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Abstract

Transitional justice policies are the product of policy entrepreneurs – highly motivated individuals who dedicate their career to achieving a narrowly defined set of policy goals through political means. These policy entrepreneurs are driven by a strong commitment to a particular niche ideology, and the laws they produce include explicit non-consensus ideological elements. As a result, transitional justice legislation that comes about in this way reinforces political contestation over the past. This argument challenges both the notion that transitional justice is the product of strategic behavior by parties seeking to undermine political rivals, and the conventional wisdom that transitional justice can lead to reconciliation, catharsis, and closure. This paper investigates transitional justice legislation in the Czech Republic and Slovakia on the basis of more than 70 elite interviews as well analysis of a broad range of primary documents.

Introduction

The transitional justice literature that has emerged over the past 25 years has developed a broad range of insights into transitional justice. However, the field has not yet developed a solid theoretical understanding of the effects that transitional justice policies and practices can produce (Van der Merwe et al., 2009; Thoms et al., 2010). A transition-centric perspective holds that transitional justice, as part of the democratization process, can contribute to democracy and establishing the rule of law (Stan, 2009). The post-transitional perspective, by contrast, emphasizes that the politics of transitional justice continue well after democracy is consolidated, and underline the strategic use of transitional by politicians (Welsh, 1996, Williams et al., 2005). In East and Central Europe in particular, where transitional justice efforts have concentrated on the legacy of the communist secret services, scholars have stressed the clandestine use of the secret service files (eg. Kiss, 2006) and the strategic approach of political actors towards the issue generally (Nalepa, 2009).
While it is accurate to see transitional justice politics as part of the democratic politics of post-communist states, the strategic understanding fails to explain a few elements about transitional justice legislation and the process that leads to it. First, almost all transitional justice in the region is the result of parliamentary activism, and is not designed by the incumbent government (like a strategic zero-sum game view of transitional justice would suggest). Second, those activist MPs are not necessarily strongly associated with a party on whose strategic behalf they would be operating. Instead, they are deeply embedded in an extra-parliamentary advocacy network that is not beholden to any particular political party. Third, transitional justice legislation often does not accomplish the things that would be consistent with a strategic political motivation – instead, the regulatory components of legislation are frequently overshadowed by strong ideological elements that do not affect the political rivals of those who championed the legislation.

To address this puzzle, my paper argues that the key actors that drive the post-communist transitional justice agenda are policy entrepreneurs – political actors who dedicate their careers to achieving a narrowly defined set of policies – and not political parties. I make this argument on the basis of detailed case studies of transitional justice in the Czech and Slovak Republics, where legislation has been introduced to address the legacy of the communist secret police (Státní Bezpečnost, StB).\(^1\) Although the political climates in the two countries diverged after the 1993 split, policy entrepreneurs were played a key role in both countries.

I further argue that transitional justice policies that address the StB have increased political contestation over that past in both countries. This is due in particular to the influence of these policy entrepreneurs, who are driven by a strong anti-communist ideology and who eschew compromise. This is an arresting finding, given the notion that transitional justice can contribute to a sense of catharsis and to reconciliation. Rather than settle debates and address unanswered questions about the past, the increased contestation in both countries suggests that transitional justice legislation has played a divisive role, fueling debate rather than ending it and raising questions rather than answering them. To be sure, it is not the purpose of this paper to offer a

\(^1\) Or Štátna Bezpečnost, ŠtB, in Slovakia. For simplicity’s sake, I will be using the abbreviation StB throughout, regardless of context.
normative evaluation of that finding – members of a democratic society can debate what they see fit. However, many normative arguments regarding the desirability of transitional justice have impinged on assumptions regarding the effects that transitional justice can bring about, and the conclusions presented in this paper do have implications for those normative accounts.

### Table 1 Overview of Argument

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<th>The communist past and transitional justice:</th>
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<td>• are the subject of elite-level debate.</td>
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<td>• remain visible due to scandals.</td>
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<td>• but are not politically salient to voters or to how parties appeal to voters.</td>
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Instead, policy entrepreneurs:

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

The legislation that they produce:

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

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

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

### Policy Entrepreneurs

Policy entrepreneurs are political actors who dedicate their professional life to achieving a narrowly targeted set of policy goals through the political system. The policy entrepreneur is strongly principled and often motivated by personal history. In legislation, policy entrepreneurs play a procedural role (initiator) and a substantive role (influence content and wording of legislation). Moreover, they are often involved in implementing legislation.

Although I am the first to introduce the policy entrepreneur as a pivotal figure in the politics of transitional justice, the concept has a long pedigree in political science. First introduced by Price (1971) to describe congressional staffers with a propensity to work pro-actively, the concept was popularized by Kingdon (1984). Kingdon described policy entrepreneurs as “people willing to
invest their resources in return for future policies they favor”, noting their ‘sheer persistence’ (p. 204) and their ‘solution-driven’ approach (p. 123). Writing in 2009, Mintrom and Norman see policy entrepreneurs as advocates who “distinguish themselves through their desire to significantly change things” (Mintrom and Norman, 2009:650).

