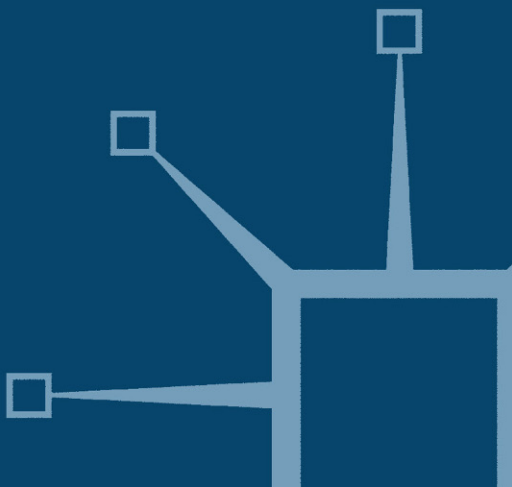# Privatizing the Police-State

The Case of Poland

Maria Los and
Andrzej Zybertowicz

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To
Adam Podgórecki (1925–98)

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Foreword

Gary T. Marx
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In discussing commentators on the secretive Black Muslims, Malcolm X observed, 'Those that know, don't say and those that say, don't know.' Until the appearance of this well-argued and well-documented book with its provocative thesis about the central role of the secret police in political and economic affairs, the same might have been said of many commentators on Poland's transition from a communist to a privatized state.

The social scientist seeking to understand the partially revealed iceberg of complex, impassioned social events such as the changes in Poland must go beyond the methodological purists who hold that only that which can be quantified and stated in propositional form is worthy of study. Such a student must also go beyond the distorting reductionism of the one-trick ponies, whether coming from the ideologues of glorification or denigration, or their logical equivalents in the single causal theorists.

It's a tough job but someone has to do it. Łoś and Zybertowicz have done it well. With intelligence, detailed scholarship, originality, honesty and humility they bring clarity and light to murky shadows. This book must be read by anyone seeking to understand the recent changes in Poland and, indeed, in any new democracy.

At an earlier time both Łoś and Zybertowicz had direct experience of the Polish secret police, not, as would be the case later, as interviewers, but through blacklisting, expulsion, imprisonment and involvement in the Solidarity movement. This has no doubt heightened their interest in the topic. But it has certainly not detracted from their objectivity. It may even have strengthened it in giving them an experiential appreciation of the importance of openness, truth, fairness and due process, and in order to prevent their experience as victims from casting doubt on their academic claims.

Maria Łoś received her Ph.D. in sociology from the University of Warsaw and taught there until 1977. She is currently Professor of Criminology at the University of Ottawa. Her long-standing interest in hidden social processes is also reflected in her many previous studies of the second economy and economic crime in communist countries. Her powers of observation are enhanced by her emigrant status. She frequently returns to Poland for research.

Professor Andrzej Zybertowicz, Director of the Institute of Sociology at Nicholas Copernicus University in Toruń, Poland, is the author of a major study on the Polish secret police. This book is a culmination of his intellectual and personal journey through the last two tumultuous decades of Polish history. It reflects a tenacious, if ever-tentative, belief (or, perhaps better still, hope) that the powers of the intellect and the rule of law can improve social conditions. He has the courage to address issues in his native land which are generally ignored by academics and the mass media.

The book asks how the changes in Poland involving democratization, privatization and marketization were affected by, and affected, the party/police-state framework within which they occurred. While democracy and a Soviet-style secret police are mutually inimical, the same cannot be said of economic factors and the secret police. The book notes the easy congruence between the police apparatus and local and global capitalism. Łoś and Zybertowicz argue that the privatization of the police state cannot be understood without examining the machinations of the various police and security agencies.

Rather than being history, remembered only in how-not-to-do-it textbooks, elements of the police state are still alive and well today. The book calls attention to the major role played by covert action and actors not only in creating and sustaining the communist regime, but, as is much less well-known, in *undermining* it. The transformation of Polish society was not simply a reflection of social movement activity from below, nor of the power vacuum created by the collapse of Soviet support. Instead it involved a series of covertly negotiated revolutions instituted from on high, initially with the apparent support of the KGB.

Through careful strategies the opposition was both attacked and later nourished. Using familiar tactics of repression, manipulation, infiltration, division, vilification, and finally co-option, the Solidarity movement and other sources of opposition were shaped and pushed in the direction of a path compatible with the interests of the communist élite who perceived that their ship was sinking. With their extraordinary experience, resources and knowledge, the massive state security apparatus played a central role in the relatively bloodless collapse of communism. But the story hardly stops there.

Like the deep foundation of an ancient building, a police-state apparatus, so entrenched in civil society that the border between the public and private is often blurred, rarely disappears. Apart from the symbolic removal of some leading figures, much of it remains in place – old agents with new uniforms and activities. Where the contaminated tether of

secret-police connections saturates a society, the song may be ended, but the melody lingers on, even as new songs appear.

This book argues that the security agency's covert actions are just beneath the visible transformation processes of marketization and privatization. Łoś and Zybertowicz note the central role played by the agencies of state security in managing the command economy, a factor surprisingly absent from social scientists' models. But, what is even more surprising, they note the central role these agencies played in subordinating parts of the privatization process to the interests of the system's former political élite. This insulated the élite from accountability for misdeeds committed under communism and permitted its directing of lines of capital flow and accumulation. It also created massive opportunities for fraud and corruption and a new wealthy class. In a process anticipated by Max Weber, the former communist *nomenklatura*, with the involvement and protection of the security agencies, trade political for economic resources and then are later able to use their economic resources to regain political power.

This book usefully situates its story within the broader transformations involving post-industrial, post-national and post-modern transformations, showing how former secret-service operatives and structures were uniquely positioned to become intermediaries between the new Polish and the global economy. In doing this they offer fresh insights into the globalization of organized crime, the marketing of spying, cross-border social control, and changes in the nature of capital. The possible necessity, and certainly the irony, of protecting a fledgling democracy through the use of secret-police tactics is not lost upon the authors. They also note how the bridging and protective actions of the secret police reduced resistance to change on the part of those formally in power and their networks.

This is not only a story of immoral opportunism; more charitably, it can also be seen as one of amoral survivalism, probably reflecting a sensibility honed out of centuries of experience of repressive rulers, whether external or internal. A non-ideological cynicism and the need to cover all possible bases coexists just beneath the surface with public obeisance to an all-encompassing ideology. When the handwriting on the wall changes, the flexible ideologue shifts beliefs. The constant awareness of threat and easy shifting of impression-management gears appears to be more characteristic of Europe in general, and Eastern Europe in particular, than of North America.

In apparently uncovering the veiled truths of secret-police and intelligence agents, we must forever be on our guard. Has the observer fallen

into a carefully fabricated web of lies? Do documents really mean what they appear to? What of orders that were never written down, of 'no file' or destroyed documents? What of verbal communications that were understood and not literally stated? What of interviewees who lie? Is observed behavior merely a means to some other hidden end? Was a secret meant to be discovered as part of a strategy? The never-ending caution and skepticism of the scientist apply with particular force here. Yet things sometimes are what they appear to be.

Łoś and Zybertowicz thoughtfully and creatively probe beneath the veneer of reality constructed by those who were (and some who remain) masters of deception. This study is a model of what scholarship on secrecy-enshrouded topics should be. Its empirical findings suggest a loosely directional perspective. The authors walk a thin line between the silliness and dogmatism of most conspiracy theories, and the intellectual anarchy of the view that history is fully open-ended and reflects nothing more than random events. To note a broad direction need not imply 'a comprehensive conspiratorial mechanism that co-ordinates and permeates all relevant actions', nor is it to deny a degree of simple convergence on the part of loosely related groups with some common interests.

One can almost feel the wheels of the author's minds turning as they fit various pieces of evidence into their argument and then reflectively stand back and wonder if they have been taken in and if there is a better interpretation. Fortunately, in the end, as Sir Thomas More counseled, they doubt their doubts and leave us with a compelling book, strengthening the groundwork for a neglected area of inquiry.

Their perspective has ample room for other causes. They acknowledge the cross-currents, variation, dynamic emergence and elements of indeterminacy found in the myriad events which, for convenience, we abstractly lump together as 'the fall of communism'. However, they also make clear that any comprehensive understanding must give significant attention to covert police activities. They offer a sensitizing perspective which tells us one place to look, offers useful concepts such as the post-totalitarian police state, and the privatized state, and guides us in ordering and interpreting facts.

The study makes clear the fruitful possibilities for comparative research on the role of the secret services in other democratic transitions such as in Spain, Portugal, South Africa, parts of Latin America and in the Axis countries after the Second World War. Studying the role of the military and secret police in a changing China would also be of great interest. Can justice be served while democratic stability is maintained?

Can fire effectively be fought by means other than fire? Can the inherently risky and dangerous tactics of covert coercion, manipulation, surveillance and deception be adequately reined in by the rule of law and official oversight? Must those who sanction the use of fire invariably be burned? The study also alerts us to the importance of studying how the end of the Cold War has affected security agencies in the traditional democracies, as they too confront post-industrialism and globalization and the blurring of conventional lines between the public and the private, the national and the international.

Given the persuasiveness of the authors' general argument, it is an interesting question of the sociology of knowledge as to why such a view does not have greater currency. Beyond scholarly concepts rooted in nineteenth-century views, one explanation is yet another conspiracy, this time one of silence and of averting the eyes. From a standpoint of societal legitimacy, there may be certain things that it is best to forget or not to know (this goes beyond the formidable self-protective powers of the security agencies and their heirs). Emerging societies in particular may need myths – if not of *divine creation*, at least of heroic *anti-communist creation* in resistance to the hated *ancien régime*. A message that the old apparatchiks helped to create the new regime and may simply be wearing new hats can hardly be welcomed.

Social scientists have rarely researched such themes, because to do so requires reversing their preferred sequence of starting with a favored theory and seeking places to test it, or starting with a sophisticated method and looking for topics that meet its requirements, such as a representative sample or a control group. In contrast, here the authors start with an intellectual puzzle and ask what methods are best for approaching it. While rigor and quantification are admirable, they should never come at the cost of excluding major areas of inquiry. As this study admirably demonstrates, we must capture our methods, not be captured by them. We must study what is significant, not what best fits conventional methodologies. It is good to see Polish sociology go beyond its classic concerns with theory and method, and enlarge its reach to include studies of dirty data. What is sacrificed in purity is surely gained in knowledge and wisdom.

Acknowledgements

List of Abbreviations

Art-B	a private company implicated in a notorious financial scam of the transition era
Bank of Commerce	*Bank Handlowy SA*
BCCI	Bank of Credit and Commerce International
BIG	*Bank Inicjatyw Gospodarczych*; Bank of Economic Initiatives
CC	Central Committee of the PZPR (the Party)
Cheka	All-Russian Extraordinary Commission for Combating Counter-Revolution and Sabotage; political police founded by V. I. Lenin
CIA	Central Intelligence Agency (USA)
CMEA or COMECON	Council of Mutual Economic Assistance (Soviet Bloc)
Communist party	see PZPR
DU	*Dziennik Ustaw*; the law gazette in which legal enactments must be published
FBI	Federal Bureau of Investigation (USA)
FOZZ	*Fundusz Obsługi Zadłużenia Zagranicznego*; Fund for Foreign Debt Servicing
GDP	Gross Domestic Product
GRU	Soviet (Russian) Military Intelligence
GUC	*Główny Urząd Ceł*; Main Customs Office
KGB	Committee of State Security (USSR)
KOK	*Komitet Obrony Kraju*; State Defence Committee
KOR	*Komitet Obrony Robotników*; Committee for Workers' Defence
Militia	see MO
MO	*Milicja Obywatelska*; Citizens' Militia, (Communist) uniformed police
MON	*Ministerstwo Obrony Narodowej*; Ministry of Defence
MSW	*Ministerstwo Spraw Wewnętrznych*; Ministry of the Interior
MSWiA	*Ministerstwo Spraw Wewnętrznych i Administracji*; Ministry of the Interior and Administration (reorganized MSW)

NATO	North Atlantic Treaty Organization
NBP	*Narodowy Bank Polski*; National Bank of Poland
NIK	*Najwyższa Izba Kontroli*; Supreme Chamber of Control
NKGB/MGB	predecessors of the KGB
NKVD	People's Commissariat for Internal Affairs; political police founded by J. Stalin (USSR)
OBOP	*Ośrodek Badania Opinii Publicznej*; Public Opinion Survey Centre
ORMO	*Ochotnicza Rezerwa Milicji Obywatelskiej*; Voluntary Reserve of the Citizens' Militia
OZ	*Osoba Zaufana*; Trusted Person, a secret informer whose status is less formalized than that of an SC
Party	see PZPR
PRON	*Patriotyczny Ruch Odrodzenia Narodowego*; Patriotic Movement of National Renewal
PSL	*Polskie Stronnictwo Ludowe*; Polish Peasant Party, a reincarnation of the ZSL
PZPR	*Polska Zjednoczona Partia Robotnicza*; Polish United Workers' Party, i.e. the Communist Party
SB	*Służba Bezpieczeństwa*; Security Service of the Ministry of the Interior (MSW)
SC	Secret Collaborator; *Tajny Współpracownik* (TW), a formally recruited secret collaborator of the secret services
SD	*Stronnictwo Demokratyczne*; Democratic Party, the PZPR's satellite party
SdRP	*Socjaldemokracja Rzeczpospolitej Polskiej*; The Social Democracy of Poland
SLD	*Sojusz Lewicy Demokratycznej*; Alliance of the Democratic Left, an electoral alliance of former Communist political forces, led by SdRP
SOK	*Służba Ochrony Kolei*; the Railway Protection Service
STASI	East German civilian secret service
TCO	Transnational Criminal Organization
UN	United Nations
UOP	*Urząd Ochrony Państwa*; State Protection Agency, a post-communist replacement of the SB
UP	*Unia Pracy*; Labour Party
Voivodeship	*województwo*; a large administrative district
WRON	*Wojskowa Rada Ocalenia Narodowego*; Military Council for National Salvation

WSI   *Wojskowe Służby Informacyjne*; Military Information Services (intelligence and counter-intelligence)
WSW   *Wojskowa Służba Wewnętrzna*; Internal Military Service
ZOMO   *Zmechanizowane Odwody Milicji Obywatelskiej*; Communist anti-riot police
ZSL   *Zjednoczone Stronnictwo Ludowe*; United Peasant Party, PZPR's satellite party

I

Opening Considerations

1
Introduction

> Society continuously describes itself, but never fully, ... it is always a task of sociology to reveal the hidden society to its members.
>
> <div align="right">Aubert, 1965</div>

There is a risk in focusing on the darker, hidden side of a process as noble and inspiring as the peaceful transition from totalitarianism to democracy. We hope that this book will be read with full understanding that there is much more to this process than the crimes, treachery and hypocrisy we depict on these pages. But we also hope that these dark influences will not be perceived as aberrant, marginal occurrences, unconnected to the core of the macro structural changes taking place in Poland in the 1990s. No serious sociological, political or economic analysis of the nature of such historical changes as these can be undertaken without at least some grasp of the historical roots, power relations, group interests, habits, hidden technologies and financial arrangements that produced the criminal underpinnings of the processes in question.

It is our contention that those who have tried to analyze the evolution and eventual self-destruction of the communist system in straight, above-ground terms of traditional sociology or economics miss a vital part of the reality concerned: an oversight that renders impossible a congruent and meaningful explanation of those developments.

This book is a continuation of our earlier research interests in and preoccupation with the 'hidden society', the unofficial world guarded by rules of secrecy.[1] Based on her comparative study of ten Marxist states, Maria Łoś in the 1980s described four typical stages such states tend to go through: a period of radical transformation; a period of monopolization; a reformist stage; and post-reformist decadence (Łoś,

1988; 1989; 1990b). At the core of this typology is the interrelationship between the dynamics of the official, above-ground economy and the evolving, ideologically repudiated, second economy. As Łoś states:

> The key difference between this analysis and other attempts at grasping the uniqueness of the process of socialist development lies in the inclusion of the second economy and its control in the sphere of the dynamic economic reality which imposes a certain logic of progression through several distinctive stages. The second economy is not viewed merely as a response to the problems or contradictions within the first economy; it is also believed to be an important force contributing to the successive transformations within the first economy. (Łoś, 1990:199–200)[2]

In her many publications Łoś has described and analyzed various forms of second-economy activities and their different structural locations, normative cultures and relations to the dominant power interests. These include the informal, mostly non-monetary, barter economy geared towards survival and redistribution of goods and services; the informal, cash-based petty-commodity/moon (and noon-)lighting economy; and organized, illegal economic operations that involve both the criminal underworld and influential party-state officials and agents of the control apparatus (Łoś, 1980, 1982, 1984, 1987, 1988, 1990, 1991).

The barter economy led to a 're-privatization and de- collectivization (individualization) of social relations related to basic needs satisfaction' (Łoś, 1992: 116). The moonlighting economy contributed to the 'partial re-privatization of the individual labour and small-scale semi-marketization' (ibid.:119). Finally, 'through the organized crime networks the centralized state economy under [went] gradual, criminally organized re-privatization' (ibid.:124).

Sharing this notion that social life is best studied by uncovering what is hidden, Andrzej Zybertowicz has documented and explored some of the implications of the fundamental role of the secret services in communist Poland for that country's surprisingly peaceful abandonment of communism (Zybertowicz, 1993, 1995–6).

In the second half of the 1980s, when Solidarity opposition forces were concerned with human rights and the project of building a civil society as a defence against the totalitarian/authoritarian state, the more dynamic members of the Communist *nomenklatura* class[3] immersed themselves in intricate economic enrichment schemes. These were two

contrasting realities, ruled by totally different mindsets and *modi operandi*. Maria Łoś commented on the political context in which a rapid escalation and simultaneous legitimation of the criminal economic involvement of the Communist élite became possible:

> The final attempts at reforms by the communist government no longer aimed at reforming the national economy, but rather at creating a distance between the members of the *nomenklatura* and the bankrupt state economy by encouraging and legitimating their hitherto hidden involvement in the second economy. Through this manoeuvre, they were to appear to be a true vanguard embracing the new, flexible, open-ended economic model. This new, pro-market rhetoric was backed by capitalistic practices.... The *nomenklatura* seized the legislative trend and the economic reforms of the late 1980s to achieve a formal legitimation of their 'informal property rights' of the earlier period. (Łoś, 1992:124–5).

At that stage the opposition/civil society movement consisted of several normative strands: the political-liberal opposition, preoccupied with civil liberties and democratic ideals, but rather mute on the issues of economy; the collectivist-traditionalist workers' Solidarity movement, decimated by Martial Law but still cultivating its dreams of true worker self-government, and striving to restore human dignity through traditional community and organic solidarity values (Kowalski, 1990); and the social-personalistic, Catholic Church-inspired movement for change, based on the social teachings of the Church, with its stress on natural human rights, private property, the dignity of labour, family and patriotism.

The relative strength of the opposition prompted an expansion of the role of the secret services. Ironically, when informal efforts to create large civil-society/non-state enclaves are successful, secret penetration by the totalitarian state becomes more pressing and necessary than ever. The truly devastating moral and political impact of this equation has never been fully apprehended, although the long-term nature of its effects is becoming more evident with the passage of time.

In addition to the increased infiltration and recruitment of secret collaborators, the 1980s also witnessed a structural power shift that placed the security apparatus close to the hub of the state. The long period of decadence and gradual disintegration of the regular party control system, following the Solidarity revolt and its suppression in December 1981, directly contributed to the state's greater reliance on

the Ministry of the Interior and the military secret services. In her 1989 book, Jadwiga Staniszkis points out that a profound crisis in the ruling party 'turned the Army and security services into a pool of cadres for the state administration, thus allowing the continuation of the *nomenklatura* principle despite the decline of the party' (Staniszkis, 1989:133).

   The prevailing focus and lofty tone of the opposition movement contrasted sharply with the Communist establishment's frantic preoccupation with finding ingenious ways to acquire capital and increase and legitimize their holdings. The Polish intelligentsia's contempt for matters of the economy, combined with a romantic vision of its desired society (Szacki, 1994:123–8), contributed to the opposition's considerable underestimation of the importance of the material basis of power. Furthermore, the non-state, shadow economy was not perceived as an inherent aspect of civil emancipation because of its dubious moral and legal status, and because – as Łoś argued in her January 1989 paper – it was a nascent threat to the unique status of the Polish intelligentsia, already undermined by its pauperization under the declining regime:

> [At the decadent stage of communism] the position and moral influence of intelligentsia – the class of ideas, traditionally perceived in East/Central Europe as the core and personification of civil society – is also undermined by its relative pauperization. Unlike the reformist period, when this class is likely to be courted – and thus offered certain economic benefits – by the authorities who seek its support, in the post-reformist period it becomes an inconvenient and menacing witness of the decline of once powerful Marxist states. The shadow economy additionally contributes to the marginalization of intelligentsia by giving rise to a new, seemingly independent, class of successful private entrepreneurs and by promoting new criteria of prestige and success, based on wealth rather than education and moral stature. (Łoś, 1989:25)

   What might have been overlooked by the moralizing opposition forces was the potential role of the shadow economy in inspiring and facilitating certain forms of socio-political self-organizing, as well as in preparing society for the future shift towards a de-nationalized economy. In her 1987 article, Łoś argued in favour of recognizing this potential:

> Another possible threat to the long-term interests of the Party[4] comes from the second economy's ability to free some people from the

direct control of the Party and the Party-run trade union exercised over the state employees. . . . While the totalitarian state controls are well-suited for controlling dependent populations at the mercy of state institutions, they seem to fail in dealing with free markets and freelance entrepreneurs. The level of control necessary to maintain the party monopoly over the society may, therefore, be harder to achieve when a growing proportion of the population is no longer within the direct reach of the well-tested, routine control mechanisms traditionally applied within the state economy. . . . Theoretically, the existence of both the second economy and the second culture should provide unique conditions for the emergence of a 'second society' – a civil society that draws on its own resources in order to develop an ability to live virtually outside the formal structure and to satisfy its vital needs through an informal community organization. (Łoś, 1987:51–2)

Not only did the opposition shrink from treating the second economy as an inherent part of an independent civil society – an engagement admittedly fraught with potential problems – it also virtually closed its eyes to that economy's vigorous takeover by the *nomenklatura* class.[5] Sceptical about the economic policies initiated by the military rulers, the opposition circles seemed oblivious to the process of 'decomposition of one formation and its re-constitution into another. . . . seemingly with the permission of the imperial centre which was enabled by the Polish situation to identify the kind of threats that might eventually present themselves in the whole [communist] block if other countries entered a similar crisis phase' (Staniszkis, 1989:125–6). These were important structural changes that radically transformed relations between private and state economic sectors and opened the door for a redefinition of the sources of power for the *nomenklatura*.

Calling it the first phase of political capitalism, Staniszkis gives a succinct description of this process:

[This phase], from the mid-eighties to the early nineties, involved the commercialization (and transformation into group property) of the assets of socio-political organizations, and also the establishment of privately-owned adjuncts to state-owned enterprises. The generation of private profit in the latter was accelerated by the opportunity to shift part of the costs of private operations onto the state enterprises, whose management were also the quasi-proprietors of the private firms. In other words, a redeployment of capital was effected from

the state to the private sector, i.e., a specific form of primitive accumulation took place, linked to an intersectoral transfer of capital. The profits then earned were invested in purely private ventures. (Staniszkis, 1995: 35; see also Łoś, 1992: 124–31)

Andrzej Zybertowicz noted in his book on the secret services that as early as 1982 this new type of reform was being thrust upon a society immobilized by Martial Law:

> The opposition criticize[d] it as a purely cosmetic tinkering with socialist organization of the economy. Being right about this 'reform's' inability to enhance effectiveness of the economy, the opposition remain[ed] blind to its other, profound (possibly unintended) outcomes...Under communism, the state property was always subject to various forms of 'privatization,' but it was only in the 1980s that the theft of the state assets actually induced germination of *an alternative economic system*. (Zybertowicz, 1993:32–3; emphasis added)

While the state was bribing workers with 'paper money', *nomenklatura* entrepreneurs were offering some of them extra incentives to consent to private takeovers. The lack of a viable economic ideology, strategy and leadership led to growing disorientation and apathy among workers who were witnesses to the process of the 'restructuring' of the national economy by transferring it into the hands of Communist officials, their relatives and their secret police contacts. Torn between the *status quo ante* of the state-monopolized economy and the new reality of the communist capitalist offensive, workers rapidly lost their sense of direction; neither option offered the economic rationality or ethical reassurance they were seeking. Even when they did protest, as in the strike wave of 1988, workers' belief in victory was eroded, because they no longer had a simple definition for it.[6]

From the point of view of the Communist *nomenklatura*, their economic offensive could not have been better timed. A burned-out society, incapacitated by defeat and feelings of hopelessness, could neither interfere with nor convincingly denounce the ideological and material positioning of the old power networks as the leading force in the process of systemic transformation.

