerous than the secret service officer. Whereas the officer has always been there as an official secret, a “legitimate” part of every state organization, the secret civilian collaborator embodies the subliminal figure of the enemy who could be anyone and anywhere. The collaborator’s “inner motives” are considered to demand scrutiny and
justification in a no-win game. The collaborator has to be facialized and this facialization, in turn, promotes an overly static and deterministic understanding of human action by disregarding historical contingency, as Alasdair MacIntyre (1976) noted in his essay on Hegel’s critical views on modern physiognomy (1976). When Wojciech Dzieduszycki was disclosed as a communist agent, many commentators reflected on what it took to be of aristocratic descent in People’s Poland. Some claimed that this meant fear and demonization, so he had to collaborate in order to survive with his family through the dark times. Others claimed that not every aristocratic person had to collaborate, and pointed to those who did not collaborate for proof. To be sure, one can find different examples depending on how one wants to see the “case” of Dzieduszycki. The figure of the collaborator can accommodate different kinds of accusations or justifications. In fact, all these contentions, in my view, boil down to the following question: how does one desire to remember or, better, make use of the life and memory of a given person? What is the future horizon of history and politics, through which one wants to understand the life of that person? This is the same question that I raised in the beginning of the chapter concerning Ryszard Kapuściński. Would one desire to remember him in the company of his comrades with a youthful revolutionary smile, or as an old defaced man of the distant debunked past without a future?

This is not a question of moral relativism. In politics, as Merleau-Ponty (1969) noted half a century ago, what appears relative or arbitrary to one may be absolute for another. In this situation, politics is mainly about risking and taking a side, which does not mean that that side has to be totalitarian, judgmental, or dismissive toward any other

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225 MacIntyre (1976) reflects on faces and skulls and what they mean to an understanding of history and human action in his insightful essay on Hegel and his critique of physiognomy, which was in the 19th century an important “science.”
position. Nor does it mean to deny the ambiguity or contingency of the field of political praxis. In this regard, I want to highlight the following recollection about Dzieduszycki by the well-known worker dissident from Wrocław (and other such dissidents), Władysław Frasyniuk, in response to the media denunciations: “I do not have much to learn from the revelations from the archives about my friend, whom I know well enough. Regardless of what he did in the 1950s or 1960s, we will always remember him as someone who took the risk of opening his house to our secret gatherings for oppositional activity during martial law.” This is the Wojciech Dzieduszycki they wanted to remember for the political future. Not the morally compromised man in his most fearful or dreadful moment, but one that actually took risked taking action and perhaps more important, enabling others to take action.

It is striking that the great Eastern European discourse on dissidence and opposition has turned into one big narrative of pervasive collaboration or conformism in the “postsocialist” era. Suddenly, it seems there is nothing to oppose any more, and every influential figure of the opposition has turned out to have had secret or not so secret ties with the former state. In its actually existing form, lustration deadens life, endorsing autopsy as the method of inquiry. It reifies time and encloses the truth in the moralized image of the past. Recently in 2011, the new Left groups of Poland, organized a huge public meeting in the house of Wojciech Dzieduszycki with the initiative of Wojtek and Małgorzata. There, Wojtek once again performed Small Narration, projecting the images on the walls of the house, which was named “House of Change” for the meeting. Numbers of young activists, thinkers, and oppositionists gathered to reflect on the alternative political future to capitalism. It is this gathering, I think, that enlivens, more
than anything else, the real spirit and memory of the house and the family history. The house carries forward that memory into a common emancipatory future. This future slowly reveals *the truth that does justice to the secret*, to borrow the words of Walter Benjamin – the secret of history, life, and capitalism. It is everyone’s secret.
CONCLUSION

I began this dissertation with the following puzzle that met me during my field research in Poland. While human rights and transitional justice are almost always invoked together to address past state violence, as in contemporary Latin America, Africa, and the Middle East, how is it that in Eastern Europe, particularly in Poland with a fairly long tradition of human rights activism, local human rights organizations and many ‘progressive’ political activists have been ardently contesting the transitional justice procedures like lustration or de-communization? How is it that many veteran oppositionists, who had been targeted or injured by the communist-era security apparatus, have come to oppose lustration, which is supposed to pursue justice on behalf of the ‘victims of communism’?