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

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

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2 This expertise need not be exclusively of a scholarly nature; in some policy areas, family background and personal histories can form a source of both knowledge and inspiration for the policy entrepreneur.
1998:31; Welsh, 2015). They share strong similarities with Bernhard and Kubik’s ‘mnemonic warriors’. In their *Twenty Years after Communism*, Bernhard and Kubik (2014) examine the politics of commemorating the communist past, and associate different memory regimes with the dominant role of different ‘mnemonic actors’. One of those types is the ‘mnemonic warrior’, who they describe as actors that “espouse a single, unidirectional, mythologized vision of time. In this conception, the meaning of events is often determined by their relation to some ‘paradise lost’ or—negatively—an ‘aberrant past’.” (Bernhard and Kubik, 2014:13). This approach to history is what motivates the policy entrepreneur to invest a great deal of time and resources into asserting their position.

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

The key components in Nalepa’s account are parties, acting strategically, anticipating transitional justice legislation that might affect their reputation and electoral chances by influencing voters. In this paper, the starting point is that post-communist parties are not as involved in this legislation; that post-communist voters are not as passionate about the issue; and that post-communist transitional justice legislation does not affect parties quite as profoundly. Instead, my account of transitional justice (both causes and effects) hones in on the role of niche political actors, driven by ideology, who produce transitional justice legislation to promote their take on the past.
These policy entrepreneurs shape transitional justice in two distinct ways. First of all, they often take the initiative on legislation by lobbying for new bills or introducing them to the floor of parliament, sometimes even as opposition MPs. Governments often play a very limited role in passing transitional justice legislation, which also suggests that transitional justice is not the product of parties using the power of incumbency to implement transitional justice strategically. This practice diverges sharply from the standard operating procedure in parliamentary systems, where the legislative initiative lies squarely with the executive and parliamentary majorities generally serve as little more than a rubber stamp when it comes to implementing the government’s agenda (see Kopecký, 2001 on parliaments in the Czech and Slovak Republics).

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

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

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

As a result, transitional justice laws should be expected to create greater political contestation over the communist past. They emerge from a context in which the past is already a matter of elite controversy, and policy entrepreneurs take advantage of this to further their own agenda. And when they get the chance, they do so in a manner that reflects their dedication to principle, one that pulls no punches.

**Political Contestation**

The previous section has forwarded the preliminary argument that, under the influence of policy entrepreneurs, transitional justice legislation leads to greater political contestation over the past. But what exactly do I mean by political contestation, and how exactly do policy entrepreneurs bring it about?

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

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

Table 2 Tenets of Anti-Communism

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

Thus, the first ‘path to contestation’ leads directly from the ideological components of transitional justice legislation to a response from those who do not share the policy entrepreneurs take on the past. This contestation does not involve actual implementation, it is purely about the spirit of the law. This is not to say that implementation has no consequences for political debate: how provisions are put into practice can also lead to contestation – but the ideological sauce in which the law is covered exerts a powerful influence here, both by influencing exactly how legislation is implemented, and by influencing whether the implementation of legislation is perceived as biased.
or not. Two transitional justice practices that can reinforce contestation over the communist past are (1) releasing information from the files and (2) the creation of a memory institute. Some transitional justice makes information available from the secret service archives. Some transitional justice legislation does this explicitly (declassifying the files). Other legislation relies on archival data only to make formal decisions (e.g., lustration), but this can also lead to information emerging (for instance when a decision is challenged or when information is leaked). The second practice that can reinforce contestation is the creation of dedicated state organizations tasked with commemoration, writ large, of the communist past. These so-called ‘memory institutes’ have been set up in countries across post-communist Europe and have been put in charge of implementing transitional justice legislation, carrying out historical research, educating the public on human rights abuse, and making archival data from the previous regime available.

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

A similar mechanism connects file declassification to contestation. Simply opening up an archive may not provoke debate, and even exposing someone for having collaborated with the previous regime need not be the subject of political contestation if the evidence is incontrovertible and the source is indubitable. This may change, however, if the legislation that facilitated access to the files has an ideological ring to it, or if the implementation of file access is provided by a memory
institute that is perceived to have a political agenda. Media coverage, which may be encouraged by memory institutes, plays a key role in this process: the greater the coverage, the more likely it allegations will be disputed and debated. The nature of media coverage matters as well, with more sensationalist, less nuanced reporting more likely to lead to controversy. This is the core of Roman David’s argument in *Lustration and Transitional Justice*. David disagrees with those who suggest that regulating the files will bring stability and end the politicization of the communist past. Much to the contrary, David argues that some transitional justice creates a demand for more transitional justice as it reinforces the notion that communists are still a force to be reckoned with (David, 2011: 136). In David’s words: “[i]t is apparent that the lustration systems fostered, if not created, divergent recollections about the past within each country and that different memories of the past in turn affected the existence of each lustration system” (2011: 160).

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

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

These ‘paths to contestation’ are consistent with what the post-communist political environment tells us about the effects that we should expect from transitional justice laws. In a context in which consensus over the past is absent, we should expect transitional justice legislation to perpetuate
and reinforce the cleavages that exist already and that shaped it. They are also consistent with the notion that policy entrepreneurs, rather than governments, bureaucracies, political parties, or public opinion, are the driving force behind transitional justice legislation in post-communist Europe. This argument may also corroborate the claims made in some of the literature discussed above. For instance, evidence for increased contestation as a result of transitional justice can help explain the tentative link that Horne (2014) found between lustration and political trust. Such evidence may contradict claims that transitional justice can contribute to reconciliation, instead creating the potential for deepening and institutionalizing divisions. Moreover, evidence for this account of transitional justice effects would demonstrate that there may be little to support perspectives that present transitional justice as primarily a partisan strategy or as a tool for democratizers. What we know about publics (mostly ambivalent) and parties (self-interested) does not match up with these perspectives on how transitional justice laws come about and on the effects that they are supposed to produce. Only by introducing the concept of policy entrepreneurs can we explain the content of transitional justice laws and the subsequent contestation that they cause.