In this book, we explore the composition of these well-entrenched power networks in which various interests and institutional affiliations intersected, producing a formidable human grid, known in Poland as

the Red Web. We postulate that the Red Web and its role in contemporary Poland cannot be understood in isolation from its police-state roots, nor can the processes of the *privatization of the communist state*. In this context, the 'police-state' is meant to encompass both its tangible and more elusive aspects. The tangible aspects entail the police and security apparatus, with its highly trained personnel, network of informers, material assets and equipment and secret archives; the more elusive aspects include distinct types of mentality, relationships and informal social control affected by the technologies of power characteristic of a state that relied profoundly on the secret services for its everyday functioning.

In our view, no serious analysis of the historic process of systemic change in Poland and other East and Central European countries can overlook the possible role of the security apparatus in both creating institutional channels and providing the protection necessary for the Communist *nomenklatura*'s smooth and profitable withdrawal from the totalitarian order. Challenging the prevailing view, we show in our book that the police-state label was not only applicable to the Polish reality of the 1980s, but it was emphatically so. As the economy collapsed and communist ideology was discredited, the party-state lost its foundation and the function of ruling passed progressively into the hands of the police/security/military complex. In order to find out what happened to that complex after the disintegration of the system that produced and fed it, we focus first on its own role in this process of disintegration and systemic transformation. Only on this basis could we attempt to decipher and interpret the intricate processes of the transformation and reconstitution of the police/security/military complex as an important force in the post-communist state and economy.

We come to this project with some previous research experience and accumulated knowledge that has structured our approach and guided our theoretical imagination. In Chapter 2, we present a general framework of our research and elaborate on the concepts, hypotheses and issues that underpin it. In the chapter's final section, we describe briefly the overall structure of the book and the gist of its chapters.

2
Conceptual and Methodological Issues

Like a river, researchers follow the path of least resistance.
G. T. Marx, 1984

Metaphors of systemic change in East/Central Europe

The transformation process in the communist states of East/Central Europe in the late 1980s and early 1990s was unique and calls for the careful development of new theoretical frameworks of analysis.

While our approach is informed by and grows out of our earlier work, we have also been open to the growing body of literature specifically dedicated to explaining the post-communist transformation. We view diverse approaches to this process – often poorly developed theoretically – as a series of metaphors of systemic change, each based on certain tacit assumptions and able to shape our vision in a specific way. We use the term 'metaphor' deliberately, as we believe that the changes we refer to are quite unique and any labels that have been applied to them are not meant to be taken literally. We have tried to assess their hidden meanings and implications as well as their usefulness as possible starting-points for our research:

Revolution

This metaphor suggests images of a forceful overthrow of a political regime, followed by the destruction of the old order and a radical break with the past. Based on our perception of the changes in Poland and elsewhere in East/Central Europe, the rupture this metaphor implies does not reflect events adequately. Rather, developments in Poland were marked by caution and careful management as well as the

deliberate preservation of the continuity of the legal system and state administrative structures and personnel. There were no purges, no expropriation, no persecution of the old élite and no new constitution to mark the beginning of a new political era. If it was a revolution, it was distinctly unrevolutionary.

Two-step revolution

This metaphor (inspired by Max Weber's ideal-typical view of the revolutionary process) focuses our attention on the contrast between the initial revolutionary outburst and the subsequent process of the construction (or normalization) of the new system, as the main source of problems for fledgling democracies. The tension inherent in this process is seen as aggravated by the peaceful nature of the change, whereby the new rulers are more likely to appear to have sold out the revolution (Pakulski, 1995). The process becomes unpredictable when there is a 'separation between the interests that brought the fall of the old regime and the interests which the new one serves or promotes' (Bauman, 1994:15). This may create a situation of socio-political limbo (or liminality), where the path from the first stage of the revolution to the second is not grounded in any predefined logic.

There is no doubt that both a perception of betrayal of Solidarity's ideals, at least by some democratic leaders, as well as a disparity between the working-class origin of the movement and this class's decomposition through marketization, rationalization, de-industrialization and globalization have been pronounced in Poland. Yet the tendency to focus on the 'parricidal' (Bauman, 1994) dynamic of the process (the masses turning against the intellectual 'fathers' of the revolution), or the populist backlash against democratic routinization and bureaucratization (Pakulski, 1995), serves also to divert attention from the supposedly vanquished former ruling classes and their possible role in the process of transformation. Once the two-step revolution metaphor is adopted, one's vision is partially blocked because attention is directed towards some actors and away from others.

Transition

This widely used term has been criticized by many authors because it seems to assume an assured transition from one point (the old, communist order) to another (a democratic political order and market economy). This view tends to overstate the unitary pre-determined nature and destiny of the process. To quote David Stark: 'Change, even fundamental change, of the social world is not the passage from one

order to another but rearrangements in the patterns of how multiple orders are interwoven' (1996:995).

(Systemic) transformation

This concept implies the structural nature of change. It suggests an open-ended process of remodelling of the social and institutional organization of the society. While stressing the structure as the location of change, this view seems also to emphasize the 'indeterminacy,' or at least 'underdeterminacy' (Mertz, 1994:1246) of changes in formal structures as a source of socio-political change. There is no assumption of a predetermined end to the process of transformation, which makes this concept perhaps more realistic than that of transition.

Path dependency

This concept emphasizes that the process of change is shaped and limited by the past (Stark, 1992; Staniszkis, 1994–5). The new reality is built with what is available to the builders; it is constructed 'not *on the ruins* but *with the ruins* of communism' (Stark, 1996:995). Any new form of social integration is conditioned by mental patterns, habits, strategies and alliances formed under the previous regime (Podgórecki, 1996a).

   Path dependency is a missing dimension in many publications that blame the market and capitalism for all the ills of the post-communist society. So long as it does not lead to narrow, deterministic models, this concept should have a considerable heuristic value, especially when applied to societies whose exposure to a particular regime was very lengthy, as was the case with East/Central Europe.

Multiple transformation

This concept (Łoś, 1996a, 1998) points to a broader context and views post-communist transformations in conjuncture with other major transformation processes of our time. In her earlier work, Łoś (1996a) distinguishes two types of such processes as particularly relevant:

1. Supranational regional transformations, involving the European Union, the multi-state reality of the former Soviet Union territory, the dissolution of the former communist economic trading bloc;
2. Global transformations, involving paradigm shifts triggered by entirely new and uncharted technological possibilities; the transnationalization of the economy and governance; the globalization of organized crime; the blurring of lines between 'legitimate' and

'illegitimate' economies; a crisis (the exhaustion?) of modernity and a related profound crisis in dealing with regulation.

Negotiated revolution

This metaphor – also known as 'refolution,' a term coined by Timothy Garton Ash (1989, 1990) – blends reform and revolution. It conjures an image of revolutionary social pressure being countered and defused with a reformist strategy worked out by 'realists' on both sides. Also defined as 'revolution from above' and 'managed revolution', this metaphor suggests systemic change processes that are respectful of the vested interests entrenched in the old regime and that treat society and its capacity for heroic mobilization as a potential source of trouble. This metaphor draws attention to the active role and dynamic survival of various elements of the old system as well as their reconstitution within the new institutional framework. It is, therefore, more in keeping with the focus of our project and our own reading of the mode of change in Poland than either revolution or two-step revolution.

Conspiracy

Although post-communist societies abound in folk conspiracy theories, none of them seem to have attracted much attention from social scientists, either as a mode of discourse or a working hypothesis. Nevertheless, several versions of the conspiracy metaphor have been used in published interpretations of the historic events in the region. Most of these explanations refer to the deliberate shaping of processes leading to the collapse of communism by specific influential forces whose interests have become indelibly imprinted on societies in question.

In one version, former US President Ronald Reagan and the Central Intelligence Agency are believed to have concocted and implemented a secret strategy of political, economic and psychological warfare against the Soviet Union, already frail due to its inefficient economic system (Schweitzer, 1994). Another theory implicates international financial organizations, in collusion with organized crime, as the main culprits in schemes to impoverish these societies and siphon off their currency and resources (Chossudovsky, 1996a, 1996b). In yet another version the KGB and former Soviet leader Michail Gorbachev are portrayed as the main actors who contrived and secretly steered the changes in East/Central Europe. Although these changes were said to be initially aimed at preserving – albeit in a renewed form – the whole Soviet bloc, when this goal proved to be unrealistic, these powerful players did not hesitate to strike a unification deal with West Germany, over the heads of the

East German leaders, in the hope that this would save the Soviet Union while integrating it with Western economies (Reuth and Bonte, 1993). Finally, some commentators on the Polish Round Table process put forward a thesis that a deal had been – explicitly or implicitly – struck between the 'moderate' leftist wing of the opposition and the 'pragmatic' faction of the ruling élite, whereby the former won political concessions and the latter won impunity and were allowed to privatize the national economy by transferring it into their own hands (Kurski and Semka, n.d.; Skórzyński, 1995; Ziemkiewicz, 1992; Zubek, 1994, 1995).

We are not prepared to dismiss the conspiracy metaphor simply because it has been ridiculed by many and politically exploited by some. Nor do we think that its inherent propensity for simplifying, stereotyping, demonizing, scapegoating and generating 'individual and collective paranoia, hostility and divisiveness' (Austin, 1994:1045) is a good scientific reason for rejecting *a priori* the possibility of conspiracies in social, political and economic life. All the above-quoted 'plots' are, in fact, backed by quite an impressive body of evidence. While wary of the danger of falling for reasoning that seduces only by its internal coherence, persuasiveness and clear organizing principle, we want to be free to probe some suppositions of clandestine scheming behind the events we study.[1] This extends also to conspiracies of silence about possible conspiracies.

The fact that we have adopted a particular guiding metaphor – described by such terms as 'negotiated (or managed) revolution', 'revolution from above', 'path dependency' and 'multiple transformation' – signals that we embarked on this project with a certain general vision of the changes in Poland. The broad nature of this vision means, however, that while it may influence the type of question we ask, it is unlikely to predetermine our answers. Similarly, our reluctance to disclaim *a priori* any potential usefulness of the conspiracy metaphor because of its bad press among intellectuals should be treated as a sign of openness rather than bias.

Covert action: the neglected dimension of governing

The demise of the Soviet bloc cannot be fully explained without an appreciation of the circumstances surrounding its rise. The communist regimes in East/Central Europe did not emerge through spontaneous movements within the countries in question, and none of the communist parties involved could expect much popular support. On the other

hand, sheer terror – based, for instance, on outright military occupation – was also incapable of yielding the results desired by the Soviet leaders. Since the myth of 'people's democracies' had to be preserved – and Stalin was eager to pay lip-service to this formula – some pseudo-democratic procedures had to be put in place. How was this to be achieved, given that neither sheer violence nor orderly democratic process presented a viable route to this duplicitous goal?

In his introduction to an interesting collection of papers that promises to bring us 'closer to understanding the Soviet role in Eastern Europe between 1945 and 1989' (Westad, 1994:8), Odd Arne Westad notes that:

> For the initial period of Soviet control there is still a surprising number of issues which have only been scantily addressed by researchers. First among these is the issue of whether the events of 1945–48 should primarily be understood as Soviet occupations, or whether there was a significant element of local popular participation in the Communist takeovers. (Westad, 1994:3)

Having found neither of these versions accurate, he does not even look in the direction of the hidden, but prodigious, domains of covert actions undertaken by the Soviet secret services, promptly supported by their local clones. Instead, he claims that the Communist parties of that region found workable means of governing through 'the combination of élite co-optation, moderate economic growth and increased social mobility – all aided by repression of the political opposition' (Westad, 1994:4).

The domain of covert actions is certainly not among the many dimensions of governing which social scientists routinely evoke to explain political processes in communist countries and elsewhere. Not a single chapter of the quoted book – devoted to the study of totalitarian regimes – addressed the role of the political police, intelligence and counter-intelligence services. This is only one of many examples supporting our general observation that historians' findings about the intelligence and security services are systematically ignored by sociologists and political scientists.

In their history of the KGB's foreign operations, Christopher Andrew and Oleg Gordievsky observe:

> 'People's democracies' were imposed on the countries of Eastern Europe by a combination of force and *deception* in which the NKGB/

> MGB [the predecessors of the KGB] played a central role. . . . Through-
> out Eastern Europe Communist-run security services supervised, save
> in Yugoslavia and Albania, by Soviet 'advisers', played a crucial part
> in the transition to 'people's democracies.' (1990:281; emphasis
> added)

Such results were produced through massive surveillance, infiltration,
various 'active measures' (that is, operations aimed at hidden manipula-
tion of the public opinion), launching front organizations and opera-
tions targeted at dismantling independent institutions of the civil
society.

Covert action as a category of governing has been largely ignored by
social science. While in some social contexts it may be justifiably left
out of the analysis, this is not so in the case of communist states, where
secret services[2] and covert actions constitute an indispensable instru-
ment of governing that makes possible the everyday operation of the
social system. Under communism, powerful police-state apparatus had
been first employed to change, and only then to rule, the target societies.

Secrecy and conspiracy are inherent features of communist regimes,
whose organizational principle, elaborated by Lenin, was so-called
democratic centralism. Four interconnected elements implied by this
principle were hierarchy, centralization, political professionalism and
conspiracy (Korchak, 1994:213). As Korchak aptly observes, this is a
combination of features characteristic, on the one hand, of bureaucracy
and, on the other, of 'a plot-making terrorist organization' or a mafia
(1994:213). It is important to realize that even in Russia, where com-
munism originated, the revolutionary party (the Bolsheviks) based its
success, first, on its sizable military force (the Red Guard), and sub-
sequently on its extra-legal and virtually uncontrollable political police
(All-Russian Extraordinary Commission for Combating Counter-
Revolution and Sabotage), whose name, abbreviated to *Cheka*, became
a symbol of ruthlessness and terror (Curtiss, 1973; Heller, 1979; Legett,
1975, 1981). Characterized by a siege mentality, chekism was 'fixated
with conspiracy and counterconspiracy' (Waller, 1994:34).

In his monograph on the KGB in post-communist Russia, Michael
Waller shows how the chekist mindset, 'nurtured in isolation from
society for more than seven decades', has outlived the Soviet Union
itself (1994:25):

> The KGB was virtually the only major Soviet institution unscathed by
> perestroika . . . Gorbachev enjoyed the strong support of the KGB

leadership and vice versa. His was a conscious policy to strengthen the KGB while attempting to create the conditions for Soviet society to become more creative and dynamic (1994:2).

Gorbachev inherited the chekist system in toto and instead of marking it for reform, he insulated it from the publicity of glastnost and the structural changes of perestroika. Under Boris Yeltsin the Russian Federation maintained the cultural continuum. . . . (1994:5,7).

Instead of starting anew and ridding itself of the chekist legacy. . ., the Russian government chose to embrace it and rely upon it as a pillar of stability and a starting point for future society (Waller, 1994:148).

Contrary to popular opinion, which holds that the label of 'police-state' no longer applied to the Soviet bloc states by the 1980s,[3] the evidence from both the Soviet Union and Poland points to a considerable strengthening of the structures and status of secret services in that decade. Indeed, it may be argued that with the weakening of the monopolistic party, these services were bound to grow in importance as they attempted to both govern and police society. In Poland this occurred in conjunction with the marked militarization of the state.

Brian Chapman distinguishes between the 'totalitarian state' and the 'totalitarian police-state'. In the totalitarian state, the central place is occupied by the monopolistic party which acts as 'both the arena in which the ideology is worked out and the guardian of that ideology' (1970:112). Party members are appointed to top positions in various sectors of public life to ensure conformity to the ideology and the party line. The party has a monopoly of communications, the means of combat and coercion, a centrally directed economy and the political police. The police is 'a leading state body', but 'remain[s] subject to the overall control of the party' (1970:114). If not impeded, however, the realm of control exercised by the party expands quickly to cover thoughts, intentions and human relationships, eventually reaching into the party itself.

The totalitarian state becomes a totalitarian police-state when its police agencies are no longer pliable tools, but 'become the leading apparat of the state', and the role of the party is undermined (Chapman, 1970:114). In Chapman's words:

The police apparat then comes to regard itself as the only wholly reliable bastion of the state, and to consider all other apparats as suspect. The professional scepticism of policemen becomes elevated

> to a theory of the state. . . . In a totalitarian police state all is suspect, everyone a potential traitor. (1970:114)

While the prominent role of secret services in Communist party-states may qualify them as *totalitarian party/police-states*, the dynamics of the relations between the Party and the police apparatus have not been adequately documented, either for the Soviet Union or Poland. Our thesis is that by the 1980s, of the three pillars on which the Party based its power – ideology/the media monopoly, the state economy and the security/military apparatus – only the third remained robust. Assuming this was the case, the changed situation would necessitate a re-conceptualization of both the Party's self-image (equating it more directly with the *nomenklatura* members and their interests rather than the ideological project) and its relations with the secret services, whose relative power increased considerably.

Within this scenario, the character of secret services would also undergo important changes. No longer expected to act in the name of an ideology, these services would have been used more flexibly and pragmatically to enforce the state's policies and facilitate the self-serving strategies of its élites. This stage we label a *post-totalitarian party/police-state*. The emergence of the secret services as the most effective, best-informed and best-organized force in the Soviet and Polish political landscape of the 1980s would make them attractive to the members of the party apparatus, who would seek new partnerships to fortify their shaky political and economic position and secure their future.

Our research attempts to explore the mechanisms of operation and the far-reaching implications of this new form of state, based on the empirical data we have been able to gather. While we do not include the Soviet Union in our study, tracing any possible shifts in the relations between the KGB and Polish security services will obviously be relevant to our topic. If our hypothesis about the increased prominence and relative autonomization of secret services in the 1980s is correct, then it becomes logical to ask about their role in the negotiated top-down 1989 revolution in Poland.

Yet the overwhelming majority of students of the East/Central European transformation have remained closed to this question.[4] Engrossed in explorations of matters more familiar to social scientists, they somehow lose sight of the massive security apparatus and its extraordinary resources and knowledge. Consequently, the stalwart domain of various communist police agencies' covert actions, initiated both locally and in Moscow, is almost completely ignored, even though, in the late 1980s,

various covert actions still originated in Moscow and no important local operation could take place without KGB approval.[5] Moreover, a growing body of evidence indicates that there was a clear increase in clandestine activities in Poland by the KGB and other communist intelligence agencies (especially the East German STASI), who – alarmed by the Solidarity movement and the political crisis in Poland – were busy recruiting their own informers at all levels of society and, above all, in its upper echelons (Dziadul, 1991:8; Gauck, 1994:16; Piecuch 1996:307–19; WIK, 1996:11).

Privatizing the police-state

We contend that the context that made possible the phenomenon described by us as the privatization of the police-state included a more general process of privatization of the communist state, understood as the disappearance of 'mechanisms that can be reasonably said to ensure the articulation and implementation of the general interest' (Kamiński, 1992:135). While the Soviet doctrine did not allow for recognition of any private interests and aimed at suppressing them, Soviet-type states ended up erasing 'the cultural grounds upon which the distinction between the private and the public makes sense' (ibid.). These states pursued the goal of deliberate destruction of the cultural meaning of all roles other than official ones, but evolved into structural shells dominated by informal interests, with no sense of any transcendent purpose. In Kamiński's words: 'In the absence of transcendent ethical standards and when political control has been exhausted by the war against tradition, narrowly grounded private concerns start to predominate' (1992:137; Kojder, 1995a, 1995b:328–31).

If our theses are correct, the demise of communism and the privatization of the economy took place within the institutional and human framework of the post-totalitarian police-state. The central thesis of our book is that we cannot properly understand the trajectories of the momentous East/Central European transformation unless we take seriously into consideration the domain of covert actions undertaken by various actors, both domestic and foreign. We seek to shed some light on a cluster of such actions, which we have subsumed under the rubric of the privatizing of the police-state process. We postulate that this process – shaped largely by numerous, sometimes divergent, covert actions – has provided an invisible structure to other, more apparent processes that constitute the East European transformation, such as democratization (especially the party system formation), the privatization of the economy and the development of a free market

system. The formal and informal power networks that emerged in (and through) the process of privatization of the police-state made possible the subordination of important aspects of the transformation process to the short- and long-term interests of the old system's political élite.

What makes this hypothesis plausible? One of the systematic functions of the communist security services, which has been almost completely overlooked by students of communism, relates to their pivotal role in managing the command economy. None of the authors of numerous books on the KGB[6] has paid any attention to the secret services' routine, *everyday* supervision of the operation of the command economy.[7] The primary focus of the majority of Western scholars on the KGB's foreign intelligence operations, while understandable, does not help to capture the actual dynamics of the communist system. Close monitoring of economic processes was among the routine and continuous tasks of security service operatives and the networks of informers they cultivated. Every single economic institution had its own 'guardian angel' from one of the secret services. Their main task was to recruit and cultivate webs of secret informers within institutions under their guardianship. We shall elaborate on this in Chapter 3, which depicts the anatomy of the communist police-state.

This domain of communist secret services operations must be acknowledged in order to account for the process of the economic endowment of the former communist *nomenklatura*, or the 'power conversion process', that is, the conversion of political assets into economic ones (Staniszkis, 1991; see Chapter 6). The same applies to the second stage of this process, whereby the *nomenklatura*, who had initially traded their political capital for economic gains, used these gains to recapture political power.

Empirical indicators of privatization of the police-state would include such actions as: converting certain of its functions into private operations; private appropriation or selective destruction of the contents of immense secret police archives; the participation of secret services and their agents in large-scale privatization schemes that channel state resources to the former *nomenklatura* networks, and the infiltration and manipulation of various agendas of political parties and the state.

The working hypothesis that underlies this entire project is that the peaceful 'transfer of power' in 1989 was contingent on unencumbered opportunities for advancement of the old regime's power-network interests, and that the secret services played a vital role in this process, providing necessary intelligence, international contacts, skills and protection (see Zybertowicz, 1993). This hypothesis refers to a multitude

of complex processes that we will explore and contextualize in this book.

Methodological approach and sources of information

Our research combines elements of deductive and inductive approaches. While we have developed a general conceptual framework and several guiding hypotheses to be tested through our research, we have also been open to new issues and leads that emerged from the data.

Since this is novel, ground-breaking research, on matters generally neglected by Polish social scientists, we have not been able to rely on a body of previous academic work. While we refer to the existing scholarly literature, our main method of information gathering and assessment is based on the 'straight intelligence' approach. This consists of the construction, in a theoretically informed manner, of complex approximations of real-life processes, based on data largely accessible to the public but generally dispersed and seemingly unconnected. We cull these data from diverse sources, including official reports, minutes of parliamentary debates, legal materials, leaked and de-classified documents, memoirs of formerly prominent figures, published interviews, journalists' reports and so forth. A special category of published materials is comprised of memoirs and book-length interviews with former prominent figures of the Ministries of the Interior and Defence (including military intelligence), predominantly from the communist period, but also from the years of transition.[8] Based on our earlier research experience and long-standing interests, we use our own judgement as well as standard corroboration techniques in assessing the credibility, hidden agendas and relative weight of examined sources and materials. We also draw on our interviews with well-informed individuals, many of whom have to remain unnamed due to the confidential nature of these conversations. These interviews include Andrzej Zybertowicz's earlier interviews[9] with former secret services operatives and his follow-up contacts with some of his respondents, and a series of tape-recorded interviews conducted by Maria Łoś in 1994, 1995 and 1998, in Warsaw, with officials from the Ministry of the Interior and the headquarters of the police and penal authorities as well as with members of parliament, senators and representatives of other political institutions.[10]

The main difficulty in framing our research stems from the lack of recognition within the social sciences of the explanatory power of concepts pertaining to secret control apparatus and covert operations.[11] This may be partly explained by the fact that the key sociological

categories and cognitive paradigms were formed in the nineteenth century and are therefore not sufficiently attuned to the twentieth century's experience of totalitarianism. The popular imagery surrounding the shadowy activities of the secret police, coupled with common distaste of researchers for attributing agency to obscure and elusive forces, have somehow made these phenomena less than respectable objects of study. We try, therefore, to develop our own conceptual framework by testing and reshaping existing concepts that appear potentially useful, and introducing new ones. Since we consider it important to integrate this type of inquiry into the overall body of social science scholarship, we try to avoid specialized terminology and descriptions of secret services operations.

Finally, we are aware of the epistemological quandary involved in any attempt to reconstruct history. While sceptical of any claims of one authoritative version of historical processes, and sensitive to the reality of various subjective readings and recollections of historical collective experience, we are also aware of blatant efforts to rewrite the recent past to suit the interests of various groups. In writing this book, our allegiance was exclusively to the ideal of intellectual honesty. Without making unrealistic claims of full objectivity and separation between our minds and our topic, we have tried to be careful and cautious in our probing of evidence relevant to what we perceived as an inexplicable gap in the prevailing interpretations of a momentous and still unfolding process.