The public commentators and scholars of Polish lustration usually offer two types of explanations. The people who oppose or are critical of lustration, we are told, have something to hide about or fear from their own or close circles’ secret links. So they oppose it to protect themselves or pursue their self-interests. Or, according to the second explanation, lustration is mainly an instrument of rightwing populists to repress and silence their opponents; it is as if there is something inherently wrong with these so-called vengeful and power-thirsty populists, who have appropriated the otherwise well-meaning transitional justice procedures.

This dissertation has attempted to provide another kind of explanation by following a different line of inquiry. True, it may be that some people have been critical of lustration out of anxiety or fear of losing face or status. But there are also ways in which the lustration process (including the bitter social-political struggles around it) itself has been producing or reproducing that anxiety and fear. My dissertation has explored
these legal and political strategies and processes, through which an environment of fear and suspicion of betrayal have been generated. In the same vein, I have critically engaged with the assumption that lustration is a natural response to the demands for justice, and investigated how a popular desire for lustration and the ‘secret truths’ of the security archives have been socially and politically created.

Furthermore, I agree with the aforementioned view that lustration has become monopolized by the rightwing groups, which have sought to use it to augment their authority and establish a new, ‘morally pure’ nation-state. Indeed, by the mid-2000s, lustration has become expanded into a full-blown national security mechanism. But instead of blaming those groups as irrational, backward, and violent (as many liberals do), or lamenting once again the political instrumentalization of law, that ‘pure’ law, which is supposed to be beyond politics, I have focused on the following questions: what are the social-historical factors that have made Polish lustration instrumentable or politically useful in the first place? What is of the structural relations of power that have prepared the conditions for the transformation of lustration into an expansive surveillance system? In exploring these questions, my dissertation has engaged with the fundamental questions of the modern state, law, citizenship, and knowledge practices that have global relevance.

First, my research has underscored the contingent yet powerful effects of state power in the pursuit of justice and on the moral-political discursive space of argumentation. This is not a novel observation. Across the decades, Soviet-type state socialism has been rightly criticized for its state-centered and nationalist character, which, as I have discussed in Chapter 2, was also highlighted by the thriving political
opposition in socialist Poland. *Eratization* and *nationalization* of socialism has had
tremendous consequences not only for the everyday life and social struggles in the East
bloc, but also for the communist movement in the West and the South (see Balibar 2003).
But my dissertation also has highlighted the crucial impact of post-1989 capitalist state-
building project on what has come to be understood by democracy, freedom, and human
rights (Chapters 2 and 3). The popular struggle for democracy against the socialist state
has become fragmented and absorbed into a neoliberal state-building project. With that,
the notions of freedom, equality, human rights, and democracy have also changed.

The similar effects of state power may be observed for the emasculated force of
anti-communist nationalism and of the socialist state’s categories after 1989. Once anti-
communism became a state ideology, at any rate the hegemonic discourse of state
building and liberal-democratic polity, it also has taken on a new force. Mahmood
Mamdani (2001), in his insightful work on Rwandan genocide, underlines a crucial
distinction between two kinds or moments of nationalism: the *anti-colonial nationalism*
mobilized against colonial oppression (the native’s violence famously associated with
Frantz Fanon’s writings) and the *nationalism of postcolonial state-building* (the victor’s
justice or the violence that deploys state power and builds on past categories of the
colonial state, Hutu and Tutsi identities). Mamdani argued that the victor’s justice,
harnessing state apparatuses and endorsing nationalist vengeance, is a perfect candidate
to reproduce the cycle of violence.226 In a similar vein, Hannah Arendt (2010), in
*Eichmann in Jerusalem*, highlighted the compromised procedure of justice when it is
employed instrumentally for state propaganda. She famously criticized the Israeli

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226 See also Partha Chatterjee (1986), who highlighted the paradoxical reproduction of colonial power (and
its categories) in anti-colonial nationalist thought after ‘independence.’
prosecution for setting up a show trial, which aimed to foment the victimhood sentiments of Israeli citizens. Thus, the leading role of the postsocialist state in the lustration process (the state archives, prosecutors, and system of law) must not be ignored. That state, which has been in the making for decades, structures the material and moral-political space, in which lustration has been operating.