**Hypotheses, Cases, and Data**

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

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

This pair of hypotheses reflects the central argument in this paper: transitional justice produces greater contestation, and it does so because of the work of policy entrepreneurs. As the discussion above made clear, I argue that policy entrepreneurs introduce ideological components into transitional justice legislation that reinforce contestation over the past. Ideology reinforces contestation both directly (as opponents of legislation take issue with non-consensus interpretations of the past embedded in the text of the law) and indirectly (by creating perceptions of bias in the implementation of a law’s provisions). By themselves, the regulatory components of transitional justice (the provisions that constrain or empower citizen behaviour) need not produce contestation. However, when implemented by policy entrepreneurs, these components can lead to contestation. This anticipated interaction effect is captured in the third hypothesis:
Transitional justice laws, as written and promoted by policy entrepreneurs, increase contestation especially if they (a) release information from the secret service files and/or (b) create a dedicated bureaucratic agency (‘memory institute’) for implementation.

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

To test these hypotheses, I consider the impact of transitional justice legislation in the Czech Republic and Slovakia. Existing as Czechoslovakia between 1918 and 1993, the countries share a legacy of human rights abuse at the hands of the communist secret service. The StB employed thousands of employees and informers to keep tabs on the population. Over the course of four decades of KSČ rule, colossal amounts of files were collected and stored. However, once the two countries went their separate way as of January 1, 1993, the politics of both countries diverged sharply. While the Czech Republic was a front-runner in consolidating liberal democracy and a market economy for most of the 1990s, Slovakia lagged behind, seeing its entrance to NATO and the EU jeopardized (Vachudova, 2005). In particular while Vladimír Mečiar was Slovakia’s Prime Minister (1991-1998) Slovakia struggled to keep up democratic norms and the rule of law. In addition, former KSČ members have been far more influential in Slovakia than in the neighboring Czech Republic (Kitschelt, 1995). Under these conditions, the Czech Republic has adopted a broader range of transitional justice measures than Slovakia has (Nedelsky, 2004).

Importantly, however, both countries have adopted legislation to address the legacy of the communist secret service. In addition, these laws are comparable: the 2002 Slovakian law based its file access portion on legislation created in the Czech Republic. The 2007 Czech law that introduced a Memory Institute, in turn, was based on the 2002 Slovakian law. The primary difference between the two countries is not how they addressed their shared communist past, but how often. This setting – similar laws addressing a similar legacy, adopted and implemented in dissimilar political climates – means that this pair of cases presents a robust test of the hypotheses. If transitional justice contributes to political contestation in these different settings, such a finding is less likely to be due to local idiosyncrasies and may be generalized more readily.
In addition to between-case comparison, these cases also lend themselves to within-case comparison over time, offering an additional source for inferential leverage. Starting from 1989, this paper encompasses a quarter century of post-communist politics in both countries. This long time range covers all relevant transitional justice legislation in both countries, and makes it possible to examine both the immediate impact and the long-term effects of these policies. In addition, studying an extended time period permits examination of the creation and functioning of transitional justice policy under different political conditions (e.g., changes in incumbent parties). This makes it possible to test alternative explanations focusing on party politics as well.

Over 70 elite interviews, conducted in early 2013 in Prague and Bratislava, form the basis of this analysis. Respondents included political actors (among them, three former Prime Ministers), activists (including several former political prisoners), journalists who write about the communist past and politics in general, and historians who are active in the implementation of transitional justice. In addition, I survey a broad range of primary documents to reconstruct the process that connects transitional justice to increased contestation. Those documents include party manifestos, draft bills, legal texts, parliamentary minutes, public opinion surveys, and news reports.

Two laws, the 2002 Slovakian law which created the Institute for National Memory (ÚPN) and the 2007 Czech law that created the Institute for the Study of Totalitarian Regimes (ÚSTR) illustrate this argument particularly well. Other laws are on the books (especially in the Czech Republic where policy entrepreneurs have been particularly prolific) and they follow the same pattern (policy entrepreneur activism, strong non-consensus ideology in the laws, leading to contestation). However, studying these two pieces of legislation makes it possible to consider not only the impact of ideological language in the legal text itself, but also the impact of policies such as creating file access or establishing a memory institute.

**Slovakia**

For Slovakian transitional justice, Ján Langoš (1946-2006) was the best example of a policy entrepreneur. A dissident until 1989, Langoš became the avatar of policy entrepreneurs advocating transitional justice in East and Central Europe. He designed the Law of National Memory, which is still the flagship of Slovakian transitional justice and, in his parliamentary work, he dedicated
himself to getting that law passed. In 2002, he succeeded. Langoš did not return to parliament and was instead appointed by parliament to chair the ‘Institute of National Memory’ that was created by the Law on National Memory. He served in that capacity until his death in 2006.

Many interviewees commented on Langoš’s dedication and commitment to transitional justice. This dedication derived from a deeply religious world view. Ondruš (2009:286) cites journalist Martin Šimečka (a prominent journalist and commentator with a background in the dissident movement):

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

In a 2003 newspaper interview, Langoš described his anti-communist activism as following: “…it is my life and I will do everything so that this horrible regime will never return to this country.”

In short, Ján Langoš was a tireless crusader for transitional justice.