Our study extends from the beginning of the 1980s to the late 1990s. We close our inquiry in 1998, one year after the September 1997 general elections, in which the coalition of the so-called post-communists or ex-communist forces was replaced by a new coalition comprised of post-Solidarity opposition parties representing a range of political beliefs.

Structure of the book

We present our findings in two major parts. Part II, 'The 1980s: The Post-Totalitarian Party/Police-State?' starts with Chapter 3. It offers a concise account of the anatomy of the police-state in Poland during the last decade of the communist regime. This provides a context for our research and substantiates our claim that this context cannot be ignored. In this chapter we test the hypothesis that the Poland of the 1980s met the criteria of the post-totalitarian party/police-state. In the final section, on macro and micro power relations, we discuss the specific strategies of regulation employed by that state, and assess the

applicability of selected theoretical insights by Michel Foucault to our research. We also examine various types of assets of the security apparatus that are potential objects of privatization and manipulation.

We proceed in Chapter 4 to analyze the 'state crime'[12] dynamics in the 1980s, to provide more tangible content to the formal context presented in the previous chapter and create a matrix of reference points that will be useful in our further inquiry. We focus on the criminal and criminogenic nature of the prevailing systemic arrangements, as well as on crimes committed by, on behalf of, or with encouragement from the Party, especially those committed by the security services. We include here such actions as the introduction of Martial Law in 1981; murders allegedly committed by the police; the cover-up of the security service's criminal enrichment schemes; and the *nomenklatura*'s appropriation of the state economy and involvement in economic crimes.

Chapter 5 explores and documents the role of the secret services in the Solidarity movement and the 1989 Round Table Agreements. It analyzes the strategies employed by the secret services in dealing with the opposition throughout the 1980s and their apparent shift in focus, from eradicating to dividing, steering and harnessing the opposition. Insights from Gary T. Marx's ground-breaking research on the manipulation of social movements are utilized and built upon.

In Part III, 'After Communism: The Posthumous Life of the Police-State', we move into the 1990s. In Chapter 6 we examine how the technologies of power in the 1980s helped produce certain forms of capital – social, cultural, moral, political and economic – and how this multifarious capital has been accumulated, exchanged and transformed during the years that have followed. Our analysis leads us to a new, more nuanced and complex interpretation of the power conversion process and goes beyond it.

In Chapter 7 we scrutinize the nature and political context of changes in the structure and personnel of state security and control apparatus and assess their capacity to thwart the police-state legacy. We also describe developments and debates related to 'lustration' and 'decommunization' as methods of dealing with this legacy. (Lustration involves identifying former secret-service agents and collaborators among candidates for and holders of public offices. It may also involve barring them from holding such offices for a specified period of time. Decommunization applies this process to the former members of the Communist Party apparatus and other top officials of the communist state.)

Chapter 8 documents and analyzes a cluster of largely covert actions surrounding the process of privatization of the police-state, including its

structures, resources, networks, skills, information and secret files. This process also includes the creation of private security and detective companies based on the resources of the state security apparatus. We track the transformation of organized state violence into organized private violence, whereby former secret-service functionaries become highly skilled and well-connected private enforcers in post-communist turf wars, rackets and high-stake takeovers.

Furthermore, in this chapter we also trace the role and fortunes of the main players identified earlier – the communist system's power networks – in the period of dynamic transition towards market and democracy. We postulate that those old networks, partly legitimated and shielded by the new establishment, have become a vital infrastructure for new forms of organized and state crime. Our research challenges the prevailing view that the countless cases of large-scale graft and organized economic/financial rings are 'normal' by-products of massive systemic transformations, and suggests that this web of networks presents a structural obstacle to the proper functioning of the newly fledged democratic state.[13] The chapter tests a hypothesis that the ramified covert operations related to the privatization of the police-state provided a lasting invisible structure for other overt processes constituting the post-communist transformation.

In Chapter 9, we document and interpret the near-paralysis of the post-communist justice system in cases involving criminal violence and corruption by the communist security and military apparatus. We uncover a number of strategies aimed at securing the impunity of those implicated in such crimes, including the struggles over the verification of the communist judiciary; the statute of limitations; the courts' access to secret-services operational files; and parliamentary privilege. We conclude that the police-state disintegrated but did not disappear in 1989. Instead, its influence continues through new incarnations more suitable for the new market economy.

Chapter 10 places the processes described in a global context of multiple transformations in the post-industrial, post-communist world.

In our final chapter we present conclusions and theoretical generalizations based on our research. As with any pioneering effort, we also acknowledge some unanswered questions, barriers to information-gathering, and the not-always-unequivocal implications of the established 'facts'.

II

The 1980s: The Post-Totalitarian Party/Police-State?

3
Anatomy of the Police-State

> When our other social and political structures are weak, the Ministry of the Interior must be powerful and we must protect it.
>
> General Wojciech Jaruzelski[1]

The missing dimension

By far the most important tool of Communist Party rule was the state security apparatus. In this chapter we demonstrate that the extent and depth of this apparatus's penetration into both formal and informal structures of social life justify the use of the 'police-state' label with respect to the Poland of the 1980s.

The prolonged period of decadence and the gradual disintegration of the regular party-state control system, following the military suppression of the Solidarity movement in December 1981, particularly contributed to the state's greater dependence on the secret police. Contrary to what some commentators have implied, the Communist Party did not abandon its reliance on terror in the post-Stalinist period. While it toned down the violence considerably, it had no choice but to continue to rule through fear and to preserve the paramount status of the Ministry of the Interior. Despite a modicum of change, there was a basic continuity in the personnel and methods of the ministry throughout the communist period.

The police-state is usually viewed as an essential element of a totalitarian regime and is understood as:

> Any political system, regardless of its ideology, where the use of organized violence is not under social control, where the instruments

27

of coercion are free to act arbitrarily, or where these serve the ends
only of the ruling élite. This implies the absence of rule of law, or any
autonomous legal framework operating independently of the police
and the ruler (...).
The chief goal of the police [in the police-state] is generally the
suppression of political opposition. (...) Another key function of
the police is the collection of information, surveillance of all activity
and the creation of a climate in which individuals are atomized in
order to prevent the emergence of any social solidarity which might
threaten the power of the ruler. (Schöpflin, 1987:431–2)[2]

Although various democratic states, most notably the United States,
have been described at times as police-states,[3] we suggest that the exist-
ence of even considerable abuses of law and civil rights of citizens by
intelligence and security agencies does not automatically warrant this
categorization. Even those who use the label in this context often refer
also to the control role played by such factors as investigative reporting,
parliamentary probes and independent watchdog organizations, ele-
ments that are hardly compatible with the pure police-state model. In
a police-state, neither independent organizations nor democratically
elected bodies (which are thus, at least to some extent, accountable to
the public) can exist.

Taking stock of the alarming extent and manner of the US govern-
ment's domestic intelligence activity in the period from the 1950s to the
1970s, David Wise comments:

An American police state has evolved, operating in the shadows side
by side with the legitimate system of government. It has emerged
in spite of the Bill of Rights and the protections of the law and the
Constitution. We have created a uniquely *American* police state, one
that has managed to grow and operate within, or at least alongside,
the democratic system. Naturally, by Nazi or Soviet standards,
America is not a police state. But the dictionary definition does not
require the extremes of a Gestapo, or a KGB; it defines a police state
as 'a government that seeks to intimidate and suppress political
opposition by means of police, especially a secret national police
organization.' The FBI and the CIA have done precisely that. (Wise,
1976:398)

While we recognize the illicit nature of some of these activities and
the threat they pose to society and the democratic system, we have

reserved the 'police-state' label for a state characterized by endemic reliance on secret police in the performance of most state functions.

Empirical reasons supporting the claim that Poland of the 1980s not only met the police-state criteria but also experienced its considerable expansion include the following:

1. Martial Law, implemented in December 1981, elevated dramatically the already prominent positions of both the Army and Ministry of the Interior (hereafter *MSW*, its Polish acronym) relative to other agencies of the party-state.
2. One powerful individual, General Wojciech Jaruzelski, gained full control of all secret services as well as uniformed police forces.
3. Police activities directed against society at large were intensified. All secret services (including the foreign intelligence), as well as the uniformed police (or militia, hereafter MO), were instructed to mobilize against the 'opposition' (Dominiczak, 1994:469, 664, 471; Piecuch, 1993:171, 236; Żabiński, 1990:3).
4. The MSW's structure was repeatedly reorganized, reinforced and expanded throughout the 1980s.
5. There were numerous signs that the balance of power was shifting from the Party to the consolidated structures of the MSW and the Army.
6. Finally, in addition to the continuous subordination of Polish secret services to the Soviet command, the 1980s witnessed an extraordinary concentration of KGB officers in Poland (including the so-called 'illegals'[4] brought especially from Western Europe) and their intense efforts to develop their own base there in order first to counter and later to steer and exploit the Polish 'counter-revolution' (see, for example, Andrew and Gordievsky, 1990:484–5). With the weakening of the Party, the Soviet influence had to be channelled increasingly through the security route or even through direct KGB operations and intelligence-gathering that bypassed Polish services entirely.

We will elaborate on the main aspects of these developments. General Jaruzelski, who had been a vice-minister and Minister of Defence in the 1962–83 period, became Prime Minister in February 1981 and, eight months later, the First Secretary of the Party. (He remained as Prime Minister until November 1985 and as First Secretary until July 1989). In December 1981, he appointed himself chairman of the Military Council for National Salvation (WRON) – a non-constitutional body

which oversaw the implementation of Martial Law. In 1983 Jaruzelski resigned as Minister of Defence, but was designated by the State Council as the Commander-in-Chief of the Army in the case of war. He assumed direct control over the MSW's Party organization in 1984, in the aftermath of Father Jerzy Popiełuszko's murder by a group of that ministry's operative officers (see Case Study 2, chapter 4). In 1985, he exchanged the position of Prime Minister for the chairmanship of the State Council, which he held until 1989, when he became President of Poland, a position he held until December 1990.

In July 1981 Jaruzelski nominated his long-time comrade, former deputy chief of Military Counter-intelligence and chief of Military Intelligence, General Czesław Kiszczak, as the new Minister of the Interior. (Kiszczak remained in that office until July 1990.) From December 1983 the latter also chaired the Committee for Legality at the Council of Ministers that co-ordinated the work of the Ministry of Justice and the office of the Prosecutor General.

The configuration of power in Poland during the 1980s was therefore quite unique, given the Party leader's direct and virtually unchallenged control not only over the Party apparatus but also over the state administration, the Army, and both civilian and military secret services. As a historian who examined the archives of the State Defence Committee (KOK) observed: '[D]ecision-makers of that period, especially among the military, were accustomed (virtually throughout the 1980s) to equate the personage of General Jaruzelski with the state. This ultimately precluded them from searching for solutions different from those determined by Jaruzelski himself' (Kowalski, 1996:58).

Under Martial Law (initiated in December 1981, suspended the following December and revoked in July 1983), many regional bosses of the Party became puppets who played assigned roles in the 'normalizing' operations conducted by the Army and secret police (Ochocki, 1992:34). More than 8000 military commissars were dispatched to many state institutions (Paczkowski, 1995c:515). A number of high-ranking military officials (colonels and generals) took positions in the civilian administration, both regional and central. In addition to the Ministers of the Interior and Defence, four other cabinet members in the 1980s were generals (including one who was formerly the chief of Military Intelligence).[5] Another general was appointed Chair of the Supreme Chamber of Control (1983–91) and a number of others became Politburo members and *apparatchiks* of various ranks. Regional (*voivodeship*) militia commanders, who in reality also had under their authority local sections of the Security Service (the SB), were no longer subject to

full supervision by the regional Party committees. They were instructed to forward some of the information collected directly to the MSW head-quarters, thereby bypassing the local Party secretaries (Ochocki, 1992: 155, 212–13, 218). Significantly, a week before invoking Martial Law, the legislature (or *Sejm*) approved a new statute on the MSW that substan-tially broadened that ministry's powers.[6]

As we have already mentioned, the remarkable strength of the opposi-tion movement in Poland and its ability to organize itself, as demon-strated in the late 1970s and in the 1980s, prompted the party-state's greater day-to-day reliance on the Army, the secret services and covert measures in general.

Operational surveillance and control

The main organizational infrastructure of the Polish police-state of the 1980s was comprised of two ministries: the Ministry of the Interior and the Ministry of Defence (MON). Their structure and tasks were shrouded in complete secrecy. When referring in this book to police agencies and policing, we normally have in mind all those organizations which rely in their activities on various forms of operational work/control. This implies that the efficacy of their methods of obtaining information depends on the secrecy of their sources and techniques.

It is worth emphasizing that essential features of operational surveil-lance and control[7] stem from their covert, largely invisible nature. Individuals or groups subjected to this kind of control, even when aware they are being targeted, do not know why and by whom they are being monitored, nor do they know how or when the surveillance takes place. They are unable to determine the exact manner in which their lives are being observed. Is their correspondence intercepted? Only some or all of it? Are they being followed? Routinely or occasionally? Are their telephones, offices or homes bugged? Who among the people they are in touch with are secret-police informers? What about friends who encourage certain activities? Are they secret-police collaborators or *agents provocateurs*? Paralyzed by these uncertainties, they are even incapable of playing deception games and passing on false information.

In communist countries when a group or institution (for instance, a scientific institute) was placed under operational surveillance and con-trol, the secret police were often able to acquire enough knowledge about developments within the group to secretly influence its inner life. That usually meant that many secret collaborators (hereafter SCs) were already operating inside the targeted group. They were kept

unaware of each other's identities. When ordered by the police to do so, they could influence the behaviour of key figures in the group through misinformation, manipulation and so forth. Operational surveillance and control constitutes, therefore, a distinct mode of social control which can be classified as *regulation through infiltration*. (This point will be further developed in the last section of this chapter.)

Under communist regimes, operational surveillance and control were employed routinely and on a massive scale. Their comprehensive nature was assured by the principle of so-called 'object protection'. Every single institution, work unit and social circle was assigned a special 'guardian angel' from one of the secret services. The object-protection rule covered all government ministries; central, regional and local, state and co-operative organizations; industrial plants; educational establishments at all levels; the media; associations; foreign missions; local councils; sports clubs; theatres; symphony orchestras; restaurants, and so forth. In brief, every single facet of social and economic life had its own contingent of guardians. All the available evidence corroborates the following statement made by the first non-Communist Minister of the Interior, Krzysztof Kozłowski: 'From the statistical point of view, one can be sure that in every social milieu there were operating individuals connected to the secret service' (Kozłowski, 1990:3; Piecuch, 1993:354, 381; on SB informers among prostitutes see Szpecht, 1990).

The primary task of the guardians was to recruit and cultivate a network of informers within assigned target areas and to gather inside information about the overt and covert dealings of the unit and its individual members, as well as their possible political and criminal deviations. While the top management in all state agencies was obligated to extend full co-operation to the assigned guardian, they were not entitled to know the identities of the SCs operating within their establishments.

Some institutions, such as the Ministry of Foreign Affairs, the Ministry of Foreign Trade and its delegations abroad, the State Press Agency, the telecommunications, postal services, airlines and industrial plants of strategic importance (like major electronics firms), covertly employed functionaries of the MSW or the MON who then held dual appointments (Dubiński and Jurczenko, 1994:39; Kosobudzki, 1990: *passim*; Piecuch 1996c:226–7).

The Ministry of the Interior (MSW)

The Ministry of the Interior[8] has often been referred to as 'a state within a state' (Pytlakowski, 1991; Malinowski, 1992:68–9). Its structure and

functions were regulated by secret decrees. It was charged with policing all aspects of the society, including the command economy. While the Party traditionally treated the MSW as its subordinate, in the 1980s, under the ministership of General Kiszczak, its various divisions achieved some degree of autonomy, at least on the regional level (Ochocki, 1992:11, 128).

The various services making up the ministry were largely independent of each other and carried out their own recruitment of informers, with the aim of systematic penetration of all areas of social life.

The MSW's Intelligence Service

The MSW's Intelligence Service – *Department I* – had 600 to 700 regular employees (Kaszyński and Podgórski, 1994: 79[9]). Intelligence had its own recruitment officers operating in all major urban centres of Poland and probably a few hundred informers throughout the country. A substantial number of Intelligence operatives worked as diplomats officially employed by the Ministry of Foreign Affairs, both in Poland and in diplomatic missions abroad (Kosobudzki, 1990).

Standard intelligence tasks, focused primarily on NATO countries and co-ordinated by Moscow, constituted only part of Department I's diverse operations. In the 1980s many, if not the majority, of Intelligence activities were directly related to internal affairs. Intelligence was also expected to 'take care' of all major international financial and trade transactions conducted by the Polish state's administrative and economic institutions. 'Taking care' involved thorough vetting and surveillance, by both the Intelligence and Counter-intelligence departments, of everyone participating in important international trade negotiations; ensuring that official delegations included SCs and/or undercover agents employed in relevant trade agencies; comprehensive protection and control of the circulation of documents; attempts at infiltration of the foreign parties involved, and so on. Among the top priority targets of Intelligence were the Vatican, Radio Free Europe and Polish émigré communities abroad (Szaniawski, 1992:2).

Section XI of the Intelligence Service concerned itself exclusively with infiltration of the élite within the Solidarity movement, both inside the country and among Polish émigré circles (Piecuch, 1993:*passim*, 1996b:*passim*, 1996c:*passim*).

Following 1982, when 'Polonia' (or émigré) companies, founded by foreign nationals of Polish extraction, were made legal, not only did Intelligence become involved in their close monitoring, but it also initiated the creation of several such companies. One of the goals of

this direct engagement was the monitoring and interception of funds that the underground Solidarity movement was transferring from the West to Poland using 'Polonia' companies (Bosak, 1992:6).

During the 1980s old ideological criteria were superseded by pragmatic justifications and economic motivations (Zybertowicz, 1994). This trend created favourable conditions for diverting much intelligence effort to semi-private, business-like operations that offered opportunities for acquiring wealth. The operational officers involved benefited from the many resources and opportunities provided by the Intelligence Service including freedom of travel, exemptions from customs control in many Soviet bloc countries, access to inside information of great economic value and participation in ramified networks of personal connections. In the 1980s, this tendency to pursue private rather than systemic interests profoundly affected at least some parts of the intelligence profession.[10]

The MSW's Counter-intelligence Service

Department II, Counter-intelligence, had divisions in every *voivodeship*. In addition to countering NATO's intelligence activities in Poland (Piecuch, 1993:469–72), its operations covered foreign diplomatic missions, trade delegations, trade agencies, journalists and, in general, foreign nationals staying in or visiting Poland. The Department's surveillance extended also to communication networks, transportation (until 1983, when this was taken over by Department V of the security service: see below), power stations and energy transfer units. It was also in charge of providing protection for the civilian environment of the Polish Army and the Soviet Army units stationed in Poland.

An essential, if not principal, task of Counter-intelligence in the 1980s consisted of monitoring and intercepting foreign supplies for the underground Solidarity movement, such as printing equipment and materials, books, communication devices and money (Piecuch, 1993: 492–7:*passim*; 1996b:*passim*; 1996c:*passim*; Żabiński, 1990:3).

The MSW's Security Service

The Security Service (SB) employed around 25 000 people in 1989 (Widacki, 1992:178; Piecuch, 1996a:402[11]). There were about 8000 operative officers who were charged with building their own networks of informers (Mikos and Podgórski, 1992:5). Given that General Kiszczak had issued an order specifying that every operative officer was to control approximately 10–12 informers (Dominiczak, 1994:423; Bereś and Burnetko, 1992:49), the overall number of SB informers in the late 1980s

was probably about 100 000.[12] Considering that some of these recruitment efforts were more solid than others and that some would be produced strictly to fulfil the plan[13] or in response to various bureaucratic pressures, it can be conservatively assumed that only about half of these 'contacts' were actually productive.[14]

The SB consisted of a number of departments and bureaus, which had regional branches in all *voivodeships*.

Department III covered predominantly white-collar institutions including health care, education, the media, state administration (including the justice system) and an assortment of social and political organizations including the Party satellite organizations. For example, in April 1981 there were more than 500 secret collaborators among the country's journalists, a number that probably increased during the 1980s. They managed not only to thoroughly penetrate this important professional group, but also to influence its activities and output.[15]

In November 1984, a special Operational Team of Department III was established. The Team infiltrated the social circles of Mieczysław F. Rakowski (then the deputy speaker of the *Sejm*, subsequently Prime Minister and, eventually, the last First Secretary of the Party); Hieronim Kubiak (a Politburo member in 1981–6); and leaders of the two satellite parties, the United Peasant Party (ZSL) and the Democratic Party (SD). Moreover, they spied on hundreds of officials in central institutions such as the *Sejm* (including deputies), the State Council, the Supreme Chamber of Control, the Party's Central Committee and the Politburo (Piecuch, 1993:320–52;[16] Malinowski, 1992:6, 9–72).

Department IV targeted organized religions and national minorities (Widacki, 1992:75–94). About 90 per cent of its resources were devoted to the surveillance and control of the Catholic Church. Files were kept on all priests and members of religious orders. Social bodies that had close contacts with religious institutions, including charities, publishing houses and Catholic journals, were also under close operational surveillance and control. In 1977 Department IV had more than 4500 SCs, many of them priests (Dominiczak 1994:610).

The Department's Disorganization ('D') Section and its local branches in several regions were involved in a whole range of insidious activities: mounting anonymous smear campaigns against clergy and other people active in churches; generating strife; publishing bogus memoirs and special periodicals clandestinely sponsored by the MSW; staging brutal assaults; destroying property; kidnapping; making illegal threats and carrying out break-ins, arson and murders (Komisja, 1991:219–20; also Albert, 1994:847–8; Fredro-Boniecki, 1990; Widacki, 1992:64–73;

Zieleniewski, 1990). There was also a special task force charged with the infiltration and disorganization of religious pilgrimages. In addition to planting secret agents disguised as pilgrims, there were routine occurrences of slashed tyres, fouled sleeping bags and water containers, stolen identity papers and so forth. Pornography and stupefying substances were also used to compromise or remove particularly active participants in pilgrimages (Komisja, 1991:221–2).

One of the noteworthy outcomes of Department IV's work was the undeniable feebleness of lay parish councils. Well aware of the risk of repression facing individuals engaged in parish activities, the Catholic Church had to forgo any active encouragement of such involvement, especially in small towns and rural areas (Żaryn, 1997).

Department V was in charge of industry, trade, the banking sector, the railway system and the research divisions of central government agencies (Dominiczak, 1994:391).

Operational surveillance and control, mostly through recruitment of informers, were the main tasks of 'guardian angels' assigned to work units by Department V. In larger factories, the number of informers could easily total several dozen (Dominiczak, 1994:46). The guardians were expected to guard against any oppositional activities in work units, identify informal leaders, stave off strikes and prevent sabotage. This was accomplished by several methods:

1. 'Warning talks' were held with individuals suspected of inciting strikes.
2. Talks were held with potential leaders and other influential individuals within the company in order to discourage others from participating in strikes.
3. Workers who appeared to contribute to the climate of unrest were detained.
4. Companies on strike were isolated by barring access to outsiders.
5. Guardians spread disinformation and launched schemes to facilitate the detection of ringleaders and instigators of unrest (Dominiczak 1994:291, 294).

Another important task assigned to guardians was the protection of state property, which included prevention of such activities as corruption, abuse of power, mismanagement, theft and destruction of state facilities (Policht, 1987:3). The SB supplied the Party with ample information about these types of irregularities. According to a former operative officer of Department V, in the second half of the 1980s, the

work of guardians was in many regions focused more on economic issues than on offsetting the political opposition.[17] Among systemic problems that guardians were charged to check and prevent were informal, horizontal bonds among various state-owned companies. The ties between them were supposed to be purely formal, based on the grid of centrally planned economic co-operation (see, below, the section on secret services and the command economy). Yet information supplied by guardians tended to be ignored, due in no small part to informal financial bonds between the economic sector and prominent Party officials (Dominiczak, 1994:299–300; Zieliński, 1991:10; Golimont, 1992:123). Despite their status as trusted functionaries of the police-state, guardians were often disillusioned as their information-gathering zeal clashed with the omnipresent top-level corruption.

Department VI was involved with agriculture, food processing, the forestry industry and environmental protection. It was also responsible for the Solidarity Union of Independent Peasants, and was charged with preventing any independent activities in rural areas. In many respects, this Department's work resembled the activities of Department V.

Department T specialized in operational techniques, including the installation of listening and monitoring devices and the bugging of telephone lines. Hidden surveillance devices were installed permanently in prisons, MSW safe houses and some hotels. Many important state agencies, foreign embassies and the residences of members of church hierarchies were also under continuous electronic surveillance (Dominiczak, 1994:64, 238, 383; Markiewicz, 1990; Ochocki, 1992:233–4). After the collapse of communism, SB-installed listening devices were discovered in all theological seminaries, the offices of Catholic Church officials and other related facilities (ira, 1991:3).