But I do not mean that the state ‘corrupts,’ or it is inherently a ‘magical’ or ‘wicked monster.’ The explosive contradictions of neoliberal democratization have decisively impacted the course of Polish lustration. So this is my second point. My dissertation has shown how the ‘postsocialist’ conceptual and institutional architecture of citizenship and human rights, especially of the notions and practices of equality and liberty, have given way to the volatile social-political antagonisms around lustration. Initiated in 1997, lustration has fundamentally become an issue about not only the ‘past villains’ (the supporters or agents of the communist-era security), but also the current beneficiaries of the capitalist transformations from socialism. It targets both the ‘ex-communists’ and ‘liberals,’ coded as the ‘winners’ of the transformations and pitted against the masses of people who ‘lost out’ during those transformations. Lustration has come to mediate the contradictions of judicial-formal equal citizenship promoted by democratization and the social and economic inequality structurally generated by neoliberalization.

However, my point is not that civil and political equality is unimportant in comparison to the social and economic equality. Rather, I have suggested that the effective practice of civil and political rights is also undermined by the impoverished and minimalistic conceptualization of social and economic rights, which treat the issues of
social equality as a matter of abject poverty or of socioeconomic security. Moreover, just as neoliberal globalization, and especially the accession to the EU, has shaped the course of legal and political-economic transformations in Poland, it also has shaped the course of the lustration law. In fact, my dissertation has shown that it is in the liberal legal-political space of security (the doctrine of militant democracy) that the Polish lustration law was mainly formulated. As such, the securitization of lustration and democracy by the mid-2000s did not simply result from some idiosyncratic ideas of rightwing populists, but also from the expansion of the security drive that already had been planted in the lustration law as part of the Europeanization process (Chapter 3).

Thus, my research joins the emerging critical scholarship that highlights the local effects and socioeconomic dimensions of transitional justice, which are often overlooked by concerned scholarship and policy-making (see e.g., Laplante 2008; Lekha and Pillay 2010). To this end, I also have begun exploring an alternative normative framework to address the complex issues of individual and collective responsibility for the communist-era state violence and capitalism’s structural violence beyond the moralization of politics and securitization of democracy. Drawing on the works of Hannah Arendt and Iris M. Young, I have suggested that the notion of “political responsibility” construes more fully and productively the responsibility of the people, who vicariously, indirectly, and regularly participated in the injustices produced by the communist state and reproduced by the capitalist state (Chapter 4).

Finally, my research suggests that this alternative normative framework needs to be complemented by a critical mode of truth-making and epistemic practices. As I have shown, the lustration practices instrumentally treat the files and categories of the
communist-era security service, using them to ‘retrieve’ information, name the perpetrators, or ‘recover’ the missing voices. As such, the lustration discourse largely draws on the terms of the totalitarianism paradigm and a judicial mode of knowledge production that promotes a clear-cut victim-perpetrator framework. It treats the security archives as a repository or storehouse of the truths simply sitting there and waiting to be retrieved. The more the information, the more there is redemption (Chapters 1, 5, and 6).

Halina Bortnowska, a veteran Catholic human rights activist, who co-authored the first lustration law, said recently: “This is not St. Peter’s truth. There is no love in this truth.” Similarly, my landlady, a retired worker of the famous Lenin’s shipyard in Gdańsk, often said, “There is your truth, my truth, and shitty truth” (twoja prawda, moja prawda i gówna prawda). It is this shitty, juridified truth, she suggested, that underpinned the current nationalist reconstructions of the socialist past, including the history of the “Solidarity” movement, as one of treachery.

How to conceive an alternative mode of truth-making practices? I think this starts from the socialization of the means of knowledge production, a new critical epistemology beyond the categories of the state (a politics of the state), and an alternative truth process, one that does not judicialize, moralize, and turn one into a “bad citizen,” or simply dig into the bottomless secret security archives for more “revelations,” but one that engages the social truth in the open – the truth of common life, past and future.
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