Before the revolution, Langoš was involved in the Slovakian dissident movement, actively contributing to samizdat publications such as Bratislavské Listy. During the revolution, Langoš was part of VPN (Verejnost Proti Nasiliu, Public against Violence), the Slovakian organization that mobilized opposition against the regime. In June 1990, Langoš became federal Minister of the Interior in the Čalfa government, serving until 1992. In this capacity, Langoš oversaw the de-communization process inside the federal bureaucracy and the creation of the lustration law. After Slovakian independence, Langoš continued to campaign for addressing communist crimes,

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3 Interviews with Fedor Gál, April 22, 2013, Prague; František Mikloško, May 6, 2013, Bratislava.

founding two NGOs with that purpose. Moreover, in 1994, Langoš entered Slovakia’s parliament on the ticket of Čarnogurský’s Christian Democratic Movement (KDH, Krestanskodemokratické Hnutie). However, his true political allegiance lay with the Democratic Party (Demokratická Strana, DS), of which Langoš became the chair in 1995. DS, originally founded during the Second World War and banned under communism, was revived after the revolution and won seven seats in the Slovakia’s unicameral parliament, in 1990, but did not clear the electoral threshold in subsequent elections. In 1998, Langoš was re-elected, this time on the ticket of the anti-Mečiar coalition which the Democratic Party had joined.

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

The Dzurinda government which was in office at the time did not share Langoš’s ambition. Even SDK, the party that Langoš formally represented in parliament, offered little support. Ján Čarnogurský, Minister of Justice for the KDH at the time and one of Langoš’s fellow dissidents during communism, notes in his interview that this legislation was not a priority for the Dzurinda government.

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government. President Schuster put up a final roadblock, vetoing the law after parliament first approved it in June, but a renewed vote in parliament defeated this presidential veto. Langoš, who did not return to parliament after the 2002 elections, was appointed chair of the institute. This career move underlines Langoš’s personal commitment to Slovakia’s process of dealing with the past, which went beyond typical commitment of a politician to a cause. It also reflects the strong extent to which implementing the law remained a political affair, as opposed to simply a matter of instrumental bureaucratization.

**Ideology in the Law on National Memory (2002)**

The language of the Law on National Memory reflects Langoš’s non-consensus anti-communist ideology in several ways. Its preamble clearly reflects the ideological agenda underlying the law, stressing commemoration of ‘victims and damages suffered’ as a result of communist and Nazi ‘crimes’ while noting the ‘patriotic tradition of resistance against occupants, fascism, and communism’ and expressing the conviction that ‘who does not know his past, is doomed to repeat it’.

Moreover, the law draws on the anti-communist notion that communism and Nazism are equivalents, by covering the communist past alongside the history of the Second World War, lumping the two periods together into a ‘period of un-freedom’ that is defined as 1939-1989. The ‘National Memory’ moniker similarly reflects a single-minded view of the past which precludes a more pluralistic approach, suggesting instead that there is one correct interpretation of the past. A final element of explicit anti-communism is that the law (Article 11) excludes all former Communist Party members from serving in the governing bodies of the Institute of National Memory, expressing the view that support for communism irredeemably deprives individuals of their integrity. This measure excludes dissidents who joined the communist party during the Dubček years, left following the invasion in 1968, and joined the dissident movement afterwards.

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

As a result of the anti-communist treads woven into the fabric of the law, the stated mission (Article 8.1) for the Institute of National Memory to carry out a ‘complete and impartial evaluation’ of ‘the period of non-freedom’ is undermined. Moreover, these elements more than anything else raise the hackles of opponents and contribute to contestation over the past.

Contestation over Ideology

Opposition to the Law on National Memory first came in 2002, when Slovakian President Rudolf Schuster vetoed the law. Schuster, whose roadblock ultimately failed, was part of the nomenklatura and mayor of Košice (Slovakia’s second-largest city) during the 1980s. Complaints about the broad brush with which Langoš paints communism are at the centre of Schuster’s justification for vetoing the law. Schuster calls the law’s definition of both communist and Nazi crimes ‘absurd’, noting that the law’s definition makes it possible to interpret a very broad range of activities as such. He also criticizes the definition of integrity used by the law (which excludes communists from serving in the institute). According to Schuster, the definition is so broad that it includes everyone who ever joined any type of organization (including the Czechoslovakian Red Cross, the Slovakian Apiarist Union, and Society of Slovakian Stamp Collectors) before 1989.8

Schuster’s failed veto was the last attempt to actually repeal this law. The most vocal opposition to the anti-communism inherent in Slovakia’s Law on National Memory has come from a small group of extra-parliamentary actors who were prominent in VPN during the Gentle Revolution and in the years afterwards. Most of them are no longer in politics today. One example is Vladimír Ondruš. Ondruš was involved in VPN in 1989 and served as Deputy Prime Minister in the Čič and Mečiar governments (1990-1991). In his interview, he described Ján Langoš as ‘obsessed with revenge’, and offered sharp criticism of ÚPN, rejecting for instance the tendency to equate communism and Nazism. Ondruš also takes issue with the way in which file access is handled, underlining a tendency to overstate the extent to which secret service collaborators (whose

complicity is exposed by this policy) bear responsibility for communist-era repressions. Ondruš argues that, by singling out these collaborators, about whom there is often little actual information in the files beyond an agreement to cooperate, the law creates a false sense of accountability.