All SB departments relied on services provided by *Bureau B*, which specialized in observation. Bureau B also ran its own collaborators, especially in such public places as hotels or restaurants, likely to be entered by persons tailed by the secret police. In many cities the Bureau had permanent observation points, located in places close to the venues of public gatherings, churches, busy street intersections, entertainment establishments, hotels and so forth.

Bureau C, the archives, contained the files of more than 3 million individuals, both 'friends' and 'enemies of the people'. They comprised the present and past collaborators of the services and those individuals who were of operational interest to the services. Files of criminal offenders made up only a tiny fraction of all archival resources (Dominiczak 1994:423).

Bureau W carried out surveillance of the mail, an operation performed on a massive scale (early in 1989 the Bureau employed 700 people) (Markiewicz 1990). According to instructions issued in June 1980, the Bureau's tasks included: the interception and control of suspect mail, based on orders from the SB and other services, both civilian and military (Kamiński, n.d.:29); tracking down people identified through the intercepted mail; and protection of wire communications to prevent their use for hostile or criminal activities (Dominiczak, 1994:421).

Postal workers who inspected the mail were, in reality, undercover SB employees (Dominiczak, 1994:421–2).

All secret services, including military ones, also drew heavily upon the resources provided by the MSW's *Bureau of Passports*, which facilitated recruitment of SCs among individuals applying for passports to travel abroad.

The *Bureau of Investigation* took information acquired from various intelligence sources and transformed it into evidence fit to be presented in courts of law.

Other MSW-controlled agencies

The *Citizens' Militia* (MO – the regular, uniformed police) employed about 75 000 people in the late 1980s, including anti-riot troops. In addition, the Voluntary Reserve of the Citizens' Militia (ORMO) numbered about 350 000 members, but many of them were practically inactive. There were more than 6000 ORMO groups placed in work units (*Biuletyn*, 1989, no 90/X kad). To some extent the ORMO was used as a pool from which the so-called Trusted Persons (OZ) were drawn. They were not registered informers, but provided useful information none the less.

Yet another police organization within the MSW was the *Directorate for the Protection of Functionaries*, whose main function was to police the police. It recruited its own informers among militia and SB members. The Directorate had just under 200 operative officers (Widacki, 1992:152–3), but its number of collaborators is difficult to estimate.

Finally, the *Directorate for the Reconnaissance of the Border Guard* concentrated its recruitment of informers in those administrative districts that adjoined state borders (21 voivodeships out of the total of 49) as well as at international airports. There were 600 functionaries and an estimated 6000 informers.[18] Rather than guarding the border zone, this service in the 1980s was engaged largely in SB-like security activities focused on countering the opposition (Widacki, 1992:174–5; Lisiecki 1991; Piecuch 1996b:120–1). In exceptional cases, the Directorate was

authorized to extend its activities throughout the country (Piecuch, 1997:176).

Misdemeanour Boards[19] were hybrid bodies. Although they were subordinated to the Social-Administrative Department of the MSW, they were formally located within the structure of the local government administration. These boards were often manned by ORMO members. According to research done by two distinguished Polish lawyers: 'Ultimate oversight over rulings was exercised by the Minister for Internal Affairs [MSW], who among other things issued instructions relating to ruling policy... The bench [that made] the ruling was usually composed of individuals with some link to the Ministry of Internal Affairs' (Andrzejewski and Nowicki, 1991:80).

Misdemeanour boards came into being during the Stalinist era (in 1951) as totally arbitrary agencies adjudicating an open-ended category of 'penal-administrative' offences. In 1989 there was a total of 376 district boards, 47 regional boards and 49 special commissions. Together, they handled more than 500 000 cases a year. There was no due process or legal representation for the defendants and practically no possibility of appeal. Sanctions ranged from arbitrary fines and confiscation of property to detention or imprisonment. Board members had no legal expertise, and only about 12 per cent of the 35 000 members had college-level education. Approximately half were Party members (Andrzejewski and Nowicki, 1991:74).

The 1980s witnessed many spurious legal reforms, whereby the authorities attempted to create the impression of some liberalization of the law without actually enacting such liberalization. A striking example is provided by the 1986 act modifying certain provisions of the law governing public-order offences. The official rhetoric lauded the act as liberal, de-penalizing and humanitarian. In reality, it furnished the authorities with a more repressive and efficient tool for harassment of anyone suspected of even loose contacts with opposition circles. The act authorized the transfer of public-order cases from courts to misdemeanour boards, thus depriving defendants of even those limited rights they could hope to have under court proceedings and subjecting them to economic sanctions higher than those permitted in court.

It was generally known that misdemeanour boards were an expedient mechanism for harassing and penalizing opposition activists and their supporters. The first deputy to Interior Minister Kiszczak, General Władysław Pożoga, confirmed that these boards, 'controlled by the SB, were used to molest dissidents' (Pożoga 1992:142). The MSW and Army officers and the ORMO members could not be submitted to

their proceedings (Pomianowski and Szczytnicki 1993; *Biuletyn*, 1989, no. 90/X kad.:4).

Furthermore, both the SB and the MO were very heavily involved in prisons and jails, where they routinely conducted their secret operations and interrogations (Alexander, 1986:49–64). The real bosses of penal institutions, the special prison police (Protection Section), were only formally employed by the Ministry of Justice; their actual employer was the Ministry of the Interior (Alexander, 1986:60–1; Moczydłowski, 1988:323). Under Communist party rule, prisons served both as places of repression and production. Their considerable industrial output figured in the Central Plan, though this was not generally known as the Plan itself was a secret document. Prison regulations, in force from 1974, were arbitrary in nature and extremely repressive; they were also classified (Porowski, 1980:57–8; 'Zarządzenie...',1974).

Every department of the MSW was assigned special Soviet advisers who were granted full access to operational files.[20] Moreover, a Unified System of Data on the Enemy, operated from Moscow, was implemented in Poland in 1978. It was a fortnightly updated, computerized network that contained information on all the internal and external 'enemies of socialism' covered by secret services of the Soviet Bloc countries. Its Polish data is said to have been destroyed ('Tajni współpracownicy...', 1992:5; Grocki, 1992: 64–6; Jachowicz and Fedor, 1992:4).

Table 3.1, based on information derived from several sources (especially Markiewicz, 1989 and Piecuch, 1996a: 402), gives the number of MSW employees on 31 July, 1989.

The ministry itself and its central agencies employed 8416 uniformed staff and 2035 civilians (Markiewicz 1989; Piecuch 1996:402). The numbers quoted in Table 3.1 do not include the Border Guard and the Vistula Military Units, which were also under the command of the MSW.

Table 3.1   Number of Ministry of the Interior employees on 31 July 1989

	Number of positions according to the statute	Rate of vacancies (%)
Militia	62 276	11.2
Anti-riot forces	12 566	24.7
Security Service (SB)[a]	24 390	7.1
Administrative and logistic units	20 673	3.4
Schools (staff + students)	4 594	27.9
Total	124 499	8.7

[a] Including the MSW's Intelligence and Counter-intelligence forces.

The Vistula Units were roughly 10 000 strong, and provided protection for government buildings and installations.

The Ministry of Defence (MON)

Any attempt to substantiate the claim that Poland was a 'police-state' must also include the role of the Ministry of National Defence. The military played a leading role in the 1980s, and its secret services were heavily involved in the surveillance and secret policing of the 'internal enemy', the domestic anti-communist opposition.

The Military Intelligence Service

While the Military Intelligence Service was charged with standard intelligence tasks (collecting data on the NATO armies), it also 'covered' the financial aspects of all Poland's exports of military equipment (including transactions with the Arab oil-exporting states) and imports. In 1981, Military Intelligence employed about 3200 functionaries (Bereś and Skoczylas, 1991:181) and an unidentified number of secret agents.

One of its tasks was technological espionage (Dubiński and Jurczenko, 1994:77). According to the division of labour within the Warsaw Pact intelligence services in the 1980s, Polish Military Intelligence was responsible for the collection of information in the domain of Western computer technology (Moraczewski, 1996:176).

As with civilian intelligence, a substantial number of Military Intelligence operatives worked as diplomats officially employed by the Ministry of Foreign Affairs, both in Poland and on diplomatic missions, although it is difficult to specify exactly how many there were (Kosobudzki, 1990; Dronicz, 1997:142).

Of all the secret services of the Polish communist state, Military Intelligence operations remain the least known within the public domain.[21] This may stem from the fact that military special services were deliberately used by Jaruzelski and his team to make secret arrangements, based on ramified financial operations, in anticipation of the far-reaching liberalization of the system (Dronicz, 1997:137–49). Some evidence of such operations can be traced in the notorious FOZZ scam (see Case Study 3 in Chapter 8).

The Military Counter-Intelligence Service

In addition to the standard counter-intelligence protection of the Army, Military Counter-Intelligence tasks included shielding families of the military personnel from the 'bad influence' of the Catholic Church;

gauging the political mood of society; and infiltrating opposition groups. Furthermore, it ran informers inside the two satellite parties (ZSL and SD) that ruled in tandem with the Communists (Okrzesik 1991:2). Yet another task of Counter-Intelligence was to cultivate networks of informers within Military Intelligence (Moraczewski 1996:29, 96; Dronicz 1997:139). Counter-Intelligence's areas of interest included factories producing military equipment as well as all economic transactions connected with military affairs.

In the mid-1980s, Military Counter-Intelligence employed around 4500 functionaries, while its informers numbered 25 000 to 30 000, of which approximately 20 per cent were people not in the employ of the Ministry of Defence.[22]

Inter-Ministry relations

Prior to the 1980s, military services were rarely used to thwart the opposition, but that situation changed substantially when General Jaruzelski became Prime Minister in 1981. Military Counter-Intelligence was instructed to carry out a number of tasks outside the military domain. Under Interior Minister General Kiszczak, 'the boundary between civilian and military intelligence and counter-intelligence, on the one hand, and the political police on the other, was blurred in all respects, including moral ones' (Widacki, 1992:178; Okrzesik, 1991:2; jano, 1992:3).

Inter-ministry arrangements that illustrate this blurring include:

1. Based on a binding directive, soldiers who were recruited by Military Counter-Intelligence were, upon the termination of their military service, handed over to the SB (Piecuch, 1993:112, 233–4, 280; Dominiczak, 1994:427). (In reality, only about half of them proved to be useful in the civilian environment.)[23]
2. Civilian and military secret services were involved in various areas simultaneously, though not always harmoniously. One of them pertained to the monitoring of families of professional soldiers, a target population of about a million people (Piecuch, 1993:62; jano, 1992:3).
3. During the 1980s, both Military Intelligence and Counter-Intelligence were used by Jaruzelski, almost on a routine basis, to probe the work of the civilian secret services (Piecuch, 1993:327; Jaruzelski, 1992:72; Widacki, 1992:178).
4. In principle, each of the special services infiltrated social circles in its own way. To prevent multiple recruitment, however, there were

centrally co-ordinated cross-checking procedures, based on resources offered by Bureau C. All services had access (often indirect) to various archives and centrally co-ordinated records of anyone who happened to come under their particular 'sphere of interest'. The sphere consisted of two basic categories of people: informers and 'enemies'.

Many other important state agencies were so closely related to the secret services that it is difficult to say who presided over whom. For example, although formally separate, the Office for Religious Affairs was in fact an annex, but also a façade, for Department IV, which dealt with organized religion. Many key officials in the Office were functionaries of the MSW, seconded to work there 'under cover' (Widacki 1992:82).

The secret services and the command economy

Their major role in the policing of the population notwithstanding, the secret services also constituted an integral part of the command economy mechanism. The Communist secret services not only spied on people: they were also expected to influence them. A vital aspect of their mission, largely overlooked by social scientists, was the monitoring and controlling of the state economy. Their influence over all aspects of the economic process can only be grasped within the political reality of state ownership of the economy.

Since the planned command economy was, by its nature, an economy of shortage (Kornai, 1980), it was often very difficult or virtually impossible to obtain through normal state channels the raw materials or parts necessary to meet production targets. This contributed to the growth of informal and unauthorized horizontal links among various state-owned companies, and to unofficial vertical links between them and various levels of the central economic bureaucracy. Informal trade and bartering between various companies in goods in short supply was widespread. The simultaneous indispensability and illegality of these practices within the planned economy made corruption an integral part of the economic process. In the words of Pavel Sudoplatov, an NKVD general, '[i]n the fourth year of the five-year plan, corrupt connections are decisive in fulfilling the plan' (Sudoplatov and Sudoplatov, 1994:61).

While the resulting personal ties were vital for keeping the economy alive, they also triggered the informal privatization of state resources and fostered clientelism. An uncontrolled spread of such links – often parasitic from the point of view of the interests of larger sectors of the

economy – could seriously threaten the upper echelons of the party-state system. Yet, while unregulated, horizontal deals and surreptitious privatization schemes disorganized the economy from within in count-less ways, these hidden processes were hard for central planners and state statistical agencies to trace. This reality enhanced the role of the Security Service as the only organization capable of collecting credible data that would, in turn, permit more accurate assessment of the output of such monitoring and controlling agencies as the Supreme Chamber of Control, State Trade Inspection or the Central Statistics Office.

Furthermore, the political dimension of the economy was central to the reproduction of relations of production in a situation where the redistributive activity of the state became the indispensable substitute for a market and the key vehicle for the state's attempts at legitimation. Under the circumstances, entirely new standards of rationality of con-trol, suitable for a command economy, had to be invented and enforced (Staniszkis, 1992:25–7). Hence, the secret services had a vital role in both checking the natural (under the circumstances) tendency of state-company managers to distort information provided to central authorities, and preventing the unfettered spread of corruption and appropriation of public (i.e., 'nobody's') property (see Walichnowski ed., 1989:226–7).

Approaching the issue from a functionalist perspective, one might say that Communist secret services performed roles that in the market economy are realized, on the one hand, by private property, market competition, hard currency and other factors that stimulate rationality of economic actions, and, on the other hand, by such institutions of civil society as the free media, local self-governments, independent associations and consumer advice agencies. It is worthy of note, for example, that in Poland the secret services spent considerable energy and effort monitoring the notoriously fuzzy boundary line between the public and private sectors of the economy (Zybertowicz 1993:33–9).

Finally, the secret services were charged with yet another responsibil-ity of systemic importance. They were called upon by the political centre (that is, the Politburo) to keep in check the ever-present aspira-tions of the lower echelons of the party-state administration to attain some measure of autonomy.

In our view, if the role of the secret services in the communist state economy is understood, many aspects of the subsequent transforma-tions of the Polish economy become clearer. This applies equally to the many phases of economic transformation, the 'soft landing' of the *nomenklatura* and the dramatic power-conversion process. It also helps explain many secondary features of the transformations and the often

well-hidden undercurrents of the historic processes of post-communist 'restructuring'.

The Party and the police

Among those employees of the MSW who occupied active-duty positions, Party members accounted for about 75 per cent, and their proportion was even higher in the Security Service. The overall share of Party cardholders in the adult population was 8 per cent in 1988 (12.2 per cent in 1979; Sułek, 1992:250–4).

All police services and many other state services operated according to the task-allocation principle.[24] This worked along the lines of a pyramid structure. Its top was the inner leadership, an informal group composed of a few members of the Politburo and/or the Central Committee's (CC) Secretariat. Usually, they met informally and agreed on crucial matters in advance of formal meetings, thereby heightening their power to impose their will upon and discipline the rest of the Politburo.[25]

The Politburo issued orders to the CC departments and the regional (voivodeship) Party committees as well as to government ministries, including the MSW. These orders were then taken up at special assemblies of the top executives in those units. Next came briefing sessions in the appropriate sub-units (for example, various departments within the ministries), followed by meetings at lower levels of the pyramid, voivodeship MO headquarters being a case in point. At every step the tasks received were operationalized, made ever more specific and assigned to particular teams or individuals. In our example, the bottom layer of the pyramid was comprised of the operatives and uniformed police officers and their secret collaborators. The last stage in the process of the task allocation were meetings between operative officers and their SCs. The informers were told what kind of information was sought, what rumours needed to be spread among which social circles and what other actions had to be undertaken.[26]

It is worth noting that – its other functions notwithstanding – this procedure constituted a communication channel through which the rulers were able to transmit information (or disinformation) to society as well as receive some information back. This was a unique medium of communication that complemented the information spread by the official mass media.

At a national Security Service (SB) conference in 1975, the director of Department III stated that information about members of the Party was also collected when there was evidence that they were involved in

questionable activities. At that time, Department III was devising rules for the secret police that would make it possible to vet all those individuals who might be included in the CC and voivodeship Party committees' *nomenklatura* lists (Dominiczak, 1994:424, 660). While there was a general rule of not recruiting Party members as SCs, and it was to some extent followed, it did not apply to the Intelligence and Counter-Intelligence services. Moreover, the SB was allowed to recruit Party members as secret collaborators, provided the appropriate Party secretaries granted permission.[27] The SCs also included Party members recruited before they joined the Party (Widacki, 1992:120; Zieliński, 1991:13).

The prominence of the police within the party-state structures of the 1980s is corroborated by the fact that voivodeship police chiefs were, as a rule, also members of the voivodeship Party committee executive. Another indicator of the enhanced position of the police was the unprecedented number of promotions to the rank of general. During General Jaruzelski's rule from 1980–8, a record 27 people within the MSW were so promoted.[28] This was in part made possible by a transfer of a number of high-ranking members of the military to the ministry (Dominiczak, 1994:392).

Despite the fact that, by the late 1980s, all Communist secret services were highly bureaucratized and considerably demoralized (even by their own standards), they could none the less be considered a formidable instrument for deliberate social-engineering schemes. To enable an informed analysis of the impact of secret services on the process of 'transition to democracy', we considered it vital to explore first their role and status prior to 1989. Only on this basis can one then ask intelligent questions about their subsequent transformation.

What happened to the myriad of secret informer networks developed throughout the decades of Communist rule? Who inherited or otherwise gained possession of the vast bulk of information collected over the postwar decades? How did the police-state apparatus react when faced with the threat of dislocation? Did these agencies move autonomously or, rather, – and if so, to what extent – were they made use of by the Communist party's leadership, whom they had served for decades? To what extent were the secret services instrumental in providing a soft landing for their own functionaries and for the *nomenklatura* at large? In contrast to mainstream academic approaches, we consider these questions to be critical to any analysis of post-1989 processes of transformation.

The police-state: macro and micro power relations

Our intention in presenting the anatomy of police structures in the 1980s was to highlight the usually overlooked backdrop against which the process of systemic transformation took place. Our description shows that the role of the secret services in the last decade of communism in Poland was far from auxiliary to that of the Party and that the police-state – or, more precisely, the post-totalitarian party/police-state – label captures adequately the nature of the prevailing arrangements. While such massive security machinery can only thrive in a society where the predominant mode of rule is by coercion and not consent, it is also bound to reinforce and aggravate this mode of rule. Consequently, the security services in Poland for many years had a vested interest in maintaining existing systemic arrangements. Yet they were also able to recognize early that the utility of these arrangements had been exhausted and that greater rewards could be obtained through the introduction of a market mechanism.

Regulation through infiltration

Equally important to the structural dimensions of the police apparatus are the methods and strategies of regulation it generated and employed. In general terms, these can be described as 'regulation through infiltration',[29] understood both literally, in reference to the techniques applied, and theoretically, through an appreciation of how this particular modality of power penetrates all other forms of power present in the society.

Infiltration is a form of dispersed surveillance ('a visibility organized entirely around a dominating, overseeing gaze' – Foucault, 1980:152), but is also an active measure designed to undermine trust and thwart the formation of social bonds. It is more than Bentham's Panopticon,[30] in the sense that the overseeing gaze does not come just from a single 'central tower', but may potentially come from any fellow member of society, secretly recruited by the residents of the central tower. The basic underlying principle is, however, akin to that of the Panopticon in that it requires that power be visible but unverifiable. To quote Michel Foucault's interpretation of these concepts: 'Visible: the inmate will constantly have before his eyes the tall outline of the central tower from which he is spied upon. Unverifiable: the inmate must never know whether he is being looked at at any one moment; but he must be sure that he may always be so' (1979:201).

In communist Poland, massive police buildings and carefully managed reminders of the might which they hid existed alongside a total

lack of information on the actual doings of the secret police. This ambiguity was exacerbated by a widespread belief in the omnipresence of the eyes and ears of this police, fuelled in part by rumours deliberately spread by the secret services themselves.

At certain times, deliberate measures were employed by the security forces to bolster this belief. For instance, in 1982, following the imposition of Martial Law, thousands of people, predominantly those associated with underground opposition activities, were summoned to police stations either for so-called warning talks or informal interrogations (Dominiczak, 1994:536, 552, 580–1; Piecuch, 1996b:228; Walichnowski, ed., 1989:280). A large proportion of those summoned were solicited to become secret informers, but, apparently, in many cases the Security Service did not particularly press or exhort them. Some of the opposition activists began to suspect that this practice was designed to create an impression that their movement was thoroughly infiltrated and no-one could be trusted. In an interview conducted in 1996 by Zybertowicz, a former SB operative confirmed the accuracy of this interpretation. Thus, rather than a myriad of external controllers actually existing in many social settings, only the idea of controllers was implanted in human minds.

This was an effective strategy. Many Poles believed that 'THEY', the authorities, knew everything about each of 'US', the citizens. This gave rationality to the common reluctance to join oppositional activities: *since THEY know of our every move, all our efforts and sacrifices are bound to be doomed and will only provide the SB with more information about the inner structures of our personal networks*. Commenting on attitudes of Czechoslovaks in the aftermath of the 1989 Velvet Revolution, Tina Rosenberg writes:

> It assuages their guilt to think that in fact the secret police's periscope was all-seeing and its brain incapable of error, the Chartists [i.e. signers of Charter 77] were secret collaborators, and the students in Venceslas Square were in the employ of the StB [secret police][31] (1996:121).
> For citizens to acknowledge their own part in maintaining a repressive regime will require great courage, but it is crucial to preventing dictatorship's return (404–5).

In short, the Panopticon strategy, however modified, generated a self-sustaining mechanism: the invisible eye of the ruler, once placed in the human mind, made people police themselves. This assured a peculiar

continuity between the power structures of the state and the micro-power at the level of individuals. In fact, by policing themselves, individuals became simultaneously subjects and objects of power:

> He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power; he makes them play spontaneously upon himself; he inscribes in himself the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection. (Foucault, 1979:202–3)
> The individual is an effect of power, and . . . at the same time its vehicle. (Foucault, 1980:98)

What these atomized subjects/objects of the police-state power internalized, however, was the all-seeing eye (and well-founded fear of its wrath) and not the ideology or attitudes or rules of order promoted by the regime. In this sense, the practices of power employed by the Communist police in the 1980s were more akin to routinized terror than the discipline mechanism identified by Foucault as 'panopticism' (1979:209). The latter signifies a subtle form of indoctrination and training of the body that appears to those involved to be natural, neutral, spontaneous and consistent with 'human nature'. Communist power practices could not count on this type of effect; instead, they had to sustain a fiction of the 'Communist man' that was played out in multiple relations throughout the society and expressed in the everyday practice of 'double-talk'. Dominant 'discourse' in Poland never acquired the aura of rationality or common sense typical of modern liberal democracies. This reinforces the historical specificity of Foucault's analysis of the development of disciplinary power within the context of the formation of the liberal, representative state.

In the case of communist Poland, not only was the political regime non-democratic, but it was imposed from outside and from above, with little concern for its internal legitimation and ability to coalesce with the indigenous culture and sense of tradition. The blunt and alien nature of the central power precluded the 'natural' Foucauldian process of mutual permeation and circulation of micro- and macro-powers and the ongoing influence of the micro-power on the construction of powerful knowledge(s) and shaping ruling technology(ies). In the strictly controlled, centralized environment of a party/police-state, the diversity of micro-powers is constructed out of, in resistance to, and within the restrictive parameters of a macro-social order and macro-forms of domination.[32] These micro-powers' partial autonomization in the late

1970s and early 1980s could only be countered by a massive police mobilization. Since there was no common framework of constructed rationality – the system was perceived as irrational even by power élites – no other response was conceivable or workable. The system was inherently incapable of accommodating the commonly shared yearning – well captured by Alain Touraine – 'to forget conventions, pretence and absurdity, to return to things which were real, to use words which had meaning, to tell the true history of the nation, to run the factories in a rational way, [and for the nation to stop feeling] a foreigner in its own country' (1983:36–7).

