

Critical Dialogue

Skeletons in the Closet: Transitional Justice in Post-Communist Europe. By Monika Nalepa. New York:

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— James L. Gibson, *Washington University in St. Louis*

In the not-too-distant past, systematic transitional justice research was a rarity. Normative treatises on various aspects of the justice of transitions have long been a staple of the human rights literature, but empirical and analytical inquiries into the causes and consequences of efforts to deal with the past have not.

In the last decade or so, all that has changed, and empirical inquiries into processes of transitional justice are burgeoning. Many types of studies have been launched, all with the common theme of trying to explain how systems deal with the past, and whether *how* they deal with the past has implications for the future. These studies are rich and diverse, in both substance and methodology.

In Central and Eastern Europe, transitional justice issues have attracted a considerable amount of scholarly interest. The transgressions of the communist regimes and their leaders were not generally murderous—it would be unreasonable to compare East Germany with, for instance, Rwanda or Yugoslavia—but the regimes were certainly widely repressive and did considerable harm to many of their citizens. Gross violations of human rights were perhaps fairly rare; ordinary violations of human rights were gross.

Because it made little sense to attempt to jail all of the leaders and collaborators with these repressive regimes—even as it made little sense to ignore their transgressions—lustration soon became a much discussed policy for punishing miscreants. Defined as imposing noncriminal penalties (e.g., being barred from holding public office) on people for their actions under the old communist regimes, this mechanism was considered for use by anticommunists in all regimes in Central and Eastern Europe as a means of expunging the past from the present.

Not all of these transitional regimes immediately adopted lustration policies, and those that decided upon them did so at different points in their transitions and with different degrees of punitiveness. That is the puzzle that Monika Nalepa addresses in *Skeletons in the Closet*. As she writes, her “book is about who decides to lustrate, when these

choices are made, and why” (p. 4). Focusing mainly on the Czech Republic, Poland, and Hungary, Nalepa employs a mixed-method research strategy—one that includes archival and case studies, elite interviews, formal modeling, and survey research (primary and secondary)—in an effort to understand the choices made about lustration policies. While her methodological approach is diverse, her overarching theoretical approach is that of rational choice, and she therefore seeks to understand how political actors used lustration policies to advance their short-term political interests.

It is unclear to me how differences in the stances of the postcommunist states toward lustration affect the future of these regimes and their prospects for any sort of broader and longer-term “reconciliation” (a dominating concern of the transitional justice literature), but to be fair, that is decidedly not Nalepa’s research problem. She focuses on the lustration policies themselves, and seeks to explain why regimes did not immediately implement lustration after the fall of old-style communism (what better tool to neutralize those communists who would not accept their defeat and who therefore sought to compete for political power under democratic rules); why promises of amnesty were in some instances later broken; and why lustration often came, when it came, under the demands of new-style communists, and not from their opponents.

The title of this book was wisely and aptly chosen, because Nalepa’s explanation for variability in lustration policies has overwhelmingly to do with the anticommunists’ fear of being exposed for their illicit and secret collaborations with the old communist regimes. The communists knew who collaborated with them and used the opposition’s fear of exposure as a chip in their bargaining against lustration and other punitive policies. Fear of being exposed through lustration processes tamed the retributive desires of the anticommunists. Only when new, untainted anticommunists arrived on the political scene did the fear of exposed skeletons abate. And after a period, communists, especially new-style communists—often out of the desperation of political weakness—turned the tables and sought lustration laws that could be applied against their political opponents. *Skeletons* is almost entirely about skeletons; there is not a great deal more to the explanations provided.

Nalepa’s story is focused and single-minded in that it considers virtually nothing beyond the strategic calculations

of political parties and their leaders. Political actors adopted their positions toward lustration according to the short-term benefits to themselves, and in particular according to their ability to harm their political opponents. Keeping promises, acting honorably, even acting for the good of the country—and indeed, even real concern about the injustices of the past—are not part of the author's story. Instead, she treats political actors as motivated only by their desire to maintain or acquire political power. Simply put: "Rather than a matter of retribution or 'coming to terms with the past and moving on,' transitional justice legislation seems to be an arena of strategic interaction between actors devoted to maintaining their offices and prospective careers" (p. 205). And not a scintilla of normativity raises its head in this book; there is no Nelson Mandela or Václav Havel in Nalepa's account of transitional justice, only grasping politicians.