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

ÚPN as a Source of Contestation

A second source of contestation is the day-to-day functioning of the institute, which can provoke debate by reflecting the ideological foundation on which ÚPN is based. Respondents critical of the institute note that ÚPN serves as a platform for anti-communist advocacy. This is reflected, for instance, in the institute’s personnel: Langoš recruited a number of political allies and also a number of anti-communists from the Czech Republic (e.g. Pavel Zacek, who in 2007 headed up ÚSTR, the Czech counterpart of ÚPN). Under this leadership, the institute interpreted its mandate in a highly political way, in spite of its task to be impartial.

For example, ÚPN engaged in political advocacy through its involvement in the 2006 Anti-Communist Resistance Law, which was introduced at the behest of ÚPN (Dinuš, 2010:29). In its

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9 Interview with Ján Budaj, January 31, 2013, Bratislava.
quarterly Pamäť Národa, the institute printed the speech that the introducer of the law made in parliament.\textsuperscript{10} This law not only fits in well with the ideology of anti-communism that permeates the institute, it also further entrenched the institute, creating an additional role for it by tasking it with executing the law. In other instances, too, ÚPN has been unable to create an impression of political impartiality. As an example, in September 2013, ÚPN proposed to increase taxation for people listed as collaborators of the secret service.\textsuperscript{11} This proposal acknowledged that pensions, based on lifetime earnings, are higher for StB staff who earned well under communism than they are for StB victims whose menial jobs paid poorly even under communism.

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

\textit{StB Files as a Source for Contestation}

Revelations from the StB files are a third source of contestation. Again, the debate that ensues is caused by a combination of actual behavior on the part of ÚPN (promoting an anti-communist agenda) and the preconceived notion on the part of critics that ÚPN is biased and that as a result any information coming out of the archives is politically motivated. In any event, opening up the files led to a spike in media attention for the communist past and involvement in it on the part of public figures and politicians. Before ÚPN, the communist past was not seen as particularly relevant by political journalists. Slovakia saw little coverage of Mečiar’s abuse of StB files as, during Mečiar’s time in office, freedom of the press faced strong constraints. This, paired with a


tendency towards litigiousness among Slovakian politicians, encouraged self-censorship on the part of journalists. Part of this reluctance may be linked to media ownership; for instance, left-wing outlet Pravda, which was typically more supportive of Mečiar during his time in office, is owned by Juraj Široký. Široký, an oligarch of sorts, former President of the Slovakian Ice Hockey Federation, and a prominent backer of SMER-SD, was employed as a StB officer up until 1989.12

The establishment of the Institute of National Memory in 2002 has made it possible for those journalists interested in publishing on the communist past to access the archives. In the years after 2002, especially while Ján Langoš was still alive, this led to a stream of revelations and an uptick in coverage of the communist past. As an example, in May 2009, weekly Týždeň published an article entitled ‘Sokol’s Shadow’, exposing collaboration by Slovakian Archbishop Ján Sokol. Earlier publications had investigated Sokol’s collaboration with the secret police during the 1980s but in the 2009 article, it was alleged that in the 1990s, Sokol had transferred large sums of church money to former StB agents.13

Since it concerned a high-ranking clergyman in a predominantly Catholic country, the Sokol revelation gained a high profile and attracted criticism from Sokol backers, who countered that the journalists were motivated by sensationalism rather than thorough fact-finding. However, in spite of these accusations, Týždeň is hardly tabloid. Instead, it is a highbrow political weekly that publishes long analytical pieces for a small readership. The Sokol piece appears reflects that, as the Týždeň journalists cite numerous sources, and printed Sokol’s response to the allegations.14

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In practice, in spite of what appears to be limited sensationalism, revelations from the StB archives have formed the focal point of those who criticize the Law on National Memory. In fact, former dissident Ján Čarnogurský (who left politics after 2002 to return to practicing law) even represents litigants who dispute their listing on the ÚPN website. For instance, he defended Archbishop Ján Sokol after the 2009 Týždeň revelations. Most of the cases end in a defeat for ÚPN.\(^\text{15}\) Others also oppose these revelations – Vladimír Ondruš stresses the risk of ‘amateur historians’ and ‘easy journalism’.\(^\text{16}\) They are concerned about false accusations and the notion that StB collaboration (or even being listed as a candidate) is over-interpreted while the eagerness to collaborate is exaggerated. A further concern is that media treat these revelations with insufficient care, reporting carelessly and focusing too much on sensation. Journalists, these skeptics maintain, pay scant attention to the context in which collaboration developed, and often fail to acknowledge the potentially untrustworthy nature of the StB archives as a historical source.

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

An additional factor that contributes to critics taking a dim view of file access policies is that ÚPN typically stands by the files, claiming that information implicating people in collaboration is accurate. In an adversarial judicial setting, this puts ÚPN in a position where it automatically argues against claimants. The institute has little choice in the matter, for if it acceded to claimants demands easily, this would only encourage more people to dispute their listing in the archives. But

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\(^\text{15}\) Interview with Ján Čarnogurský, May 15, 2013, Bratislava. The verdicts in cases that are brought against ÚPN are listed on the ÚPN website as well. They are available at: [http://www.upn.gov.sk/sk/rozsudky/](http://www.upn.gov.sk/sk/rozsudky/), accessed on July 22, 2015.

\(^\text{16}\) Interview with Vladimír Ondruš, February 1, 2013, Bratislava.
this role does serve to further reinforce the impression of ÚPN partiality, especially in cases that involve political figures.