Communist practices required the spectacular power of the collective 'king' (the Party and the police apparatus) to be feared and celebrated, while trying simultaneously to implant it in the 'bodies' of citizens through an invisible web of micro-power relations. Unlike the disciplinary/normalizing power in liberal democracies, regulation through infiltration in communist Poland was not exercised by those providing socially legitimated professions (such as social workers or medical professionals) with their human science grounding, but by a dreaded, shadowy army of secret agents and their hidden collaborators. And, unlike Foucault's disciplinary grid, infiltration as a strategy of ruling was not implemented in an environment shaped explicitly by 'a legislation, a discourse, an organization based on public right' (1980:106). The technology of power used by the Communist apparatus was of a very different kind; its core principles were neither disciplinary normalization (with its implicit imposition of *norm*) nor juridical codification (with its explicit stress on *right*), but the normalization of fear[33] founded on a deliberate destruction of human bonds and sovereignty of the person. Although constructive and dispersed 'disciplines' of a democratic/capitalist variety are inherently threatening because of their positive power to shape and standardize people's aspirations, they are also enabling. The destructive, centralized discipline of the Soviet/communist type is inherently threatening because of its negative power to restrict people's lives and to shape them through fear and loss of self-respect; they are thus predominantly disabling.

Because of its reliance on negative discipline and deterrence, the communist approach defied liberal logic according to which, 'in a society in which the principal elements are no longer the community and public life, but on the one hand, private individuals and, on the other, the state, relations can be regulated only in a form that is the exact reverse of the spectacle' (Foucault, 1979:216). Although in communist Poland community was deliberately and quite thoroughly

destroyed, the state went methodically through the motions of a spectacle by indulging its penchant for compulsory rallies, parades and mass meetings routinely assembled either to glorify the regime or denounce its 'enemies'. It was a forced, humiliating spectacle that celebrated falsehood and worked to undermine both each participant's personal integrity and the collective integrity of the whole society. It created a 'negative community', based on forced membership and collective degradation ceremonies. This contrived exercise kept the power of the state visible, but also reminded people continuously about the power of the state within them. While each participant had to deal with individual shame, the co-presence of so many others – reduced to the same pattern of obedience by forces beyond their control – normalized an attitude of acquiescence.

Atomized individuals were treated more like appendages to the state economy than as private citizens. Unlike the technology of discipline used in capitalist countries – whereby the individual (the body) 'is reduced as a ''political'' force at the least cost and maximized as a useful force' in the accumulation of capital (Foucault, 1979:221) – the late-communist technology of power was ritualistic, costly and often violent, and its disciplinary techniques were focused on the individual as a concealed enemy, whose potential usefulness lay in dissuading other individuals from joining forces against the party-state.

These techniques were not aimed at instilling any openly articulated virtues or habits (such as hard work or hygiene, for example) whose importance for society as a whole could be plausibly argued. On the contrary, the shifting ideological expectations and norms directed towards members of society were never expressed in a concrete language, thus keeping citizens in permanent uncertainty as to their possible failings. Since everything that was not explicitly permitted was theoretically prohibited, the fuzzy area was very extensive. This is consistent with Podgórecki's claim, based on his analysis of several totalitarian legal systems, that 'the constituting feature of totalitarian law is its ''whimsicality'' and unpredictability' (1996b:7).

Far from being economically worthwhile, these strategies actually reduced co-operation and efficient economic management. They were not guided by any vision of a healthy or wealthy society, but by fear of society, conceptualized as the enemy. Accordingly, any constructive investment (through discipline or otherwise) in 'human capital' was bound to be seen as unwise, and control became an autotelic activity, an end in itself. Society was to be permanently controlled rather than disciplined with a view to obtaining larger societal goals. Simply

put, 'maintaining a system that is resisted by most influential citizens requires unchecked power' (Rosenberg, 1996:406), and unchecked power tends to be obsessed with itself as a supreme mission.

One of the most remarkable effects of the novel experience of solidarity and positive community in Poland through, first, the pilgrimage of Pope John Paul II in 1979, and then the unfolding of the mass movement Solidarity, was the disappearance of ubiquitous fear and mistrust among ordinary members of society. This presented the secret services with a dual task: to search for new ways of reinstating the fear on which their rule was predicated, and to help existing power structures to adjust to the irrevocable loss of their ideological basis. We address this issue in Chapter 5.

Bureaucratic empowerment

In addition to power exercised through political policing and its panoptical and atomizing effects on individuals, there also existed another, quite different, type of micro-power technology, that may be called 'bureaucratic empowerment'. It resembles the petty bureaucrats' reign depicted by Kafka, and pertains to the peculiar informal power and sense of importance many individuals derived from their state employment under communism. This has been described in an earlier publication by Łoś:

> In an arbitrary, bureaucratic system, where people had to constantly petition the state, petty clerks had acquired a sense of importance as they dealt with other people's problems and exercised their discretion, often in exchange for bribes or 'favours'. Chronic shortages of goods and services lifted the humble sales- and service-persons to the role of powerful gate-keepers, who controlled access to commodities in short supply. (Łoś, 1994b:80; Kojder, 1995a:46)

This type of structure produces three kinds of control: first, individuals who fall into the described category 'perversely enjoy the illusion that they wield real power' (Podgórecki, 1996b:17), and therefore become a 'natural' part of the prevailing system of rule; second, their vested interest in maintaining the intricate system of bureaucratic control not only helps to perpetuate this system, but also furnishes its additional – personalized – layer; and third, frustration and anger with the system are directed towards this army of petty bureaucrats, making a realistic appraisal of the central source of this dispersed power more difficult.

Just as with political policing, the communist bureaucracy and shortage economy present important realms where individuals become caught in the larger power game and try to play the part to their advantage, losing sight of the broader picture. They derive power from the shortcomings of the system, and in the process become bonded to it. The resultant corrupt networks of mutual favour and privatized bureaucratic relationships serve as a stabilizing factor, for any change would disturb the existing tested and familiar arrangements, and could both bring to light common involvement in violation of the law and undermine the sense of power derived by the actors involved (Łoś, 1982:125). This mechanism and its ability to generate quasi-legitimacy[34] for the faulty system were well-known to the secret agents acting as 'guardian angels' for diverse workplaces. They monitored them, but the information they gathered was rarely acted on unless there was a special political reason to use accumulated information against particular individuals or groups.

Ruling through corruption

A related power strategy is the deliberate (or partly deliberate) introduction of conditions for 'collective corruption', aimed at particular professional or other functional groups.

> [It] consists in providing the group with privileges that the rest of society does not posses, such as access to special shops or the special provision of certain services. Once those privileges are accepted by the group, the group starts to put informal pressure upon its members to conform . . . Corruption as a technique of rule over the society is a negative strategy aimed at demoralizing and disarming a potential internal enemy or at winning over an ally by compromising his moral integrity. Used widely, it demoralizes society and corrupts the apparatus of the state itself: a corruptor cannot escape corrupting himself. (Kamiński, 1992:158–9)

As indicated by Kamiński, in ruling through corruption 'the ruling class attempts to pit one social group against another, demoralizing and atomizing society, and directing social frustration against scapegoats' (1992:260). To incite these processes and yet keep them under control required the concerted effort of the Party and secret services. The latter might, for instance, help prevent a looming revolt by directing public anger onto a particular privileged group and effecting some disciplinary actions or purges against its selected members.

The secret services were actively involved in mounting periodical anti-corruption and anti-economic crime campaigns, often in response to social unrest and/or following a change in Party leadership. These campaigns allowed the conducting of purges of members of losing factions and the harassment of dissidents as well as the diversion of public attention from other systemic problems. For example, following the rise of the Solidarity movement and Edward Gierek's[35] fall in 1980, the new Party leadership launched a major anti-corruption campaign in Poland. It has been reported that among those officials denounced for corruption were 'three Central Committee secretaries, 28 first secretaries of provincial party committees, 34 secretaries of provincial committees, seven deputy premiers, 18 ministers, 56 deputy ministers and 51 heads or deputy heads of provinces' (Holmes, 1993:247). It is more than likely that the information gathered by the secret police was of vital importance in this 'rule through corruption' exercise.

In a broader campaign against economic crime in the 1980s, a number of major criminal schemes by foreign trade officials ('Handel . . . ,' 1980:17–18; 'Przyjmowali . . . ,' 1983:6) and in several other sectors of the economy were exposed. Especially targeted was the offence of 'speculation' (private dealing in scarce goods, foodstuffs and/or foreign currency). Special anti-speculation squards were created and manned by police officers, soldiers and 'volunteers'. Newspapers reported daily on their successful operations as well as on the difficulties they had to face. War terminology was utilized: 'It is true that after just two weeks of the intensified anti-speculation campaign, the black market is now on the defensive. . . . Yet we are still a long way from the total elimination of this unacceptable phenomenon' (Olszewski, 1981:1).

Łoś commented on objectives of this operation:

> This well-publicized war on speculation was expected to convince the public that an economic recovery of the country tormented by food shortages and general economic collapse depended mainly on the successful suppression of speculation and the operation of black markets. Such a task, it was implied, could not be accomplished by a free union movement, but rather, only by a full mobilization of the repressive forces in the society. A new bill on the 'struggle against speculation' was hastily prepared which proposed that an almost unlimited power be granted to the police and special penal boards whose decisions, in turn, could not be appealed to the courts or to the prosecutor's offices. As well, the proposed penalties were to be significantly more severe than the existing ones. (1988:198–9)

A new anti-speculation bill was passed in October 1981 and further extended in October 1982. In 1983 alone, 8105 persons were charged and 6712 were convicted on charges of speculation ('Spekulacja...,' 1984:6).

Significantly, some opposition activists and supporters were convicted on charges of economic rather than political crimes. For example, charges of misuse and/or misappropriation of socialized property were often laid against 'persons who were working in state printing shops, typographic institutions and the like, and who printed books, newspapers, calendars, leaflets...at the request of Solidarity or other independent social organizations' (Polish Helsinki Committee, 1984:91).[36] Moreover, exceptional measures of the anti-speculation campaign were often utilized as a cover for searching and monitoring the private apartments of opposition members or those suspected of harbouring Solidarity leaders in hiding, as well as for confiscating their property or money, or planting incriminating objects. These tactics also served to tarnish the reputation of opposition activists in the eyes of the general public and portray them as greedy individuals, gaining materially from their underground activities. For many frightened citizens this provided the necessary rationale for abandoning the Independent Solidarity Union upon its suspension in December 1981. The above examples illustrate how deliberately manufactured images of economic crime and corruption constituted an integral part of the strategies of power employed by the rulers of Poland in the 1980s.

Types of assets engendered by the police-state

The formidable security apparatus described earlier in this chapter produced certain types of assets which could be utilized by former operatives or intercepted by other actors involved, under the new systemic conditions. These assets included various forms of '(sub) cultural capital', such as inside knowledge and special intelligence; expertise in acting both on the margins of the law and outside of it; the ability to infiltrate agencies that form the vital infrastructure for economic activity; the habit of treating people as instruments; the capacity to lie convincingly and to recognize lies by others; and experience in performing secret operations, including clandestine networking, espionage, money-laundering, launching companies to be used as fronts for other purposes, information interception, disinformation, bribing, brainwashing, kidnapping and, last but not least, killing.

The cultural capital at the disposal of former security operatives also had a clear international dimension, given their command of Western

languages (relatively rare in Poland in the late 1980s); their understanding of Western police, banking institutions, the media and lobbying channels; and their long-term experience of collaboration with the Soviet and East European secret services. This remarkable cultural baggage, however, must be viewed through the prism of their nihilistic disenchantment with basic social and national values and their acceptance of ruthless methods of operation.

The security functionaries' 'social capital' (see Chapter 6) – understood as such features of social life as trust, shared norms and connections that facilitate co-ordinated action – was based on common training, old loyalties and obligations, as well as shared histories of participation in illegal or unethical activities. Faced with the possibility of being held accountable for their deeds in the event of a revolutionary change, many functionaries clustered together to counter the anticipated threat.

Their power of mobilization was fortified by a special kind of '*political capital*' (Bourdieu, 1991:194) accumulated by the agencies they served. Despite its seemingly indelible totalitarian imprint, this type of political capital did not necessarily lose its potency the moment the ruling police state collapsed. First of all, their unique training and secret knowledge of both the defeated power élite and the various factions of the winning bloc made the former security forces/operatives indispensable for the new government in its attempts to fortify itself and establish order. Second, the prospects of the old political class depended in large measure on their access to the knowledge, skills and connections of the secret services. Third, and crucially, upon their dissolution or reform the institutional power/knowledge of secret police agencies could easily be translated into informally reproduced power/knowledge outside the official institutional structure.

While social capital refers to co-operation and trust, even if limited to one's own network or community, political capital enables one to effect subjugation and fear. In practice, obviously, co-operation may stem from the fear of being brought to justice, and it may involve deployment of political capital. A useful form of political capital was provided by secret archives, filled with information that could be used for the blackmail and manipulation of state officials, journalists and economic managers, as well as some of the former dissident leaders. Having direct personal links to all levels of state apparatus in 'new' post-communist governments may be counted as both social and political capital.

Moreover, various compromising materials on prominent dissidents enabled the old-regime functionaries to exert control over the *symbolic/*

moral capital they lacked. Social prestige and honour accrued by various opposition personalities represented this kind of capital. Since some of them were secret collaborators of the Communist secret services, they could be used to promote and 'legitimize' the ends of the secret service community and *nomenklatura* groups in general. (For a more contextualized and historically grounded discussion of this subject, see Chapter 5.)

Dispersed responsibility and vanishing culprits

The moral and sociological implications of the mechanisms we have been describing – *regulation through infiltration, bureaucratic empowerment* and *rule through corruption* – became very obvious in 1989, when initial high expectations that those responsible for all the atrocities of the old regime be brought to account were subdued by a counter-view, in which the boundary line between victims and villains was barely recognizable. Tina Rosenberg expresses this view in contrasting the legacy of authoritarian and totalitarian regimes, or – as she also calls them – 'regimes of criminals' and 'criminal regimes' (Rosenberg, 1996:400):

> In Latin America . . . one can point to a few hundred men who committed the actual crimes. The east bloc dictatorships necessarily made everyone a co-conspirator. If everyone was a victim of communism just by virtue of living in the system, so too was everyone a cog in the repressive machine. Under communism, the lines of complicity ran like veins and arteries inside the human body. Even the most natural responses of self-preservation were also, in a sense, acts of collaboration. (Rosenberg, 1996:399)

The implications of such a view – eagerly supported by the new and old élites – are significant. It is important to keep in mind that such concepts as the 'Panopticon effect' and 'dispersed power', while revealing very important aspects of the power practices studied, should not be taken as negating the existence of a centralized repression system and a special caste of rulers and primary beneficiaries of the militarized police-state power apparatus. Equating the responsibility of those players with that of ordinary people who lived in fear and engaged in petty compromises to survive is sheer demagoguery.

Chapter 4 shows how the state crimes of the 1980s have remained mostly just that: crimes committed by the state, with no-one deemed responsible or accountable for them.[37] In the present chapter, we have

described the structure of the (militarized) police state in Poland of the 1980s and identified some aspects of its technology of ruling. To recapitulate, the main mission of all the secret services within both ministries (Interior and Defence) in the 1980s was to infiltrate, monitor, control, manipulate and neutralize the political opposition. While the intelligence services covered the opposition's contacts abroad, counter-intelligence focused on its contacts with foreigners inside the country. Other tasks were of secondary importance.

Its relative invisibility notwithstanding, the police-state structure constituted an integral part of the conditions that moulded develop-ments at the turn of the 1990s in Poland. Later in this book we attempt to explore various aspects of its role in Poland's systemic transformation. In doing so, we trace the developments surrounding the remnants of networks of the police state within the emerging new economic infrastructure, especially in relation to major economic and financial scams.

In conclusion, several points should be reiterated:

1. The agendas of the police state involved numerous, routine and often unlawful covert operations co-ordinated and executed by a huge, ramified apparatus, assisted by an army of formal and informal colla-borators.
2. The secret police played a vital regulatory role in the command economy.
3. At least 100 000 people (Secret Collaborators) led a double life, which must have affected their integrity and mentality. They were usually individuals highly active in various areas of social and economic life.
4. The great concentration of power by the Party and the police state was maintained over the years by strategies that instilled the image of this power in each individual and reinforced it by degrading spec-tacles of mass obedience. The technologies of power included *regula-tion through infiltration, bureaucratic empowerment* and *rule through corruption*. They aimed at producing an obedient, atomized, frigh-tened society, where the only power individuals could enjoy was derived from humiliating or bribing others.
5. The key consequence of the rise of the Solidarity movement in the early 1980s was that atomization and fear were replaced by a sense of belonging and grass-roots empowerment. This was a crippling blow to the Party.

6. The role and size of the secret services increased significantly in the 1980s as they moved to the centre of the political arena, which had been partially vacated by the Party, now weakened both politically and numerically.[38] They had to invent new modes of exercising their thus-expanded political and operative power in a society dramatically changed by the experience of solidarity.

4
State Crime and Cover-up Operations

Martial Law of December 1981

The emergence in 1980 of a 9-million-strong movement under the Solidarity banner posed an enormous threat to the totalitarian communist regime. The imposition of the 'state of war' by the State Council on 13 December 1981 was an illegal act. According to Article 33, Section 1 of the constitution, such a decision could be made only in the case of military aggression, and the competent body was the *Sejm*. Only when the *Sejm* was not in session could the decision be made by the State Council.

On 13 December 1981 the *Sejm* was still in session and so the State Council's declaration of a state of war (hereafter Martial Law) was unconstitutional. To compound the illegality of this process, the State Council acted formally on orders of General Jaruzelski's Military Council for National Salvation (WRON), an *ad hoc* body with no legal status (Albert, 1994:826); furthermore, while Solidarity was perceived by the Communist leaders as a threat, it could not possibly be construed as an external military enemy, and although the relevant decree was not published until 14 December 1981, the State Council declared that it would come into effect immediately after its passage – 12 December at midnight. Arrests had begun even earlier to ensure greater effectiveness. As a result, scores of people were detained for actions that were absolutely legal up to 14 December, and were detained for months without charge, or sentenced to long prison terms, under illegally passed laws made known only through radio and television announcements and street posters.

Many Western commentators saw the introduction of Martial Law as a measure of last resort, taken only when Solidarity had 'gone too far' in

challenging the principles of the communist state. Yet secret work to prepare some form of violent assault against the movement had begun soon after demands for free trade unions were first formulated by striking workers at the Polish sea coast. An order[1] issued in August 1980 by the Minister of the Interior established a special Commanding Team (*Sztab*) with a mandate to plan a forceful challenge to Solidarity under the codename 'Operation Summer 80'. The team was given powers normally reserved for the minister, and the Security Service (SB) was placed at its disposal (Komisja, 1991:13; Paczkowski, 1995b).

The minutes of the Politburo meetings of that period offer a chilling record of the cynicism and alienation of these powerful but frightened men plotting to outmanoeuvre 'the enemy' (*Tajne dokumenty*, 1991; *Polityka*, 1990, 1991a,b). Unsurprisingly, the labels 'enemy' and 'foe' (*przeciwnik*) were reserved for a peaceful movement at home, while 'ally' (*sojusznik*), the other constantly used term, stood for the Soviet Communist Party leadership. The rhetoric used at these meetings leaves no doubt that if the Politburo were to decide to use force it would be to protect the Party and not society. Jaruzelski, the First Secretary of the Party, made it very clear in his 5 December 1981 statement to the Politburo:

> The Party must defend itself as a political power. Unfortunately, the working class does not defend the Party. It is a terrible, bizzare disgrace to the Party that after 36 years in power it has to be defended by the militia forces. But we have no future. We have to be prepared to take a decision that will enable us to save what is essential (*Polityka*, 1991b:6).

The Martial Law decree and related regulations (for example, concerning the internment of political activists) were prepared in secrecy by the MSW and the Ministry of Defence. Not even the seemingly all-powerful Politburo had access to the specific content of these legal preparations. None of the restrictions applied, however, to high-ranking KGB and Soviet Army officials, who were consulted and briefed on several occasions. The KGB assumed responsibility for printing the relevant public announcements (Paczkowski, 1995b:14). The State Council went far beyond its legal mandate when it accepted the final decree submitted to it on 13 December 1981.

As early as 15 October 1980, a decision had been made to prepare a list of people to be interned in the event of a serious crisis, and by December 1980 it was 12 900 names long. A 'shadow' Solidarity leadership was to

be groomed to take over the union upon the arrest of its real leaders (wicz, 1990; Dziadul, 1991:188; Paczkowski, 1995b:15; also Chapter 5 here). A number of gross provocations were planned and executed by the MSW in order to escalate the conflict and justify the military clamp-down. The most active Party members were armed and formed into special fighting squads.

Based on a detailed analysis of archival materials, Polish historian Andrzej Paczkowski, an expert for the Parliamentary Commission on Constitutional Responsibility, concluded in 1995 that the introduction of Martial Law amounted to an illegal coup and that the security appar-atus was authorized by the highest party-state levels to use illegal means to implement it (Paczkowski, 1995b:15; Albert, 1994:826; Kersten, 1995:71–2). Yet this Parliamentary Commission, which in the years 1993–6 had investigated the possible constitutional responsibility of the authors of the 'state of war', recommended in February 1996 that no legal action be taken, a recommendation subsequently accepted by the parliament (*O stanie wojennym*, 1997).

In their inside story of the KGB's foreign operations, Christopher Andrew and the former KGB intelligence officer Oleg Gordievsky sum up the circumstances surrounding the declaration of Martial Law in Poland in the following way:

> Moscow was more reluctant to send in troops than the West real-ized . . . The only solution, the [KGB] Centre concluded, was for the Polish army to mount a *coup d'état* . . . The KGB's candidate to lead the coup was General Wojciech Jaruzelski . . . [He] was playing a double game. It was believed at the Centre that by the time he became First Secretary he had already agreed with Moscow to carry out a military coup and had begun detailed planning. The final details of the coup were settled during two sessions of secret talks in Warsaw with [the head of the first Chief Directorate that conducted KGB operations abroad] General Kryuchkov and Marshal Victor Kulikov, commander-in-chief of the Warsaw Pact forces . . . The declaration of martial law . . . was brilliantly planned and executed. There was widespread praise, as well as relief, in the Centre for the skill shown by Jaruzelski, the Polish high command and the SB. (Andrew and Gordievsky, 1990:485–6)

It was estimated that approximately 60 people died between December 1981 and December 1982 as a result of beatings, torture and the use of force against peaceful demonstrators (*Committee in Support*,

1983b:13), and several hundred deaths were indirectly caused by the war measures (Albert, 1994:838). By June 1982, six months after the introduction of Martial Law, 13 314 people had been sent to interment camps and prisons, and 10 000 of them had been released (Dominiczak, 1994:547). In March 1983 the Minister of Internal Affairs stated that 2580 people had been sentenced since December 1981 for anti-state activities, and 1462 for offences under the state-of-war decree. Typical 'crimes' involved the possession of leaflets, the display of Solidarity pins and other banned symbols, the organization of meetings or demonstrations and the refusal to work in militarized enterprises. Many judges were forced to sign a 'loyalty oath', and a number of those who refused were dismissed (Łoś, 1983:405–6; *The Polish Helsinki Committee*, 1984:96).

One year after its introduction, the 'state of war' was suspended by an illegal decree that codified most of the repressive measures of Martial Law into existing legal statutes. All bills enacted during the state of war (including laws on trade unions, censorship, juvenile delinquency and persons who avoid employment) retained their force (Łoś, 1983:407–9). Thousands of men were conscripted into the army and sent to military penal camps (*Committee in Support*, 1983a:1–9). When Martial Law ended, in July 1983, additional laws and legal amendments were passed to toughen disciplinary and penal measures against potential labour and opposition organizers (Ziemba, 1994:297–300).

The 1989–91 Extraordinary Parliamentary Commission to Investigate MSW Activities scrutinized several 'pacification' operations in which MSW forces were authorized to use live ammunition without strict instructions about when this would be justified. These operations included the 1981 shootings by special anti-riot police (ZOMO), who killed nine miners and wounded 25 others at the striking coal mine 'Wujek', and an assault on a peaceful demonstration in Lubin in 1982 in which three people were killed and more than a dozen wounded.

Despite binding regulations, the firearms and ammunition issued on these occasions were not individually recorded, preventing identification of the functionaries directly involved in the shooting. No attempts were made to match returned firearms with either their users or the bullets removed from wounds and bodies. Evidence was destroyed or altered, scores of witnesses were arrested and convicted on fabricated charges and others were threatened or coerced into giving false statements. These were deliberate and methodical actions sanctioned by the Chief Military Procuracy. The parliamentary commission's findings illustrate the total impunity of the security forces in a situation where

investigations of their abuses of power were bound to be conducted, in effect, by themselves.