Indeed, few alternatives to the overarching strategic instrumentalism hypothesis are considered in the book. The main exception is a rival hypothesis that has to do with public demands for lustration policies. The question is whether the eventual adoption of lustration policies was an elite reaction to the demands of the mass public for retribution. This is an important question for the theory because it suggests motives for lustration that extend beyond the skeletons argument. Nalepa unequivocally concludes that public demands cannot account for the implementation of lustration policies.

I find this portion of the author's analysis particularly unpersuasive because it is based on a straw-person theory of policymaking and on dicey empirical analysis. For instance, from Figure 5.4 (on p. 112) we learn that "pro-lustration voting" is measured with the question "Which party did you vote for in the most recent parliamentary election?" Students of issue voting and electoral mandates will be reluctant to accept such an operationalization. Indeed, the entire analysis of "issue voting" (voting on the basis of a preference for lustration) is very simplistic; Nalepa's "demand input" model (referred to as "the voter-demand-based theory") is one that most political scientists long ago abandoned for more sophisticated models emphasizing the role of politician characteristics, enduring party attachments, and multidimensional issues in voter choices (e.g., Michael S. Lewis-Beck et al., *The American Voter Revisited*, 2008). Using the voter-demand-based theory, one might very well conclude that voting for a Republican candidate in the United States is an indicator of the strength of the demand for the repeal of abortion laws. That would, of course, be a mistake.

More generally, empirically oriented political scientists will be reluctant to cede much certitude to Nalepa's empirical evidence. Her sample of elites is by her own assertion unrepresentative, the operationalization of key concepts with items asked of elites are highly debatable, and the statistical tables rarely support unequivocally the substan-

tive points she seeks to extract from them (e.g., the theoretically important Table 4.2 appears to be based on only 19 out of 107 elite interviews). Moreover, inferential statistics are rarely used in her analysis. She often invokes "proxies" as measures of key concepts, doing so without any discussion of reliability or validity. Throughout her analysis, she treats voters and parties as if lustration were their only policy of concern, and as if parties could be defined and understood by nothing but their positions on lustration.

As I have hinted, I am not particularly enamored of the view that strategic instrumentalism is the only way politics can be understood, and that normative considerations are irrelevant to the making of important transitional justice laws and policies. I consequently find this book's lack of serious attention to the question of historical injustices—as an empirical, not normative, matter, as in the rapidly growing literature on the political psychology of injustice—particularly disappointing. Nalepa set out, I have no doubt, to use the cases of lustration in the Czech Republic, Hungary, and Poland to illustrate a simple process by which rational actors compete for political power. Because alternative hypotheses are not seriously tested, readers should not be surprised that the strategic explanation prevails. This unidimensional rational choice perspective will most likely discomfort those believing that transitional justice has something to do with justice.

One cannot help but feel that Nalepa's analysis of the Central and Eastern European transitions is incomplete in other ways as well. Actors other than political parties are important (e.g., courts, including their willingness, real and/or perceived, to enforce amnesty agreements), issues other than lustration are important (e.g., economic policies, the development of a rule-of-law political culture), and political considerations other than the strictly strategic (e.g., fairness) are important. Even on its own terms, this book teaches us little about how lustration policies actually affected perpetrators and victims; the author's analysis is largely silent on how lustration laws were implemented in reality. And indeed, it is not even clear to me that the hows and whens of lustration policy have any substantial effect on larger political variables, such as the development of legitimacy for democratic institutions and processes within these countries. Perhaps it is too soon to tell, but when the next generation's political scientists analyze the degree of success in building democratic institutions and cultures (not to mention "reconciliation") in these countries, it is not at all clear to me that lustration policies will succeed as important independent variables.

In a similar vein, many transitional justice scholars will conclude, as I have, that there is undoubtedly more to the politics of transitions and transitional justice than lustration. Rebuilding the economy, reentering Europe, creating democratic and accountable political structures, building a political culture that is respectful of human

rights with strong commitments to the rule of law, and recreating dreams for the future all need to be included in transitional justice equations in post-Soviet Europe. Transitional processes are about more than transitional justice, and transitional justice is about more than lustration.