**Czech Republic**

The 2007 Czech law was primarily the result of the efforts of two policy entrepreneurs: Jiří Liška and Pavel Žáček. Liška was a senator for the centre-right ODS between 1996 and 2010. He was involved in drafting a number of transitional justice policies, including the 2002 file access law and the 2011 law on anti-communist resistance. The 2007 ÚSTR law is his major accomplishment, however. After leaving the senate in 2010, Liška has remained involved in the implementation of some of these laws, serving on the commission that evaluates claims for resistance fighter status.

Liška was joined by journalist and historian Pavel Žáček. Žáček began his career during the Velvet Revolution as editor of *Studentské Listy*, a student publication that focused on exposing the workings of the communist system of repression. A prolific author, he continued to explore the functioning of the StB, working at the Office for the Documentation and Investigation of Communist Crimes (ÚDV). When Slovakia created its Institute for National Memory (ÚPN) in 2002, Žáček worked closely with Ján Langoš, the policy entrepreneur whose drive and tenacity were responsible for the creation of ÚPN. After Langoš died in 2006, Žáček returned to work in the Czech Republic. There, ODS had returned to government after 8 years of Social Democratic rule. Žáček joined forces with ODS Senator Jiří Liška and drafted the ÚSTR bill. After the bill was voted into law in October 2007, Žáček was appointed as the institute’s first director.

Žáček and Liška share a strong anti-communist ideology. One element of this anti-communism includes the rejection of the communist period as a whole, including periods of liberalization.

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

18 To be sure, the advocacy network that promotes this agenda is much larger, including numerous activists and interest groups. In addition, several other elected politicians are involved in this agenda. For instance, Liška worked with two brothers, Marek and Patrik Benda. Marek Benda is an ODS MP (1990-present) while his brother Patrik worked as Liška’s aide. The Bendas’ father, Václav, was a dissident during the communist period who later served as a Senator and headed the ‘Office for the Documentation and Investigation of Communist Crimes’, which is a special branch of the Czech police.
Indeed, Liška says that 1968 caused ‘the greatest moral damage’ to the Czech Republic, because it created a group of dissidents who prided themselves in their communist credentials, and who thus gained credibility to later, after 1989, say ‘we suffered, we were dissidents, we helped bring down communism’, and return to power. For Liška, a lot is at stake when it comes to transitional justice, and as a result, he takes a dim view towards criticism of their agenda, describing those who take issue with his legislation as ‘enemies’, rather than opponents. These convictions drive their efforts in promoting this policy agenda. Significantly, although the initiative for legislation generally belongs to the government, in this case it was Senator Liška who introduced the law to the floor of the Senate and ushered the law through parliament. Although the government was sympathetic to the initiative, it is clear that the main thrust came from elsewhere.

**Ideology in the ÚSTR Law**

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

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19 Interview with Jiří Liška, April 15, 2013, Jičín.
20 Interview with Jiří Liška, April 15, 2013, Jičín.
21 The preamble does use the term 'authoritarian regime' (without making clear which period that refers to), but it neglects this distinction for the remainder of the text of the law.
22 Preamble, ‘Zákon o Ústavu pro studium totalitních režimů a o Archivu bezpečnostních složek a o změně některých zákonů’ [Law on the Institute for the Study of Totalitarian Regimes and on the Archive of the Security Branches and on Changes to Some Laws], 181/2007 Sb.
As a result, the law diverges significantly from standard legal jargon, reflecting the role of policy entrepreneurs in generating this legislation. On the whole, the law combines legislative language (stipulating a legal framework of new rules and regulations to be implemented) with political punditry and social commentary, in a way that is unusual for formal legislative texts. Indeed, it is striking that a great portion of the law is dedicated to justifying the need for such a law, when normally a successful vote after parliamentary debate is sufficient. In their interviews, those involved in the legislative process confirm the atypical nature of this legislation. Ivan Langer, then Minister of the Interior, suggests that “… this bill was very bad from a judicial point of view and could never have passed through parliament if we had not completely re-written it”, and acknowledges that opening the law with a motto is unusual, even if he does describe the motto as ‘a deep wisdom and truth’.23

Nonetheless, the explicit ideological stance that the introductory sections of the law embraces serves to undermine the work that this law then tasks the new institute with. Article 4a states that the Institute will ‘research and objectively evaluate’ these periods, but in the same sentence, the lawmakers restate the anticipated conclusions of this research and objective evaluation by specifically stating that the research matter is ‘totalitarian rule’, and ‘anti-democratic and criminal activities’.24 Given the explicit ideological language in the preamble, the objectivity of the institute is undermined from the start.

Contestation over Ideology

Once in effect, the ÚSTR law led to contestation in three different ways, with the ideological anti-communist message in the law running as a red thread through the discussion. The first ‘path to contestation’ regards the language of the law itself. A group of MPs led by Zdeněk Jičínský challenged the law in court, arguing that it was unconstitutional for the state to take such an explicit

23 Interview with Ivan Langer, April 25, 2013, Prague.
24 To be sure, the purpose of this analysis is not to question the validity of those historical conclusions, and to present an argument that communist rule between 1948 and 1989 was not criminal, anti-democratic, and totalitarian. Whether the regime can be labeled in that way or not is a separate discussion that this paper does not seek to address. Instead, my purpose here is to point out that the law does address this debate by eschewing more value-neutral, objective formulations.
stance in favor of one particular movement. In particular, Jičinský’s argument centred on the use of the word ‘totalitarian’ in the law, arguing that only the 1950s were totalitarian in nature.\textsuperscript{25} This argument was rejected by the court, although a number of judges wrote dissenting opinions.