This failure to prosecute seems to extend into the post-1989 period. While three commanding police officers were brought to trial in 1995 in connection with the Lubin murders, none have been convicted (Podemski, 1995b). A retrial was eventually ordered by the Court of Appeal (Teuerle-Biel, 1997). At the new trial, the former military prosecutor Krzysztof H., who conducted the 1982 investigation into the tragic events in Lubin, testified that the use of firearms by the Militia and ZOMO functionaries was unjustified. His 1982 investigation was hindered, however, because testimonies of the functionaries involved were totally unreliable. Furthermore, it was impossible to gather proper evidence at the scene, because the whole area was thoroughly cleaned immediately after the incident, and even the nearby houses, damaged by bullets, were replastered. Based on the evidence he was able to trace, he estimated that about a thousand rounds of ammunition were fired during the assault. He also told the court that he had been removed from the investigation when he reported that the use of firearms was unwarranted and demanded that a new inquiry be launched focusing on the commanders of the operation rather than the troops involved. In his report, he also recommended that the investigation of actual killings be discontinued, because it was impossible to establish the identities of the culprits (Kamiński, 1998:15). Eventually, in 1998, the court made a controversial legal decision to stay the charges based on past amnesties.

A protracted trial of 22 men accused in the 'Wujek' killings ended in November 1997 with the acquittal of all defendants. Their superiors remain untouchable.[2] The Minister of the Interior at that time was Czesław Kiszczak, who issued a coded statement on 13 December 1981 that authorized district police chiefs to decide whether firearms would be used against those who resisted Martial Law. He was charged in the 1990s with endangering the lives and health of miners in two coal mines, and was acquitted in July 1996, after a lengthy and remarkably sloppy trial (Jachowicz, 1996b,c; Ordyński, 1996b). The case was reopened after this verdict was quashed by the Court of Appeal in 1997.

Murders by the police

The 1989–91 Parliamentary Commission cited in the preceeding section looked at 115 cases[3] of 'unexplained' or unprosecuted deaths linked to SB activities in the 1981–9 period. It dropped an additional seven cases

(including three deaths of priests) when the Procuracy initiated its own inquiries. The commission concluded that there was sufficient evidence to recommend criminal investigation in 91 instances where there was obvious MSW involvement.[4]

This list included instances of individuals being shot by MSW functionaries, a number of alleged suicides in which the MSW was implicated, deaths caused by such 'accidents' as 'falling' out of police vehicles or windows, cases of people dying shortly after being severely beaten during arrest or interrogation, as well as seven alleged SB murders of Catholic priests (Komisja, 1991:181–228). Predictably, any investigations undertaken in the 1980s by the militia or the Procuracy aimed at muddling rather than uncovering the facts. The material evidence was never secured, and in those rare cases where charges were laid, the trials were not concerned with finding the truth. In many cases, the Procuracy investigations and internal MSW inquiries were guided by an *a priori* assumption that the police were not involved. Their main focus was on the suppression (usually through repression) of any rumours or claims to the contrary (Komisja, 1991:204–13).

The Extraordinary Parliamentary Commission to Investigate MSW Activities completed its report in 1991. Despite its recommendation to initiate or reopen investigation in 91 cases of probable MSW involvement in killings, the response of the post-communist Procuracy and courts has been very slow and selective. Even in those cases where legal action has been taken, it seems hesitant and rather contorted. By the end of 1995, criminal charges had been brought against 49 people and only four of them were convicted and given prison sentences (Ostrowski and Podemski, 1995:6–8). Moreover, a four-year-old criminal investigation into the activities of the SB anti-Church section ('D') has been plagued by incompetence and lack of will. A prosecutor who reviewed the case in 1995 concluded that the investigation should start from scratch because there were so many prosecutorial errors (J. O. and A. M., 1995:11). The new investigation into charges of criminal conspiracy was completed in June 1997, but was reopened on request from the two main suspects (Ordyński, 1997b).

The following case study of the extraordinary cover-up of a 1983 murder also reaches beyond the 1980s and corroborates our assertion that change in the system has not automatically led to prosecution of former state criminals.

CASE STUDY 1: Grzegorz Przemyk's murder

On 12 May 1983 a 19-year-old high-school student, Grzegorz Przemyk, son of a dissident poet and activist, Barbara Sadowska, was detained and then beaten at a police station in Warsaw. Two days later, he died in hospital as a result of injuries sustained during the beating. His mother had also suffered injuries several days earlier when a gang of MSW functionaries attacked a convent in Warsaw which housed the Primate's Aid Committee for Political Prisoners (Polish Helsinki Committee, 1984:47,50). Przemyk was detained when he refused to show his identity papers to the police, who had stopped him for disorderly behaviour.

The beating of Przemyk was witnessed by his schoolmate, who was also detained. Another friend heard his cries from the street (*Życie Warszawy*, 1984:6). Once taken to the medical emergency station, Przemyk was examined by a psychiatrist, who ordered him to be hospitalized in a mental institution. However, upon his mother's intervention, Przemyk was released into her care. Although he had no visible injuries, surgery proved that his stomach was completely crushed and he was beyond saving. A medical autopsy showed that he had been severely beaten by professionals who could administer blows without leaving any outside marks.

On 17 May 1983, official newspapers published a false version of events prepared by the press spokesperson of the Warsaw Militia Headquarters. It did not mention that Przemyk had been detained at the militia station (Żurek, 1995a:6). The case was widely publicized by opposition circles and Przemyk's funeral was attended by several thousand people. School youths, university teachers and prominent writers sent petitions demanding a full explanation of his death. The expected visit of Pope John Paul II made the situation particularly embarrassing for the authorities.

Under the pressure of these developments, the Politburo decided on 24 May 1983 to treat the Przemyk case as 'extraordinary', and a special group, which included Minister Kiszczak and was chaired by General Mirosław Milewski, was established (Sierpińska, 1997:16, 17). Milewski, a Central Committee Secretary and the chair of the Central Committee Commission on Law and Legality that oversaw the work of the MSW, was also a Politburo member and a former Minister of the Interior (Fredro-Boniecki, 1990:11). A special team of three SB officers was set up at the Party Central Committee building to manage the mass-media publications and ensure their consistency with the official version of events. A number of rank-and-file militiamen were instructed as to how to answer questions from the Procuracy office and told what to say in court in order to avoid discrepancies in their testimonies (*Prawo i Życie*, 1995a:36).[5]

Within the MSW, the handling of the case was supervised by Kiszczak himself and the Militia Chief. The ministry's operations were parallel to the Procuracy's investigation. Operational contacts and resources of the secret services (including Intelligence) were employed in order to compromise

people belonging to the social circle of Sadowska and witnesses. Dissident émigré groups outside of Poland[6] were also targeted. Furthermore, the SB located and 'informally' interrogated 108 people who might have known something about the events at the medical emergency station (Żurek, 1995b:37). The Procuracy investigators were not informed and no official written record was made of these interrogations, although some of them were secretly tape-recorded (KES, 1995:3).

The victim's mother was placed under surveillance 24 hours a day. Her legal representative was arrested on trumped-up charges; his files on the case were unlawfully seized by functionaries of the MSW (Polish Helsinki Committee, 1984:51–2); several prosecutors were invigilated, and a deputy head of the Procuracy who did not show enough zeal in obeying Party orders pertaining to this case was fired (Ordyński, 1995:1, 14). Following unsuccessful attempts to bribe the two young witnesses with prospects of study trips abroad and jobs in the MSW, they and their families were harassed and shadowed for months.[7] These covert actions were directed by a special group under the cryptonym 'Witness' (Sierpińska, 1997:16).

The identification of the suspected militiamen by the two friends of Przemyk was arranged in such a way as to hinder the recognition of those who beat Przemyk at the militia station. Nevertheless, one of them was recognized by the key witness. Evidence was fabricated to back a charge, made publicly by Kiszczak, that Przemyk's fatal injuries had been caused by two ambulance attendants (Jachowicz, 1997bd:1; Ordyński, 1997a:11). They were threatened and framed into accusing each other (Polish Helsinki Committee, 1984:52; Jachowicz, 1997a; Wysocki, 1997). Several incidents were staged in order to convince the public that it is common for medical personnel to beat and rob patients. In connection with one such operation, a medical doctor, Barbara Makowska-Witkowska, was sentenced on a trumped-up charge of assault and spent more than a year in prison[8] (Makowska-Witkowska, 1988:137–88).

At the conclusion of the trial in July 1984, the two accused militiamen were declared not guilty and the ambulance attendants were found guilty of criminal negligence (they were sentenced to two years and one and a half years in prison respectively). The doctors involved were found guilty of unintentional criminal negligence for failing to provide appropriate medical assistance to Przemyk; their sentences were waived on the basis of the July 1983 Amnesty Act. No written justification of these verdicts was issued (Zalewski, 1997b). In August 1984, Kiszczak issued special financial awards to thirteen MSW functionaries for their handling of the investigation (Grochmalski and Szczepaniak, 1995:2).

In April 1990, the files of the 1983–4 investigation were uncovered just in time to prevent their illegal destruction.[9] On many documents there were handwritten remarks by Kiszczak indicating the desired direction of the investigation (Ordyński, 1997a:11; Walczak, 1997). In July 1990 the case was

reopened in the Warsaw District Court and the earlier trial was declared invalid. In April 1991 the list of the accused MSW functionaries was extended by the prosecutor in charge of the new investigation to include the former director of the Bureau of Inquiry and Investigation of the Militia Headquarters, one of those commended by Kiszczak in 1984 (Sroka, 1991:2). Among witnesses interrogated by the prosecution were: Jaruzelski; Kiszczak; deputy Prime Minister at the time of Przemyk's death, Rakowski; and Milewski. They all claimed to have very poor recollection of the case. Instead of interrogating them simultaneously, in different rooms, the questioning of witnesses was spaced in a way that allowed them plenty of time to share information and co-ordinate their responses (Zalewski, 1997b).

After one and a half years, in April 1993, the Procuracy finally sent the files to the court, yet the trial did not start until May 1995, five years after the reopening of the investigation and almost six years after the collapse of the old system. In October 1995 the key witness told a journalist that a few days before the new trial was to begin, strange cars had appeared in his village and stayed close to his house, strangers had tried to invite his children for ice-cream and somebody had tampered with his father's car (Misiak, 1995).

The trial was finally concluded in April 1997. In his closing summary of the case, the prosecutor stated that the trial exposed the organized efforts of a special group created by an order from Kiszczak to hamper investigation of the case. He emphasized that the charges brought against the ambulance attendants were fabricated and that an elaborate strategy of intimidation and harassment of the key witness and his family was executed by SB functionaries (Jachowicz, 1997a). The prosecutor demanded sentences of ten years' imprisonment for the two militiamen accused of the beating that resulted in Przemyk's death and three years' imprisonment for the director of the Militia Bureau of Inquiry and Investigation charged with covering up and hampering the investigation.

While the judge ruled that there was no doubt that Przemyk's death was caused by militiamen and not by ambulance attendants, there was insufficient evidence to identify the culprits. One of the officers accused was acquitted; another was sentenced to four years' imprisonment (reduced automatically to two years by the 1989 amnesty) for instigating the beating. The director of the Bureau was given a suspended sentence of one and a half years for trying to arrange the destruction of relevant files. The key role of Kiszczak in masterminding the schemes of cover-up, the imposition of false charges against innocent people, the subversion of justice and the intimidation of witnesses was described in the judge's justification of the verdicts, but Kiszczak was not on trial and neither were other top-level officials, including the Party Politburo, whose prominent participation in the case was well-documented. Both the prosecution and defence appealed against the sentences.

Subsequently, in May 1998, the Court of Appeal quashed the acquittal of one of the two militiamen and prohibited the other one from working in the

police for five years, in addition to his four-year prison sentence. The director of the Bureau of Inquiry and Investigation was acquitted.

Case Study 1 illustrates a comprehensive and massive cover-up operation that involved at least a few hundred people employed in state agencies, all of whom broke, disregarded or twisted the law that was valid at the time. Those involved included officials at all levels of the Party, judges, prosecutors, militiamen, secret-service functionaries and journalists. Why would the supreme levels of the communist state become so deeply and directly engaged in this relatively minor case? The Party was defending its apparatus of violence under circumstances in which it already felt threatened by society – a display of bunker mentality by an insecure tyranny.

It is worth noting here that neither the Party nor its secret services were able to control all elements of the case: some prosecutors, some judges and some witnesses refused to act as puppets. The fact that it took five years to prepare a new trial in post-1989 Poland strongly suggests, however, that the principle of 'dirty togetherness' (see Chapters 3 and 6) has remained in operation and the old power networks have not lost their vitality. The principle explains why some witnesses and others involved in the case feel insecure even today. It appears that a cover-up continues to protect important figures who should have been charged in the case and that a code of silence is still binding those directly involved in the events at the militia station.

The 1991 Parliamentary Commission report also documented seven cases of alleged SB killings of Catholic priests. Catholic clergy were under constant surveillance by the secret police and were frequent targets of brutal harassment and persecution. Inquiries into these crimes have been made particularly difficult because nearly the entire contents of the MSW archives relating to the Church (including individual files kept on every priest) were destroyed in 1988 (probably after secret copies were made; Grocki, 1992:25). The unspeakably brutal murder of Father Jerzy Popiełuszko (Case Study 2) is the best known example of the lengths to which the MSW was prepared to go to silence outspoken clergy.

CASE STUDY 2:   Father Popiełuszko's murder

The murder of Father Jerzy Popiełuszko was preceded by a protracted, vicious campaign against him that involved libel, slander, harassment, provocation, planting weapons and explosives during a search of his apartment, constant interrogations and, finally, laying sham criminal charges (Perth-Grabowska,

1985a:19–33, 1985b:50–67). When these methods failed to break his spirit, he was kidnapped and murdered in October 1984. There were so many elements of torture employed against this priest that it was impossible later to ascertain which terrible act actually killed him. He was savagely beaten; he was gagged and choked with gauze forced deep into his mouth and sealed to his face with tape; he was suffocated by a rope collar attached to a rope that ran along his spine and doubled his legs up behind him; and, finally, he was tossed into a water reservoir (Perth-Grabowska, 1985c:68–7).

When an eye witness reported Popiełuszko's kidnapping to the Catholic Church authorities, a formal investigation was launched that resulted in a gruesome, partially televised, trial of four MSW functionaries (*Tygodnik Powszechny*, 13,20,27 Jan., 3,10,17,24 Feb. 1985). This response was designed to show both the sincerity of the Jaruzelski government's denunciation of the crime and to demonstrate to members of the clergy what could happen to them if they spoke out against the communist state. The trial was also expected to restore Poland's international credibility and to persuade the United States to drop its veto of Poland's bid to join the International Monetary Fund. The expected effect was achieved.

Two of the defendants were sentenced to 25 years in prison and the remaining two to 15 and 14 years. Yet the fact that they must have acted on orders from above was not translated into criminal indictments of any high-ranking officials (Daszkiewicz, 1994). Instead, the high-profile trial presented an opportunity to condemn publicly the political activities of the Catholic Church. 'The court became a forum for open attacks on the church, which were reprinted at length by the official Polish press' (Cooper, 1985:38; *Tygodnik Powszechny*, 17 Feb. 1985). The head of the government's office for religious affairs, the law professor Adam Łopatka,[10] made a chilling statement: 'The error of the authorities consisted in the fact that Popiełuszko was not imprisoned long ago' (Cooper, 1985:38).

This unprecedented trial worked particularly well in manipulating international opinion into accepting the official claim that Father Popiełuszko's murder was an isolated case and all those guilty were punished. The West seemed oblivious to other cases of assault, arson and murder that targeted selected priests in various regions of Poland (Zieleniewski, 1990).

After the collapse of the communist system, in the early 1990s, two high-ranking MSW officials – General Władysław Ciastoń, a former deputy minister of the Interior and the head of the SB, and Zenon Płatek, former director of the MSW's Department IV – were indicted in connection with Father Popiełuszko's murder. Their two-year trial resulted, in August 1994, in acquittals of both defendants. They had been charged with using one of their subordinates as an intermediary in the murder of Father Popiełuszko. In the explanation of the verdict, Judge Jarosław Góral expressed his frustration:

> The real problem lies in the weakness of the Procuracy and the whole justice system. . . . We do not know the truth. . . . Outside the courtroom,

some of the witnesses – former MSW functionaries – were telling judges that ever since they were called as witnesses in this case, they and their families had experienced many strange, inexplicable things. Fear is the feeling that many of the witnesses shared. . . . The trial made it clear that the prosecutor had no chance [to uncover the truth]. (Góral, 1994a:10–11)

Later the judge elaborated on this point, when he responded to an interviewer's queries about problems with the Procuracy's evidence: '[The problems] stemmed from the power of the MSW and the weakness of the Justice ministry. The MSW was – and according to some still is – a ministry that no one is able to control' (Góral, 1994b:11). Subsequently, the Supreme Court president, Professor Adam Strzembosz, informed the press about various odd and alarming incidents that had happened to Judge Góral and to some other people who co-operated with the court. The tyres of Góral's car were punctured, windows were smashed, his apartment was broken into and his case files were searched. He was repeatedly pointed at by a group of strange-looking characters who appeared near him in various places. (The judge's application to carry a gun took a year to process.) Another person involved in the trial, an auxiliary judge, received a bogus phone call summoning him to the court. While he was out, his apartment was set on fire, killing his mother-in-law. He was also approached by strangers who made threats and reminded him that 'the case was not over'. Another auxiliary judge was beaten twice by unknown assailants. Despite these and many other strange incidents, no formal investigation was launched to identify the perpetrators (Januszewski, 1995:10–11).

Eventually, in March 1996, the verdict in the Ciastoń and Płatek case was quashed by the Court of Appeal which argued that the justification of the acquittal was biased and arbitrary in its treatment of evidence. Eventually, more charges were added and a new trial was to begin in February 1998, but the case was returned for further investigation (*Związkowiec*, 26 Feb., 1998).

Finally, in a ruling related to Father Popiełuszko's 1984 indictment on trumped-up charges, the Supreme Court ruled that the MSW leadership had known about and approved of their subordinates' criminal actions, which involved fabricating charges, planting evidence and producing phoney anti-state publications that were later found in the priest's apartment (Milewicz, 1995:3). No one from the then MSW leadership has been charged in the case.

The cover-up of the Security Service's criminal enrichment schemes

The Communist secret services engaged in criminal economic ventures to supplement their already disproportionally large budget (Henzler, 1990b:1,5; Smoleński, 1991:10). The clandestine nature of their operations made it easy for them to engage in schemes involving burglary, fraud, smuggling and other forms of organized crime of staggering

proportions. In principle, criminal gains were used to finance the services' ideological mission: to combat class enemies at home and to support Marxist parties and movements abroad. Yet the rules were lax enough to allow massive private appropriation of the proceeds from their predatory, illegal ventures. This contributed to internal problems and antagonisms within the Security Service and the whole MSW. In rare instances, operatives were convicted of criminal offences when they claimed too large a share of the stolen goods.

One MSW-directed crime ring, which operated in Western Europe in 1968–71 and managed to steal and smuggle into Poland huge quantities of gold,[11] jewels, precious stones and other valuables, was investigated by an internal ministerial commission in 1984. Most of the goods that had been deposited in the MSW vanished without a trace (Henzler, 1990b; Jurczenko and Kilijanek, 1991; Smoleński, 1991). Despite the MSW commission's recommendation to pass its final report to the Procuracy[12] (Piecuch, 1996b:176–84), the Politburo, headed by General Jaruzelski, decided against it and the matter was hushed up (*Życie Warszawy*, 1990:1). In his 1991 interview, General Kiszczak justified the cover-up, claiming that exposure of the operation would harm Poland's interests and credibility (Smoleński, 1991). In 1990, seven people were charged with corruption in connection with this affair (*Życie Warszawy*, 1990:1), but the charges were later dropped because there was insufficient evidence that the accused men had gained personally from the crimes.

The criminal economic ventures of the Communist secret services illustrate their special status and their continued impunity, despite the disintegration of the system that spawned them.

The endowment of the *nomenklatura*

The lack of any political or social control over the Party and its tight rule over the legal system led not only to the unchecked power of the party/police-state, but also to a feeling of omnipotence and impunity among its officials.[13] One of the attributes of communist rule in Poland (and in other Marxist states, see Łoś, ed. 1990) was corrupt networks of ruling cliques that aimed at organizing their relationships in such a way that every member of the clique had an opportunity to take advantage of the resources – be they political, economic or legal – controlled by other members.[14]

In the 1970s managing the country became, for the Party élite, synonymous with owning it, because of their unhampered use of its wealth

and institutions. In the 1980s the Party introduced pseudo-market reforms that enabled a formal legitimation of the *nomenklatura*'s 'informal property rights' of the earlier period (see Łoś, 1992, 1994a,b for details). The new pro-entrepreneurial, pro-market rhetoric facilitated a conversion of the long-standing *nomenklatura* practices of illegal appropriation of state resources, corruption and organized crime into officially hailed schemes of privatization that turned the party '*apparatchiks*' into '*entrepreneurchiks*' (Tarkowski, 1990; also Łoś, 1992, 1994a,b). But the old mentality and habits persisted:

> [A]ll the wives of party secretaries, ministers' sons, and police col-onels' brothers who open private firms rely not on low-cost produc-tion or product superiority in their quest for profit but on political linkages that assure them privileged access to scarce inputs from the state sector. The unchanged state sector, with its pseudomarkets, infects the private sector, and the distorted existence of the latter makes it a fertile ground for rent seeking by the ruling stratum. (Winiecki, 1990:69)

A slew of new laws[15] led to a proliferation of officially registered joint-stock companies and partnerships founded on the basis of, and in parasitic symbiosis with, the state-economy units (similar schemes in Hungary were dubbed 'golden parachutes'; see Botos, 1990:137). The main objective was to secure a 'legal' transfer of state property into the hands of the party-class (Zybertowicz, 1993:36). A Polish sociologist wrote about the new breed of Communist capitalists thus:

> From his workplace he takes anything that can be used as capital to help launch a private enterprise: raw materials, machines, cars and so on....His main capital is not money but rather his privileged position of 'access' to policymakers and bureaucrats....The Enfranchised Nomenklatura Man...flies a company plane, has his own sports club and hunts with colleagues, retiring at night to the luxurious lodges built for high-level officials in the 1970s. (Gliński, 1992:150)

One of countless examples of the private appropriation of state-economy assets for a symbolic payment involved a joint-stock company, Igloopol, where:

> [T]he stock-holders...including the director [of the parent state com-pany] and former vice-minister of agriculture...in exchange for less

than 9 billion zloty [Polish currency] secured assets valued at about
200 billion zloty...provided by their parent enterprise, based on
contracts they signed with themselves [in their double capacity]. (Titten-
brun, 1992:147; emphasis added)

A 1989 investigation by the Supreme Chamber of Control confirmed
the parasitic pattern of the '*nomenklatura* companies'. It issued a report
which showed that they were created mainly to subvert tax and wage
regulations, inflate prices, create monopolies, use state offices for private
gain and channel state assets into private ventures (Baczyński, 1989:1,4;
Milewska, 1989:1; Tittenbrun, 1992:143). The first post-communist
government, however, has accepted this mechanism for the massive
enrichment of the *nomenklatura* class, partly in the hope that it would
have an 'erosive effect' on that class. Yet it may be argued that instead
of the anticipated weakening of the Communist élite's cohesiveness in
the wake of its ideological conversion and atomization through
individualistic entrepreneurial pursuit, the well-entrenched, informal,
mutually corrupting networks were strengthened by their new opportun-
ities to capitalize on their crimes and to venture into new, more daring
criminal schemes (Łoś, 1994b:82–4; Zybertowicz, 1993:32–45).

By the time of the first (semi-)democratic elections in June 1989, there
were already 3000 joint-stock companies. In 75 per cent of cases they
had been created on the basis of the 1700 largest state enterprises
(Tittenbrun, 1992:143). At the beginning of 1990, among the people
occupying key positions in joint-stock companies were 705 chief
executives of state enterprises, 304 lower rank executives and chief
accountants, 580 directors of state-controlled co-operatives, 80 Party
apparatus functionaries and activists, 57 municipal presidents, nine
heads of districts and their deputies, and 38 directors of district-govern-
ment departments (Skarzyński, 1990:4).

While it appears that in the 1970s the criminal enrichment schemes
of the ruling groups within the economic and security sectors were
probably relatively unconnected, the late 1980s were characterized by
their relative merger. The new opportunities of direct property conver-
sion, transfers of funds of substantial value and creation of joint ven-
tures with foreign capital attracted keen interest from secret-services
members who did not want to be left out. As mentioned earlier, each
workplace, organization or office had its own SB 'guardian angel'. This
person ran a network of secret informers and was, as a rule, fully
apprised of life under the formal façade of stern communist institutions
(Zybertowicz, 1993:32–45). Due to their inside knowledge, these SB

officers were exceptionally well-placed to pressure officials who were designing high-stake deals into inviting them to participate as partners, paid protectors or providers of useful intelligence. Close links of SB and military secret services agents with their often influential secret informers were also the basis for various profitable endeavours.