At the same time, Nalepa's analysis should stimulate non-rational choice scholars (such as me) to think more clearly about pragmatism and strategy in processes of transitional justice. Anyone who has accepted the necessity of amnesty is already no stranger to pragmatism; scholars more oriented toward the justice end of transitional justice should perhaps be more aware that normative positions and policies often have unintended consequences. Some political actors will inevitably seek to exploit transitional justice policies for their own purposes. Especially in light of Nalepa's analysis, scholars cannot ignore that possibility.

Finally, one wonders about the generalizability of many of Nalepa's findings. Outside of Central and Eastern Europe, lustration has not been widely practiced, and certainly it has not been a great concern for the transitional regimes in Africa and Latin America. Even within the context of Europe, the case of the former Soviet Union stands in sharp contrast to the Central and Eastern Europe states. Lustration seems to be a policy with applicability to only moderately repressive regimes.

Despite my reservations about its contribution to the understanding of larger issues of transitional justice, there can be no doubt that Nalepa's analysis of lustration policies, when judged exclusively on its own terms, is an important addition to the emerging transitional justice subfield within political science. There may be more to transitional justice than lustration, but Nalepa's understanding of its strategic politics provides an important part of the puzzle that cannot be ignored by future scholarship.

Response to James L. Gibson's Review of *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*

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— Monika Nalepa

Vigorous exchanges between those who study charged topics like transitional justice using different approaches can be very helpful in progressing our understanding of the complex issues. But those reading this exchange between James Gibson and me could be left puzzled. While my review of Gibson's work shows how our two approaches can be harmonized, Gibson's review of *Skeletons* may urge readers to question whether, given such seemingly irreconcilable differences, transitional justice remains one field.

In what follows, I briefly address Gibson's principal concerns. But first, I correct a key conceptual misunderstanding. Gibson objects to what he characterizes as my "overarching approach of rational choice" (p. 425). But

the form of rational choice that he condemns is the kind exemplified by classical models of democratization "with or without guarantees" associated with the work of Adam Przeworski and others. This approach, which has shaped the field of Comparative Democratization over the past twenty years, rests on a cost-benefit calculus that *disregards* time inconsistencies as well as expectations of what other actors might do. Influenced by works such as Donald Green and Ian Shapiro's *Pathologies of Rational Choice Theory*, I have long been deeply dissatisfied with the simplifying assumptions of such models. After all, if the communists had been entirely focused on their "narrow and short-term political interests," they would not have stepped down peacefully. Had they done so, they would have exposed themselves to retribution or (at least) years of subsistence in the political shadow of victorious dissidents. But instead of throwing the baby out with the bath water and rejecting rational choice *per se*, I set out to develop a model of information asymmetry. In my model, communists know something crucial that the dissidents do not—how infiltrated the dissidents are with secret collaborators. I agree with Gibson that conventional rational choice models based on assumptions about actors' short-sighted narrow economic interests cannot satisfactorily deal with the complexities of transitional justice, and I deliberately seek to go beyond such narrow models.

Gibson offers four substantive criticisms of my book. I address each in turn.

First, he claims that I ignore the possibility that peaceful transitions followed by delayed transitional justice could have been the results of political elites' preferences for fairness followed later by a desire to see justice done. Suppose that we could demonstrate that the communist decision-makers relinquished power "for the good of their country," that the infiltrated dissidents were motivated by the norm of "acting honorably and keeping promises," and that the anticommunists who came to power in the late 1990s were advocating lustration out of "a real concern for injustices of the past" (p. 426). If this were true, one would have to explain why the skewed distribution of normative preferences is perfectly collinear with these politicians' strategic incentives for maintaining office. Furthermore, one would have to account for why such normative motivations would be suspended while designing the specific lustration laws. As I show elsewhere, the lustration policies that were eventually adopted in Poland, Hungary, and the Czech Republic were *not* the most desirable from a fairness point of view.¹

Gibson's second contention is that I erroneously measure transitional justice by voting behavior. I designed my survey to explore the alternative hypothesis to *Skeletons*—an explanation centering on voters' demand for lustration. Simply put, I wanted to find out if voters care for lustration policies at all. My survey asked respondents both about their individual preferences regarding lustration and