Jičínský is a communist-turned-dissident who was a parliamentarian for about two decades after 1989. An active KSČ member during the Prague Spring, Jičínský was expelled from the party after the invasion and joined the dissident movement. He was one of the first wave of signatories of 

\textit{Charta 77}. After the Velvet Revolution, Jičínský entered the Federal Assembly, and, after the Czech-Slovak split, served as an MP for ČSSD between 1996 and 2010 (with a brief interruption in 2002-2003). Starting with the lustration law in 1991, Jičínský has inveighed tirelessly against all the pieces of transitional justice legislation, working inside parliament to overturn them or amend them, and fighting outside of parliament by petitioning the Czech Constitutional Court on several occasions to overturn part or all of certain laws.

Jičínský is not alone in his opposition to the anti-communist transitional justice agenda. The institute has attracted the greatest opposition of all the transitional justice implemented in the Czech Republic. In addition to the challenge in front of the Constitutional Court, more opposition followed when, in 2012, the Social Democrats won the Senate elections and gained a majority in the upper house of parliament. They took advantage of their majority to change the composition of ÚSTR’s council, appointing people who shared their concerns with the anti-communism that had hitherto been prevalent in ÚSTR’s work. In 2013, the conflict came to a head when the new council fired the institute’s director, Daniel Herman.

The criticism of the social democratic senators honed in on ideology as well. One of them, Jiří, Dienstbier jr., criticized “attempts of the right wing parties to ideologize the past by painting that period as a totalitarian monolith that did not go through any real change and was equally perverse from start to finish”. He continued: “Of course, the communist regime was bad throughout because it suppressed democratic principles and human rights, but you can really only say about the 1950s

that it was totalitarian”. Among the new appointees to the council was Michal Uhl. Like Dienstbier, Michal Uhl is the son of prominent dissidents, Petr Uhl and Anna Šabatová. Born in 1985, he is the youngest member of the council, but although he was only four when the wall came down, he is outspoken on the issue of the communist past and transitional justice, calling anti-communism ‘one of the biggest problems of today’s political scene’.

**ÚSTR as a Source of Contestation**

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

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

First, Žáček’s leadership played a major role in undermining the credibility of ÚSTR as a source of information and the potential ÚSTR had for contributing to educating the Czech public on the communist past. Žáček was ultimately dismissed by the institute’s board but stayed on as a researcher and advisor. His leadership style contributed to numerous conflicts inside the institute, and saw a number of ÚSTR staff leave in anger. Interview respondents disagree as to the nature

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26 Interview with Jiří Dienstbier jr., February 26, 2013, Prague.
27 Interview with Michal Uhl, March 7, 2013, Prague.
28 ‘Historik Prečan píše otevřený dopis řediteli ÚSTR Pavlu Žáčkovi a ptá se: Čeho se bojíte’ [Historian Prečan Writes Open Letter to ÚSTR Director Pavel Žáček and Asks, ‘What Are You Afraid Of?’] *MF Dnes*, March 23, 2010,
of these conflicts: some suggest that differences of historical opinion play a role, while others report no interference by the institute leadership in their academic work. Nonetheless, even if the conflicts within the institute appear to mostly be personal and not about the correct interpretation of communism, they reinforce the impression that the institute leaves no space for different historical perspectives and serves to promote a political agenda.

The notion that that agenda would be anti-communist is reinforced by the tendency on the part of institute staff to engage in political advocacy and the inability of the institute to avoid being used as a political prop. ODS politicians have in the past used ÚSTR as a venue for announcements (e.g., when Prime Minister Mirek Topolánek controversially decorated the Mašín brothers, the ‘third resistance fighters’ from the 1950s who killed a number of people as they made their way to the West). But the perception of bias is also due to the way ÚSTR staff behave. On its official Facebook page, ÚSTR has shared news stories of politicians and activists calling for stronger measures against former communists, or stories about court cases and so on against former communist officials. The neutrality of the institute is further compromised when its employees comment in the media on politicians (frequently those from the Communist Party). For instance, when KSČM MP Miroslav Grebeníček expressed his view that Jan Palach's self-immolation had not been an act of anti-communism, an ÚSTR employee opined that such assertions should be made illegal. And in 2014, when parliament again discussed ending the lustration law, Pavel Žáček asked “If we repealed lustration, who would have won the Velvet Revolution?”.


Second, institutional factors play a role in creating incentives for the institute and its staff to behave in this activist way and in undermining the potential for the institute to be seen as neutral. The uncomfortable combination of advocacy and the provision of information undermines the potential for neutrality. Given the political backing of these institutes and their integration with the network of policy entrepreneurs discussed above, it seems reasonable to anticipate a certain institutional interest in revealing information about individuals' pre-1989 covert activities in a way that is at odds with the institute’s stated mission to carry out impartial research.

The extent of political control over the institute is another element of the institutional setup of ÚSTR that reinforces the impression of political bias. According to the 2007 law, the Senate appoints the institute’s council, which in turn hires a director. Giving politicians (as opposed to, for instance, the Academy of Sciences or another academic body) control over the leadership of the institute means that any appointment can be seen as political.\(^{32}\) Even if the Senate appointed only the most impeccably capable and knowledgeable people, they would still have to contend with concerns that they owe their position (and the money that comes with it) to their connections, not their expertise and skills.