Moreover, security agents were always heavily involved in areas requiring extensive foreign contacts, such as diplomacy, foreign trade and sport, which presented them with unique opportunities for smuggling, hard-currency graft and speculation. In the 1980s and into the 1990s, they could actually invest their illegitimate foreign earnings by setting up sham joint ventures, or so-called 'Polonia' (émigré) companies. These types of companies were offered especially favourable tax terms in the name of attracting foreign investments (Zybertowicz, 1993:39–43). Finally, the information obtained through technological espionage was a commodity that could bring a high price on the black/ free market (Żabicki, 1992).

In sum, the *nomenklatura* networks of the late 1980s appeared well prepared for the shift towards capitalism and determined to capitalize on their privileged position and connections. Moreover, they had been socialized to regard legal constraints as not applicable to themselves. In Part III we examine these networks' place and role within the structural transformations of the 1990s.

The rule of law and the police-state

Responding to pressures from international bodies and a dissatisfied society at home, the Party under the leadership of General Jaruzelski tried to build an image of Poland as a state ruled by law. This new approach was also prompted by a growing disintegration of the system of centralized control over various levels of the party-state. Among the institutions introduced in the 1980s with the explicit aim of monitoring and enforcing the legality of the state and its representatives were the Superior Administrative Court (1980), the Tribunal of the State (1982), the Constitutional Tribunal (1986) and the Ombudsman (1988). Moreover, a 1980 constitutional amendment removed the Supreme Chamber of Control from the cabinet's supervision and subordinated it to the *Sejm* only (reversing a 1976 amendment; Mordwiłko, 1994:57–8).

All the above institutions were potentially useful instruments of the rule of law, but their primary function in Poland during the 1980s was to try to provide legitimacy to a system that was not based on law. While the Ombudsman's office and the Superior Administrative Court could

claim some achievements, they could not alter the overall political context or the vagueness of the constitution. The Constitutional Tribunal was to rule on the constitutionality of only those laws that were passed after March 1982 (thus excluding the exceptionally harsh laws based on the 1981 Martial Law decrees and other enactments of that period), and was not empowered to examine laws from the perspective of international law (Łętowska, 1994:32). Moreover, its decisions could be overruled by the *Sejm*.

The usefulness of the Tribunal of the State was purely symbolic, as the Party and its leaders could not be touched, and any rare attempts to hold former state dignitaries accountable for their actions were undermined by the nature of the system itself and the close ties of criminal 'togetherness' within the ruling stratum. No institution of constitutional control can be effective if there is no political will and the ruling party places itself above the law. It is also worth noting that in communist Poland the very concept of 'constitutional responsibility' of state officials was a legal fiction, given that many governing bodies, including such seats of power as the Party and the Central Planning Commission, had no constitutional basis, and government operation was regulated mostly by decree rather than by proper legislation (Kowalik, 1990:203–4). Furthermore, the MSW and the omnipresent secret services not only continued to be exempt from any scrutiny but were allowed to expand and become more autonomous during the period in question.

The creation (or upgrading) of the institutions mentioned in this section constituted an attempt by the political leadership at *legitimation by procedure* and the depoliticization of political control in the face of mounting resistance within society. Yet these measures neither constituted a system nor were capable of shaping the socio-political environment in which they functioned. Inserted artificially in this environment, new institutions based on the rule of law had little hope of wresting power from the existing system of control that relied on political decision-making and was averse to the formal constraints inherent in a procedurally based determination of outcomes.

5
The Role of the Secret Services in the Solidarity Revolution

Points of departure

This chapter explores the role played by the Communist secret services in the process of top-down reform in the late 1980s and in the first months of the formation of a new political and economic order. Our exploration of this specific area builds on, and is meant to supplement or revise, our initial reading of this dynamic process based on our earlier research. We start with the following premises of the relevant facets of this process.

First, Poland was the first country in the Soviet Bloc to initiate radical political change; its example encouraged and cleared the path for other countries in the region. By looking closely at the events preceding the dissolution of the communist regime in Poland, we learn by the same token about the underpinnings of this historic process as it evolved internationally.

Second, several communist countries, including Poland and the Soviet Union, reached a stage of post-reformist decadence in the 1980s (Łoś, 1990), and it became obvious that attempts to accommodate two radically different ideologies through a quasi-marketization of the Communist economy were not going to enhance the performance of that economy in a lasting manner. The resulting tension and contradictory ideological and economic pressures, combined with an uncontrollably expanding second economy and the weakening of the monopolistic state, had to alarm those whose vital interests were linked with that regime and its apparatus. By the very nature of its enterprise – the gathering of intelligence – there is no doubt that the KGB, along with its East/Central European satellites, was better informed than any other

organization about the depth of the crisis and the looming economic bankruptcy of the communist economy.

Third, in none of the communist countries, Poland included, was the opposition movement strong enough to overthrow communist rule by force. The state had at its disposal a coercive and military apparatus of enormous proportions, and was capable of defending itself against the 'people's power' (see Werblan, 1993; Zybertowicz, 1994 for elaboration of this thesis).

Fourth, the disintegration of the Soviet bloc was enabled and hastened by the reforms initiated by the Communists themselves in their attempts to fend off the deepening economic decline. When the internal dynamics of reforms undertaken in Poland led the system to the brink of radical change, the ruling élite chose not to block it but, instead, to embark on the path of negotiated revolution. Because of this decision, the depth of the transformation went far beyond the programmes of reform drafted by both so-called Party liberals and the leading opposition forces (Bereś and Skoczylas, 1991:194; Misztal, 1995:18; Zubek, 1995). The top-down political reform launched in 1989 was not meant to amount to anything more than a tightly controlled power-sharing arrangement, whereby the opposition was to play the role of a junior partner used mainly to diffuse the responsibility for widespread economic hardship. The Communists' ability to control the unfolding process proved, however, to be less decisive than they expected, and they ended up being swept swiftly (albeit temporarily) out of power (see, for example, Paczkowski, 1995a). Nevertheless, they seemed to have contingency arrangements and did not fall very far or very hard.

Fifth, the peaceful and measured course of dismantling the Party's monopolistic position – a position guarded by a phenomenal apparatus of organized force – would have been unlikely without the protection and actions of the Communist secret services.

Finally, given the intricate process of struggle and negotiation, the enormous stakes involved, the potentially threatened interests of Moscow (the dominant foreign power) and those of fellow 'satellite' states, and the size and strength of the police and special security forces, it seems reasonable to assume that no explanation of the processes of transformation and formation of new order in Poland would be adequate without accounting for the role and legacy of the police-state (see, for example, Staniszkis, 1994–5).

Covert methods of influencing social movements: the relevance of Gary T. Marx's model

The mass social movement called Solidarity was a prominent force whose contribution to the final demise of the communist system in Poland (and throughout the bloc) cannot be over-estimated. Yet, even though this movement was born and operated for almost ten years within the police-state environment, researchers, including specialists on social movements, have not given this significant circumstance much thought. This is despite the fact that as long as 20 years ago Gary T. Marx elaborated a conceptual model that could have been fruitfully utilized in studies on this subject (Marx, 1974, 1979).

The vulnerability of social movements to infiltration

Marx chose the phenomenon of the police informer as the starting-point for his analysis of the state's reaction to the emergence of a social movement. He correctly observed, 'In theory, a distinction can be made between the informant who merely plays an information-gathering role, and the agent provocateur who more assertively seeks to influence the actions taken by the group' (Marx, 1974:404). The most useful secret agents, of course, are those who have the potential to climb to the top in organizations or movements they infiltrate or who have been recruited as agents from among the top leadership.

Marx argues that inserting agents into loosely structured and usually ill-disciplined social movements, whose members are not normally carefully screened, is much simpler than introducing agents into formal structures of foreign states or into criminal organizations (1974:424). Moreover, 'the elaborate preparations that characterize wartime spies generally seem absent' (1974:410).

In Poland, in the 1980–1 period, prior to the imposition of Martial Law, the Solidarity movement was characterized by a number of features mentioned by Marx, including its stress on 'peaceful nonviolent means, reform, democracy, openness, an antibureaucratic orientation and optimistic faith in people, tolerance, community, and naïveté about government surveillance' (1974:424). Such features render movements vulnerable to secret-police infiltration.

Within Solidarity, both during its open existence (1980–1) and its underground period (1982–9), another phenomenon noted by Marx could also be observed. He wrote:

> Activists often react with great ambivalence to the discovery of an agent or to an accusation against someone. The member who attempts to reveal an agent, whether real or imagined, may face countercharges of being an agent or at least of damaging the movement through smear or slander and creating suspicion. Even where the evidence is incontrovertible, some activists will refuse to believe that a trusted colleague could voluntarily betray them. (1974:425)

Later in this chapter, we analyze and illustrate the strategies and functions of the infiltration of the Solidarity movement by the secret services in the first and second halves of the 1980s.

Strategies for inhibiting social movements

In a 1979 essay, Marx describes various strategies and tactics employed by secret police organizations with the aim of inhibiting social movements. They include:

1. The creation of an unfavourable public image of the movement (disinformation, counter-propaganda, etc.).
2. Inhibiting the supply of money and facilities.
3. De-recruitment: deterring new recruits, effecting reduction in the membership or suppression through use of threats, putting pressure on families, enhancing paranoia about being watched and infiltrated, scare tactics, etc.
4. Destroying leaders through smear campaigns, surveillance, harassment, assults and threats.
5. Creating internal conflict by encouraging factionalism, jealousy and suspicion among activists; creating or fuelling schisms based on disagreements over tactics, goals or personalities.
6. Encouraging external conflict by promoting conflict between the movement and other groups in its environment, pitting different movements against one another, or creating alternative social movements to divert the targeted movement's energy from broader goals and make it compete for limited resources, social support, etc.
7. Sabotaging particular actions, for example meetings, rallies (Marx, 1979:96–106).

Marx also looks at various methods of facilitating social movements that the secret services employed. While he enumerates the diverse aims of such actions, we find the following insight to be potentially most relevant to the case at hand: 'The facilitative actions that police

use...may be part of an indirect strategy to strengthen or create (in order to control) a group that is the opponent, or rival, of the real target group...Or in the classic tradition of the provocateur, authorities may covertly encourage a group in order to sanction it later' (Marx, 1979:106).

In the history of communist countries in general, and Poland in particular, imaginative examples of the application of strategies specified by Marx abound. Normally they were effected through the deployment of, or with support from, the secret services. We present in this chapter some Polish practices and concrete examples that illustrate the capability of the police-state to influence both social movements and processes co-produced by them.

In Poland in the 1980s, all social initiatives, even those that did not aspire to political or cultural independence, were routinely infiltrated – conditions that met the criteria for a process Marx called the 'centralized policing of politics' (1974:437). His conceptualization was based on the study of events in the United States, and the scale and intensity of these practices in Poland were incomparably greater:

1. The police agencies of communist states were much more extensive than those of states not based on the command state-economy, one-party monopoly and ideocratic order.
2. In addition to police organizations, in their efforts to suppress social movements communist states were able to use the mass media and the workplace freely, as both were fully owned and controlled by the party-state. This enabled the authorities to conduct well-planned and co-ordinated operations whereby, in addition to covert actions, they could easily effect massive smear or disinformation campaigns and fire political activists.
3. There were no limits (other than practical ones) to the arbitrary use of the resources of the police-state by the ruling élite. There were no independent institutions to supervise and keep them in check. The state budget and the allocation of money to the security sector were classified and not subject to the approval of any democratically elected bodies.
4. The scope of activities forbidden by the state and therefore subject to policing was boundless. Everything not explicitly permitted by the law was left to the discretion of the police and current ideological interpretation. Certainly, any form – or merely the suspicion – of spontaneous organizing or congregating, uncensored publishing, unauthorized photocopying, displaying non-state-approved symbols

and so forth was treated as potentially threatening to the security of the party-state.

Communist objectives in trying to control social movements also fell within the police-state context and went far beyond the relatively simple task of inhibition. In our research into the Solidarity movement we were alert to both the features that seem common to the policing of social movements in various societies and the characteristics that may be specific to this historically and politically unique case.

1980–5: Attempts at eradication or subjugation of the opposition

It is worth emphasizing that by the time the Party leadership entered the historic Round Table talks with the opposition, at the beginning of 1989[1] (see Chapter 6), they were thoroughly prepared, having deployed massive security resources in a complex strategy designed to mould the 'revolutionary' process and protect their interests. They had the advantage of many years' experience in playing games with the opposition. General Kiszczak explained the background to the talks:

> Solidarity did not fall from the sky. Among its ten million [members] there were people who had been our agents even before it was created. All that was needed was to re-activate them . . . [A]lso, we had already in place our deliberately built network of agents among the contesting groups which had been active in the 1960s. Many of them were later drawn into illegal [political] organizing and through them we could recruit others. At the beginning of the 1970s, this network was by and large abandoned. The files were deposited in the archives and the people concerned were told that contacts with them would be discontinued. Yet at the end of the 1970s, they were approached again, and re-recruited, often under pressure. (Bereś and Skoczylas, 1991:194–5)

It is also noteworthy that – as observed by a former officer of Military Counter-intelligence – the relatively active intellectual opposition in Poland consisted in part of people who had roots in Party élites and were linked by 'family ties with high-ranking Party functionaries and state officials. They were good sources of information, without the need to formalize their status as informers' (Kamiński, n.d.:23).

Anti-communist opposition had existed in Poland throughout the 45 years of communist rule (Gella, 1978, 1998; Lipski, 1983:12–29; Rozmarynowicz, 1996; Kurtyka, 1997; Zuzowski, 1992). With the birth of the Committee for the Workers' Defence (KOR) in 1976 it became quasi-institutionalized (Lipski, 1983; Zuzowski, 1992). KOR and several other organizations had a tendency to act openly – for instance, they listed in their bulletins the names and addresses of the core group of activists – and despite constant and often brutal harassment, their presence appeared to be tolerated by the authorities (see, for example, Friszke and Paczkowski, 1991:14–15). It is often claimed that during the 1970s, when Edward Gierek was the Party First Secretary, some groups were treated as a sort of informally licensed opposition. It is likely that the leadership opted for a strategy whereby these opposition circles would not be 'suppressed with repressive and prosecutorial measures [but] controlled and managed by operational means' (Bereś and Skoczylas, 1991:145). The degree to which this control was successful has not been sufficiently investigated.

The reason for Gierek's 'soft touch' is usually linked to his politics of openness to the world and his instrumental liberalization of the stagnating regime. He was able to establish a friendly rapport with several influential Western leaders, such as German Chancellor Helmut Schmidt, while building a reputation of being a crypto-democrat and securing many credit lines from the West. (These credit lines were responsible for unbridled corruption and the unprecedented accumulation of the Polish external debt that had climbed to 20 billion dollars by 1980.)

The credits helped to buy social peace. Yet to keep Western credit lines open, the opposition needed to be handled with restraint. Some authors argue – although their claims have not been sufficiently substantiated in the literature – that a large share of these credits (perhaps as much as 6 billion dollars) was transferred directly to the Soviet Union. If true, this could explain Moscow's tolerance of Gierek's relative leniency towards the unusually conspicuous opposition activities in Poland during the 1970s (Ochocki, 1992:159).

The secret-police chiefs' boast that they were capable of closing down the opposition in Poland in 48 hours was probably not a bluff. They kept a very close watch on opposition-type activities. According to a November 1979 Security Service estimate, all the opposition groups and their active supporters, numbering about 1500 people, were identified, kept under surveillance and in some cases infiltrated (Dominiczak, 1994:483).

It is noteworthy that Stanisław Kania, who succeeded Gierek in September 1980 as the Party First Secretary, from 1968 to 1971 had held the post of director of the CC Administrative Department which oversaw the military sector, MSW (including secret services) and justice system, and in 1971 became CC Secretary responsible for the above-mentioned sectors (Bereś and Skoczylas, 1991:99; Mołdawa, 1991:369). He was replaced as the Party First Secretary in October 1981 by Jaruzelski. (Jaruzelski's unique location within the police-state power apparatus is described in Chapter 3.)

The policy of controlled toleration of opposition contributed to a momentous power shift following the August 1980 strikes and the advent of the mass protest movement, Solidarity. A broad-based civil resistance movement was reinforced and inspired by seasoned opposition organizers, who brought with them cultural-symbolic skills, a useful network of contacts both at home and abroad, and social prestige.

The historic 16 months from August 1980 to December 1981, during which the foundation of civil society was laid in Poland, had a hidden undercurrent – a massive surveillance and infiltration build-up. From the very beginning Solidarity was perceived by the authorities as an alien element within the communist order of things. It was later revealed that 'the idea of Martial Law was born already during the peak of workers' strikes in 1980, that is almost 16 months before its actual introduction' (Kukliński, 1992:39). The infiltration of the Solidarity Union did not present much of a challenge to a professional service; in the euphoria of newly acquired freedom, almost everything was done openly and there was no screening of candidates for important positions within the newly created union structures:

> [In 1981] Czesław Kiszczak [then Interior Minister] reversed his earlier interdiction that prevented MSW functionaries from joining the Solidarity Union by explicitly ordering undercover MSW employees [seconded to other places of employment] to become members. This order was heeded by 85–90% of the SBs working in the postal and telecommunication services, various ministries and other central agencies as well as in important industrial plants, editorial offices, radio and television, cultural and academic establishments, and so forth. (Piecuch, 1996b:358–9)

In one very publicized case, an SB man, Eligiusz Naszkowski, became the head of the regional Solidarity board in Piła. Excerpts of his tapes of a closed meeting of Solidarity leaders held just three days before the

introduction of Martial Law were repeatedly broadcast by the media to highlight 'the hawkish mood' of the Solidarity leadership and prepare the ground for the military crack-down (Grocki 1992:36–41; Jaruzelski 1992:342, 355; Bereś and Skoczylas 1991:196–8; Piecuch, 1996b:112). Both Solidarity and police sources confirm that there were a significant number of agents at very high levels of the Union structure (Jakimczyk, 1997:5; Gruba, 1990:14). Kiszczak explains the steps undertaken by his Ministry in preparation for Martial Law:

> Efforts to establish a new network of agents were intensified, the old network that was long put on ice . . . was reactivated . . . [I]n November [1981] operations were conducted that aimed, on the one hand, at persuading Solidarity to restrain itself and temper its anarchic actions, and on the other, to mislead it. All kinds of information was spread, including leaks about planned arrests. At the same time, some special operations (such as the 'Ring' operation) targeted the criminal underground in order *to muddy the waters*. (Bereś and Skoczylas, 1991:127; emphasis added)

Kiszczak claims that secret services had many thousands of informers within Solidarity (the Union at that time numbered about 9 million members), including several dozen of the Naszkowski calibre (Bereś and Skoczylas, 1991:197). Asked whether the operational network of agents made possible an effective manipulation of Solidarity, Kiszczak answered: '[It] did, but not always to the desired extent. If our capability were unlimited . . . , there would be no need for the Martial Law' (Bereś and Skoczylas, 1991:195).

The Polish historian Paczkowski has analyzed many archival documents pertinent to the methods used by the Communist authorities. He quotes a document which testifies to the willingness of the Party leadership to authorize a large-scale provocation:

> In the second half of December 1980, material prepared for a meeting of [the then Party First Secretary] Stanisław Kania with the MSW Party activists asserted that . . . a strategy of 'localized confrontation' should be followed 'to prepare the ground for a total confrontation' . . . Reactions to the former may even provide an excuse for the introduction of Martial Law. The example was given of the arrest and indictment of [the leading dissident] Jacek Kuroń and his 'close associates' that would likely lead to 'efforts to incite widespread strikes in his defence, thereby justifying – after other measures have

been tried – an imposition of war measures in the regions threatened by these actions'. (Paczkowski, 1995b:15; internal quotations are from the relevant documents)

Paczkowski also describes two directives presented to the 26 November 1981 CC Secretariat meeting by Jaruzelski, soon after his ascension to the First Secretariatship of the Party and only 17 days before the onset of Martial Law. He advised his audience explicitly that it was necessary to prevent a speedy settlement of two conflicts that were escalating at that time, namely the nationwide wave of student strikes and the teachers' strike in Lublin (Paczkowski, 1995b:15). Undoubtedly, such recommendations were carried out also, if not exclusively, through the engagement of secret services. Using Marx's terminology, their actions would be classified as facilitation/provocation tactics, but they need to be understood as a part of an overall strategy related to the timing and legitimation of the pending military crack-down.

Among the complex set of operations through which Martial Law was prepared and implemented was an operation code-named 'Spruce' (*Jodła*), and its first stage was the internment of several thousand opposition activists. The second stage was supposed to manipulate the weakened Solidarity movement to make it compatible with the communist system. This was to be achieved by executing Kiszczak's order to assemble a team of 'Solidarity activists who could replace the extremist leadership' in all regional councils and larger workplace committees. . . . During the first meeting of the MSW leadership after the introduction of Martial Law, a decision was made to 'intensify work leading to the creation of a new, truly "people's" Solidarity' (Paczkowski, 1995b:15, internal quotations are from the relevant documents analyzed by Paczkowski; see also Dziadul, 1991a:188).

Paczkowski comments on these efforts: 'This component of the preparations for Martial Law is especially noteworthy as it shows in a distinct fashion the active role of the security apparatus in shaping the political situation and the coercive appropriation of the fledgling civil society' (1995b:15). Referring once again to Marx's conceptualization, it was an attempt to create an alternative movement, but – unlike his model – this project was to replace imperceptibly the targeted movement with a new one. This was a much more ambitious undertaking, requiring an extremely extensive network of agents.

The second stage of the 'Spruce' operation was never realized, probably due to the genuine commitment of Solidarity supporters and the

unjailed activists who steadfastly refused to co-operate. This made it extremely difficult for secret collaborators to take over leadership roles in the movement.

After the initial suspension of the Union, it was officially de-legalized in October 1982. A bureaucratic effort was made to create alternative trade unions, based on branches of the economy instead of regions. The SB's task was 'to ensure that the new unions, while attending to workers' concerns, would not threaten political interests of the Party . . . Of paramount importance was the selection of cadres for those unions' (Dominiczak, 1994:552).

The relationship between the second stage of operation 'Spruce' and still another initiative, undertaken in the spring of 1982 by Stanisław Ciosek, then Minister for Co-operation with Trade Unions, is not quite clear. Mieczysław Rakowski, Deputy Prime Minister from 1981 to 1985, who held several posts with the Party, made the following comment: 'Stanisław Ciosek tried to establish ''Workers' Solidarity'', a pro-government organization. The MSW furnished the cadres. . . . But none of these people had sufficient standing to achieve much. There were a lot of agents, willing to act, but they were petrified by the fear of being unmasked and compromised' (Piecuch, 1996b:420, also 140; Bereś and Skoczylas, 1991:195; compare Marx 1979:104).

These setbacks notwithstanding, the MSW was actively seeking new recruits. Based on MSW records, Henryk Dominiczak maintains that mass internment of Solidarity activists during the Martial Law period provided an opportunity for a very successful recruitment campaign in which Counterintelligence (Department II) officers were also involved. According to the documentation of the 20 January 1982 meeting of the MSW top cadres, at the beginning of 1982 all operational MSW services recorded increases in their SC rolls (Dominiczak, 1994:531–2, 543). According to Dominiczak, by mid-July 1982, 14 500 individual interviews with internees had been conducted, of which 950 resulted in consent to collaborate (1994:552). Moreover, the MSW directives of June 1982 prescribed implementing 'such methods of release of internees which would be most likely to discredit them in the eyes of their friends and associates, arousing suspicion and apprehension' (Dominiczak, 1994:552).

The secret services engaged in a variety of actions designed to tarnish the image of Solidarity activists, foment mistrust and produce 'de-recruitment' (to use Marx's term, 1979:101–2) or the estrangement of Solidarity activists from their own organization. The directives quoted above are only a small sample of the many instances of this extremely

common category of manipulation. A typical example of a smear campaign, described in detail by Jan Widacki, a Deputy Minister of the Interior under the first non-Communist minister, started with anonymous letters concerning a targeted minor dissident's mother. She was described as a half-German, a former Nazi collaborator, an adulterer and more. This 'information' was spread through SCs in the man's workplace where he was very respected by his colleagues. A massive campaign, which lasted one and a half years and involved many officers from both the civil and military secret services and a good number of SCs, was successful in tarnishing his reputation and culminated in his quitting his job. Widacki stresses that this was not an isolated or extraordinary case.

Yet another *modus operandi* employed by the secret services in their de-recruitment efforts consisted of intimidation tactics in order not just to terrorize individuals, but also, or perhaps primarily, to deter others. For example, in January 1983 an underground Solidarity activist, Janusz Krupski, was kidnapped and doused with a noxious liquid that almost killed him. The SCs, introduced earlier into the underground structures, were instrumental in making this operation possible (Pleszczyński, 1994:11). In another case, in May 1983, an anti-terrorist squad kidnapped five members of the Polish Primate's committee for assisting prisoners from the premises of a Warsaw church. They were taken to a forest, battered and abandoned (Jach, 1995:3). In the spring of 1984 several Solidarity activists were kidnapped in Toruń.[2] Even though the people immediately implicated in this abduction were convicted following the collapse of communist rule, the motives and the chain of command behind this operation have not been revealed. It was in the autumn of the same year that Catholic priest Jerzy Popiełuszko was abducted, tortured and murdered (probably during an unsuccessful attempt to force him to become an SC) (Case Study 2). It seems that these cases and others in this category were deliberately given some publicity in order to create a climate of terror.