To be sure, the historical work at ÚSTR, the expertise of the people that work there, or even the content of the conflicts among each other – all of these are not nearly as important as \textit{perception} that the work is biased, that the staff are hacks, and that the conflicts are about repressing a pluralist approach towards the communist past. Factors like leadership and institutional setup certainly contributed, but by eschewing consensus, the lawmakers ensured that the institute could not play anything but a divisive role. The potential for ÚSTR to function as a neutral arbiter, using historical expertise to interpret sensitive archival data – a tall order in the best of situations – was a non-starter from the get-go in this case.\(^{33}\)

\(^{32}\) The fact that the institute’s director is not \textit{directly} appointed is actually an explicit attempt to forestall this very issue, but the level of political insulation it offered proved insufficient. Those involved in the legislation acknowledged that they did not anticipate that this construction would be used against them. Interviews with Pavel Žáček, March 5, 2013, Prague; Ivan Langer, April 25, 2013, Prague; and Jiří Liška, April 15, 2013, Jičín.

\(^{33}\) The institute faced an uphill battle in any case: As a result of the destruction of large numbers of files in December 1989, the chaos of 1990, the clandestine publication of lists (e.g., the Cibulka lists in 1992) of people registered with
StB Files as a Source of Contestation

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

Memory institutes and journalists play a crucial role in making information broadly available, and detractors of both ÚDV and ÚSTR argue that these institutes, in cahoots with their political masters, have worked to pull defamatory materials on opponents out of the archives. One example offered by several interviewees as an example of bias on the part of ÚSTR is the case of Milan Kundera. Allegations were published in October 2008 that, in 1950, Czech author Milan Kundera informed the police about a suspicious visitor in his Prague student dorm. This individual, a man by the name of Dvořáček, was then arrested for having illegally fled the country, and sentenced to 14 years in prison. These allegations were published in Respekt by Adam Hradilek, an ÚSTR historian working together with a Respekt journalist, Petr Třešňák, under the title ‘Milan Kundera’s Denunciation’. The accusations caused furor in the Czech Republic and abroad as Kundera sympathizers decried what they saw as shoddy research underlying the serious charges. For the opponents of ÚSTR, the event confirmed fears that ÚSTR served only to slander and smear the reputations of public figures. However, the discovery of the information that led to the accusation StB, and the general untrustworthiness of the files and claims about them, it is essentially impossible to legislate this matter cleanly and in such a way that no further debate can arise.

34 See Ondruš, 2010:278 fn. 51.
was accidental, and occurred in the process of a private study carried out by Hradilek, who was investigating his family’s history. Hradilek was not instructed to find information about Kundera, and when he did, he did not inform the institute’s leadership. Instead, he approached Respekt and over the course of several months, wrote the article together with Třešňák. Hradilek did not inform ÚSTR Director Žáček until a day before the issue of Respekt came out.\(^\text{36}\)

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

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

\(^{36}\) Interviews with Adam Hradilek, February 27, 2013, and Petr Třešňák, April 23, 2013, both in Prague.
visit a branch in Brno. Annually, around 1,700 people, most of them academics, take advantage of this opportunity. Given the number of collaborators and officers (around 75,000) as well as the number of people who were followed (700,000), those visitor numbers are not overwhelming.

**Conclusion and Discussion**

This paper seeks to make two contributions to the literature on transitional justice. First of all, it introduces the policy entrepreneur as a key driver propelling the transitional justice agenda forward. Policy entrepreneurs are not typical political actors who are interested in office, re-election, or partisan success; in fact, this paper argues that party strategy plays a limited role in explaining transitional justice outcomes and motivating policy entrepreneurs. Instead, they are motivated by achieving a narrow set of policies through political means, and they work towards that goal tirelessly and without compromise. Their influence has shaped transitional justice legislation in the Czech Republic and in Slovakia, but evidence from Romania (Stan, 2013) and Ukraine suggests that policy entrepreneurs are active elsewhere as well. In addition, policy entrepreneurs have joined forces in the European Network for Remembrance and Solidarity and have turned to the European Parliament in recent years to promote anti-communism and push for a recognition of communist crimes alongside the Holocaust. Thus, policy entrepreneurs can be seen at work in the distinct political environments of the Czech Republic and Slovakia, and also beyond, suggesting that future research on transitional justice can benefit by including this concept.

This is all the more important because policy entrepreneurs have such a powerful impact on the shape that transitional justice legislation takes and on the effects that this legislation produces. This is where this paper seeks to make a second contribution. Transitional justice legislation, as promoted and implemented by policy entrepreneurs, leads to greater contestation over the past it addresses. In both the Czech Republic and in Slovakia, ÚPN and ÚSTR have served to keep the communist past on the political agenda by including ideological language in the text of the law.

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itself and by creating (rightly or wrongly) the impression of bias in the implementation of key policies. This finding offers a corrective to the notion that transitional justice can contribute to reconciliation or social catharsis, arguing instead that the policies studied in this analysis led to greater division over the communist past. The implications of this result for post-communist countries are that the communist past can continue to inform politics in those countries and form a cleavage along which political competition plays out. It may do so in particular by defining social democratic parties in terms of their relation to the communist past, keeping the left on the defensive about its historical background. Moreover, it creates a situation in which transitional justice, which is usually described using definitive imagery such as ‘to close the books’ (Elster, 2004) or ‘to come to terms with the past’ (Elster, 1998), becomes (for better or for worse), a never-ending process.

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