In other instances, attempts were made to create situations or to frame individuals so that they could be accused of terrorist activities or of spying for NATO (Piecuch, 1996c:*passim*, 1996b:102). Moreover, throughout the 1980s, Solidarity sections abroad were being infiltrated. It has been established that there were active agents in offices in Brussels, Paris, West Berlin, Stockholm, Canada and Switzerland (Piecuch, 1996b:140, 238). Various facts, already revealed in the 1980s and provided by new sources and archival documents uncovered recently,[3] seem to validate at least the general message of Kiszczak's assertion that

'90 per cent of money sent by the West for the underground activities passed through our [i.e., secret services'] hands. The same is true for the accounts sent back to the West by Solidarity – they were often prepared by our people' (Bereś and Skoczylas, 1991:202; see also Piecuch, 1996b:251, 257–8; Bosak 1992:6; Lasota, 1992:3).

Even though many of the undercover operations were less than successful, there is no doubt that the underground opposition was significantly weakened by them. It is interesting that the authorities' decision to embark on the course of radical reform was hastened by two waves of strikes in 1988 (in April/May and in August) that were initiated spontaneously by local leaders not connected to the underground Solidarity. The looming threat of the ascension of a new cohort of anti-communist leaders who had escaped infiltration appears to have fired a reformist zeal in the top circles of the party/police state.

Harnessing the opposition: post-1985 Poland as a testing-ground for the Soviet bloc; the role of the secret services in effecting and steering the Round Table talks

Were there any masterminds behind the developments that constituted the core of the systemic transformation in Eastern/Central Europe? As far as the early stages of the process are concerned, the answer is yes. Only in 1995 did Wojciech Jaruzelski reveal the thrust of a conversation he had had with Mikhail Gorbachev in 1985, just one month after Gorbachev had become the new leader of the Soviet Union:[4] 'We discussed every way of bringing about reform. Poland was to become the laboratory of *perestroika*, and we did not want the other Eastern Bloc leaders to know... From that meeting we moved forward. It was pivotal, and everything that followed went ahead in careful consultation and consideration' (Jaruzelski, 1995:7; Mink, 1992:205; Piecuch, 1996b:285). It is likely that the high level of militarization of the regime in Poland at that time played a role in convincing the Soviet leadership that the process would not get out of hand.

For a fuller appreciation of our interpretation of the post-1985 developments, it is important to keep in mind that Communist leaders were addicted to conspiracies. In the 1980s, Jaruzelski was in a unique position because he controlled all levers of power of the Communist party-state: the Party, the state administration, the army and the secret services, both civilian and military. It was a situation in which a prominent actor (Jaruzelski), who had a secret goal (tightly controlled, top-down structural reform), also exerted control over vast strategic

resources (the police-state infrastructure) and received encouragement from the leader of a foreign controlling power (Gorbachev). Under the circumstances, any Communist leader would rely heavily on covert action as one of the most important means of policy implementation (see Chapter 3).

It is also worthy of note that the secret services, especially those involving foreign intelligence, conditioned their members to plan and operate for the long term. They were trained to set in motion complex plots calculated to yield specific returns. Although social actions always have an element of unpredictability, this does not mean that their effectiveness cannot be enhanced through careful planning and cumulative experience.

Following the 1985 Jaruzelski–Gorbachev meeting, the Party inner leadership probably concluded that it was no longer possible to eliminate the opposition. They thus braced themselves for the task of trying to shape the enemy. To facilitate this task, they introduced a vital distinction between the 'constructive' and 'destructive' opposition. The modelling consisted largely of taking action that broadened the space available to the constructive forces and restricted the influence of the latter (Bereś and Skoczylas, 1991:260; Zubek, 1995). In the words of General Władysław Pożoga:

> We wanted to harness the more conciliatory wing [of the opposition], assimilate and neutralize it, and create a chasm between them and the radical wing. This was to be achieved through tactical alliances to promote reforms, allowing the moderate opposition groups to partake, in a restricted fashion, in the shared responsibility. (Piecuch, 1996b:273)

An account by Kiszczak, who was Minister of the Interior at the time, explains that his ministry envisaged the need for some form of power-sharing and endeavoured, by means of secret infiltration, to effect and exploit a split within the opposition: 'As the head of the Ministry of the Interior, I had *a fully up-to-date picture of the situation in opposition circles*' and easy contact with its representatives . . . In January 1989, the Tenth Plenum [of the Party] . . . finally cleared the way for a dialogue with a sector of the opposition which we then called ''*constructive*'' ' (Kiszczak, 1990:11, emphasis added; Bereś and Skoczylas, 1991). As a result, two parallel campaigns began: 'a media campaign to convince the public that it made sense to distinguish between the ''constructive'' and ''destructive'' opposition, and selective arrests of unco-operative

activists who were then to be replaced with secret collaborators' (Piecuch, 1996c:253; see also Borusewicz, 1992:11).

Public attacks were launched against some opposition leaders, while others were ignored. Thus, some people were pulled into the spotlight as major opposition figures or martyrs, while others were pushed off the stage. There was an organized effort to give a boost to some groups and undermine others. Solidarity sections abroad were also included in the plan. The Brussels office was made to appear successful in channelling Western funds, for instance, while some other offices were caused to fail (Piecuch, 1996c:254).

Operational channels were used to transmit controlled 'leaks' about intentions of the authorities to chosen opposition circles and/or leaders. Some of the targeted leaders would prepare political analyses to be publicized through the underground press and/or passed by foreign journalists to the Western media, notably Radio Free Europe and Voice of America. The accuracy of their predictions would enhance their public image and symbolic capital (compare Marx, 1979:107 on movement facilitation tactics).

In the aftermath of the amnesty of 5 June 1986, 5000 special 'interviews' were conducted with those affected by it (Dominiczak, 1994:580).[5] According to Pożoga, 'it was an attempt to dissuade some people from further oppositional activity, obtain intelligence on the political underground and select likely candidates for recruitment. The SB still suffered from a dearth of agents of stature. They dreamt about drafting people who could climb very high' (Piecuch, 1996b:228, also 375).

The opposition figure Jan Litiński questioned the motives behind the amnesty in an article published by the underground periodical *Tygodnik Mazowsze* in the autumn of 1986. He indicated that there were no obvious reasons for the sudden release of practically all political prisoners, and that it was effected by the police and not the *Sejm* or Jaruzelski: 'This development has no precedent in the history of this regime. It truly reveals the police as the leading force in the country... *in the past they never presented themselves as a more prominent force than the Politburo*' (Lityński, 1986:1; emphasis added).

Commenting on the release of the bulk of non-criminal prisoners (as they were then referred to) in September 1986, Rakowski said: 'At that time we were convinced that we were able to restructure the system according to our own idea. Our understanding stipulated that we had the initiative and, consequently, *control of the dynamics of the situation*' (Rakowski 1991:93–4).

The complexity of the processes in question notwithstanding, what interests us here above all is the role of the secret services in securing the control Rakowski referred to. We postulate that the party-state leadership did not decide to share and eventually to relinquish power to Solidarity élites before at least four major conditions had been fulfilled.

First, the deepening economic paralysis made it clear that only a partial legitimation of the system by prominent Solidarity leaders could prevent an uncontrollable social explosion. In other words, it became apparent that the co-opting of a section of opposition élites to the ruling bloc was vital to averting a spontaneous social mobilization and a potentially crippling assault on the *nomenklatura*.

Second, when it was asserted that regional Solidarity organizations were not strong enough to constitute a serious alternative to the state apparatus, the Communist leadership became confident of its ability to maintain the upper hand in the badly needed major restructuring process. (In the second half of the 1980s, most regions lacked fully active Solidarity organizations.) Kiszczak reiterates this diagnosis of the situation in Poland in the following statement, made in fall 1992:

> Obviously, we could have continued to rule, as Solidarity was not exactly at the height of its popularity. The strikes that occurred at several mines [in 1988] did not trigger nation-wide unrest, and the army, *militia*, and administration were in our hands . . . It was the best timing – the enemy was so weakened that we trusted we could avert undue disturbance. (Kiszczak, 1992:3)

Third, when it was decided that the achieved level of operational control of Solidarity élites was sufficient to prevent their excessive emancipation, a controlled transformation seemed feasible.

Fourth, once the inner party-state leadership managed to neutralize those circles in their own power bloc that were capable of preventing or impeding top-down reform, they could more confidently concentrate on the task at hand. The most important aspect of this neutralization was the truncation of the extremes. This involved pushing out from the key positions both the Party hardliners and those judged to be excessively radical (Perzkowski, 1994:218–19; Piecuch, 1996b:72–3). Another important thrust of the neutralization strategy was to secure full control over the satellite 'parties' (Perzkowski, 1994:220, 234, 238; Piecuch, 1993:345–6; Zybertowicz, 1993:29). A special Operational Team of the MSW Department III established in 1984 was in charge of this task, following the murder of Father Popiełuszko.

This was not the only type of secret service involvement in operations that targeted the ruling power circles. According to former cabinet spokesperson Jerzy Urban, former Prime Minister Rakowski divulged that when he was forming his cabinet in September 1988, the MSW had given him 'a long list of objections to certain candidates as well as, with no request from him, a lengthy list of approved persons . . . It was an informal attempt to influence the make-up of the cabinet.' Urban explained that the MSW had a significant bearing on important appointments because when it raised objections against certain individuals, 'there was no other apparatus that could check these objections and prove them wrong' (Bereś and Skoczylas, 1991:146).

Another issue to be investigated is the contribution of the secret services in the political planning of the top-down reform. An important – perhaps even decisive – role was played by the 'group of three': General Pożoga, who was then chief of the MSW Intelligence and Counterintelligence and the First Deputy to the Interior Minister, Urban, and Stanisław Ciosek, a Politburo member. This team was treated by Jaruzelski as a sort of 'think tank', and was charged by him with the confidential task of preparing strategic reports on the prospect of long-term reforms (for the texts of these reports, see Urban *et al*., 1987, 1992). Urban commented on the team's role: 'There is no doubt that we were preparing ground for what later happened in Magdalenka.[6] The meetings of the ''group of three'' were initiated by Jaruzelski and others as a plot concocted behind the backs of the Party apparatus' (Urban, 1991:151; Piecuch 1996b:249–55, 269–75).

It is not easy to reconstruct the party-state inner leadership's way of thinking. We do not want to create an impression that when they proposed the idea of the Round Table talks it was a part of a fully elaborated scheme. Yet the hitherto uncovered evidence, as well as the apparent train of events, seem to point to a certain logic behind what actually evolved in that momentous period. This logic could be reconstructed in terms of the following strategy: to share, or even in the worst case relinquish, power so that those who were able to pacify the masses would ensure a period of relative social calm, while tying the hands of these partners (the Solidarity élites) in such a way that they could not turn against the initial champions of the reform (see Wyszkowski, 1989; Ziemkiewicz, 1992). Later, when social wrath turned against the new power élite, the plan was to allow or even deliberately stir up discontent among the masses, all the while furthering the process of 'power-conversion'.

An important element of this plan was a controlled engagement of the opposition in the reform process in order to legitimate that process in the eyes of the alienated and destitute masses. On the opposition side, a remarkable blueprint for a compromise agreement with the Communist authorities was written in a prison cell in the spring of 1985 by an influential dissident, Adam Michnik.[7] He believed the only route to peaceful reform was a *rapprochement* between the reformist opposition groups and those segments of the ruling élite who might favour a compromise solution that offered the Communist authorities legitimacy and the civil society some voice and recognition in a semi-pluralist, *reformed communism* (see Skórzyński, 1995:9–11). Despite an escalation of hostile rhetoric against Michnik and the initial vociferous protests against his inclusion in the Round Table exercise,[8] the Jaruzelski/Kiszczak team had to know that his ideas made him a potential ally in the execution of their intricate plans. As it happened, he played a key role in the Round Table process, both overtly and in the behind-the-scenes negotiations.[9] As noted by Jan Skórzyński:

> The key issue [on the Communist side] was a guarantee of security for 'very important groups,' referred to by [a representative of the Party apparatus, Kazimierz] Cypryniak and [Professor of Psychology and Politburo member, Janusz] Reykowski. Jacek Kuroń and, especially, Adam Michnik devoted much energy to calming the fears of the *nomenklatura*...Who knows whether without these efforts the Warsaw talks would have materialized at all? The main task in the talks was to imbed these guarantees into the reforming system. (1995:206)

When the Round Table talks eventually took place, not only were they directly and actively co-ordinated behind the scenes by Interior Minister Kiszczak, but he also was officially named the party-state's chief representative in these talks. This was a puzzling choice. For a large part of the society, not to mention the opposition circles, Kiszczak personified the evil and repressiveness of the communist regime. What is more, particularly after the murders of Przemyk, Father Popiełuszko and others, he was perceived as being personally responsible for the regime's crimes. His conspicuous role in negotiations with the opposition requires explanation.

Undoubtedly, the fact that he was Jaruzelski's long-time friend played a role (Piecuch, 1996b:279). Yet the main reason for his inclusion may lie elsewhere. Even high-ranking Party and government officials were

not privy to the operational data of secret services. Yet in 'operation Round Table', which constituted the centrepiece of top-down reform founded on a power-sharing idea, direct access to information from secret sources and the ability to co-ordinate various operational activities were of crucial importance. The latter included both technical aspects of operational schemes, such as wiretapping, mail surveillance and direct spying, and the involvement of secret agents for such purposes as infiltration, recruitment, influence and disintegrative/active measures. Kiszczak's unlikely metamorphosis into a peacemaker offered a paradoxical climax to the police-state build-up in the last decade of Communist rule in Poland.

The 'operational protection' of the Round Table talks consisted in ensuring that among the representatives of Solidarity and their immediate associates there were a certain number of people belonging to the following categories: secret service functionaries employed elsewhere undercover; fully active SCs; opposition activists who were formerly Party members and who, in their official positions, collaborated with the services, and people never formally enrolled as SCs, but labelled, in the services' jargon, as 'susceptible individuals'.

The presence of secret service collaborators on the Solidarity side of the Round Table talks was documented by, among others, the Research Department established within the MSW by Minister Antoni Macierewicz in 1992. Although there were many reports written by such secret collaborators, 'they were prepared in such a way as to make the identification of the author impossible. They were signed with pseudonyms, and were intended for the MSW, Party, and state top brass. It is absolutely certain that Kiszczak was fully apprised about the intentions, tactics and plans of the opposition during those talks' (Grocki, 1992:88; also 67). Given the combination of personal sources and the extensive use of technical surveillance, it is unlikely that the Solidarity side could hide much from their Round Table partners. According to Pożoga:

> [O]f all the participants on the Party/government side, Kiszczak was best prepared. He knew everything about his own team and could do what he wanted since all the decisions were made by Jaruzelski. He also knew almost everything with respect to the intentions of the Solidarity/opposition side.... first-hand information was flowing incessantly to [the MSW] and, after being processed by their analytical office into easy-to-digest reports, was forwarded to Jaruzelski (Piecuch, 1996b:297).

Still, the infiltration could never be absolute, and Pożoga relates the problems associated with recruitment attempts in newly formed Solidarity groups and bodies. 'It involves a lot of time to prepare an agent. The gaps in the infiltration by agents were compensated by electronic surveillance. Bugs were being installed wherever it was feasible' (Piecuch, 1996b:280).

In those last years, it appears the secret services embarked on a project that only some of their sections were aware of. An important element of the first stage of top-down reform was the *two-pronged tactic*. This entailed, on the one hand, proclaiming the good news of reconciliation spurred by the Round Table initiative and, on the other hand, an intensification of selective repressive actions against opposition groupings to gain an additional bargaining chip in the negotiations (see Bartosz, 1991:11; Ochocki, 1992:225; Dominiczak, 1994:586, 589). The hypothesis of a two-pronged approach helps elucidate, for instance, the still-unexplained deaths – during the weeks directly preceding the Round Table talks – of two priests connected with the opposition, Stefan Niedzielak and Stanisław Suchowolec. The following explanation of these two incidents has been put forth by Zbigniew Branach in his book about the circumstances surrounding the suspicious death (in July 1989) of yet another priest, Sylwester Zych:

> It is not an isolated opinion that the murders of the two priests were carefully planned. A mysterious *death commando*, conducting a string of executions ordered by its sponsors, was designed to intimidate the democratic opposition representatives preparing for the spectacle of the *round-table*. Political murders were to serve a warning: *the ancien regime is retreating, due to the bankruptcy of its ideology, but do not think it is weak . . .* (Branach, 1994:7)

It seems that a method akin to the good-cop/bad-cop tactic was deliberately employed by the establishment. This interpretation is corroborated by Pożoga, who made the following remarks on the events of August 1988:

> The order to crush by force the Nowa Huta strike was issued by the Minister and it happened at a time when the strike was almost over. The Church initiated mediation and Church representatives were among the workers . . . The particularly aggressive and provocative behaviour of anti-terrorist and *militia* forces, also towards women, was not prescribed by some local functionary. Nor could an order of

this type be issued by the region chief. It had to come from the [Interior] Minister, and he had to have authorization from the [Party] First Secretary... [I]t is possible, on the one hand, to seek reconciliation with some party, and, on the other, often on the same day, to order an escalation of repression to teach them a lesson and to facilitate the repetition of this manoeuvre when the talks are resumed. (Piecuch, 1996b:277, 279, 283; Bereś and Skoczylas, 1992:260)

Shortly before the commencement of the Round Table talks, at an annual meeting with the top cadres of his ministry, Kiszczak stated:

Last year, the SB and *militia*, as well as the whole department of the interior had many remarkable accomplishments. Yet, the *systemic transformation*[10] in our country that we are going to encounter this year, demands some modification of the methods and patterns we have been using in our work. This year, we must radically change our approach to the operational work... operational control and protection must take on a more offensive character. The SB may and should create various associations, clubs or even political parties, and submit the existing ones to an intense infiltration.[11] We must operationally penetrate the governing bodies of these organizations, at all levels – central, regional, and the most basic ones. We have to secure operational capability to influence these organizations, to steer their activity and politics (Ziębicki, 1992:10; emphasis added).

The Party leadership's manipulative knack is apparent in secret documents of the Politburo and the CC Secretariat from the period 1988–9, published in 1994 (Perzkowski, 1994). For instance, we learn from them how, on 1 February 1989, Jaruzelski described his strategy to the First Secretary of the Czechoslovak Communist Party, who was understandably alarmed by the developments in Poland:

We want to neutralize Solidarity in order to survive the difficult period of about one to two years when [economic] problems will be especially acute... [We want to] create a situation whereby social-ism would be safe and the opposition would be co-responsible... the game is about absorbing the opposition into our system, its participation... It is a great historic experiment; if successful it may have repercussions beyond the borders of Poland. (Perzkowski, 1994:260, 262)

The minutes of various Politburo and CC Secretariat meetings document strategic ideas debated by these bodies. There are claims that the polarization of the opposition into 'constructive and destructive streams' was effected, at least in part, by the Party leadership's deliberate actions (1994:39,42,47) and the assertion that 'one of the goals of our talks [with the opposition] is to select those we can live with and to cause division within the opposition' (73). There are calls for 'prudence in the manoeuvres aiming at stirring enmity between [Solidarity leader Lech] Wałęsa and those who disagree with him' (41), for a comprehensive plan for 'influencing various strands of the opposition' (238) and for an adroit exploitation of any cleavages within the opposition (247).

Various references to 'simulation games' (130,264,311) and Jaruzelski's call for what he calls 'war games' (117) indicate the emphasis on the need for a comprehensive strategy in dealing with the opponent. These games also involved manipulating diverse groups in the Communist camp. For instance, in the context of preparations for a rally of blue-collar Party activists, Jaruzelski evoked the following scenario: 'these should be young people, trade union activists, the more the better. You must *prepare them, drill them*, they are to stand and shout: ''we shan't allow Solidarity, we are against talking to Wałęsa.'' And, then, we will defend ourselves stressing that it is important to talk' (119–20, emphasis added; also 134).

Kiszczak, preparing for talks aimed at settling the list of approved Solidarity representatives prior to the Round Table meetings, presented a CC Secretariat meeting in October 1988 with a simple ploy, already tested and proven effective. The Communists would suggest certain names of potential Solidarity representatives to Wałęsa, assuming this would compromise those people and make their supporters wary. Kiszczak knew that 'there would be instant mistrust towards the individuals we propose' (82–3).

The proposed team of the Party/government representatives comprised five officials, in addition to Kiszczak himself, explicitly listed as MSW functionaries; but, according to the minutes, the operational side of the Round Table preparations was rarely discussed openly at the Politburo and the CC Secretariat meetings. It was done mostly through Kiszczak's briefings, that dealt in general terms with the necessary manipulative measures, propaganda campaigns (including detailed programming of the content of the media reporting; see for example 204–5), deception, and agile orchestration of various activities within the overall 'political war against the opposition and political enemy' (205).

Only in rare cases were specific examples of operative machinations revealed by Kiszczak; they include the information that a letter from an important opposition lawyer to Wałęsa was intercepted by operational means (83).

Based on these archival materials and other known facts, there can be no doubt that if the Round Table talks were an exercise in the dismantling the Communist party monopoly, it was a controlled exercise, steered from above. At the time of the talks a Deputy Minister of the Interior, Czesław Staszczak, made the following statement during an intra-ministerial teleconference: 'The Party wrote the script for the Round Table talks, and their direction is invariably consistent with the conditions we dictate' (Ziębicki, 1992:10). Although this claim was evidently exaggerated, statements of this type are indicative of top officials' general understanding of the reform process as a game both initiated and directed from above.

In our interpretation, one of the main reasons for the Party leadership's temporary loss of control – through the devastating defeat in the 1989 semi-democratic general elections described in Chapter 6 – was not so much a miscalculation in their manipulation of the opposition but, rather, their under-estimation of two broader processes: the loss by the party-state establishment of any sense of the expectations of the people, and the rapid conversion of the *nomenklatura*'s political power into economic power (see Perzkowski, 1994:416). While the Party concentrated on manipulating individuals and opposition élites, it neglected the broader social context in which these individuals and groups operated. To some extent, it was a similar error to the one committed at the second stage of the 'Spruce' operation (mentioned earlier in this chapter) and in the failed attempts at the establishment of Workers' Solidarity. In addition to their poor understanding of the society at large, it appears that the Party and its leadership were experiencing an acute deficit in both social capital, or social ties, outside their own milieu, and symbolic, or moral, capital, measured by public prestige. These drawbacks limited their ability to orchestrate large-scale social manipulation.

During the 1989 election campaign the secret services were busy gathering intelligence. The case of the SB-installed listening devices uncovered in the regional Solidarity headquarters in Słupsk – and denounced in the media – indicated that the SB was up to its usual tricks. The sweeping Solidarity victory in the June 1989 semi-democratic parliamentary elections necessitated some file-cleaning by the services. In a revealing move on 26 June 1989 the Deputy Minister of

the Interior, General Henryk Dankowski, issued an instruction to all regional branches of his ministry concerning those newly elected members of parliament who were registered SCs. According to this instruction, the removal of the names of these MPs from the Bureau 'C' register of secret collaborators 'should by no means imply that operational contact has been broken. On the contrary, it is necessary to undertake diverse actions to make sure that these persons are linked to us in an ever stronger manner and prove ever more willing to follow our orders.'[12] The importance of this document and the significant scale of the problem was confirmed by the list of formerly registered alleged collaborators presented to the parliament on 4 June 1992 by the then Interior Minister Macierewicz (see Chapter 7).

Secret services functionaries often worked in a fashion common to most state employees under communism, who merely followed established routines and did not show much initiative; but the sheer scale of these services' efforts was daunting and had to have had a considerable impact. Despite the fact that their penetration of many opposition circles was rather shallow, the concentrated targeting of some groups brought long-term effects that helped create favourable conditions for the former Communist élites to pursue their interests under changed circumstances.

The first non-Communist Interior minister, Krzysztof Kozłowski, was faced with the task of renewing the MSW cadres. He quickly discovered that among the new, Solidarity-backed appointees in the refurbished secret service (UOP) there were a number of the 'veterans of opposition' who were in reality SB agents (Kozłowski, 1997b:20; Bereś and Burnetko, 1991:51–2; Snopkiewicz, 1992:22). Many questions remain unanswered. Were these people deliberately directed to the new service? If so, by whom? Was this a co-ordinated scheme? How many agents remained unidentified? Were some people's true identities poorly disguised in a calculated move to make them easy targets for unmasking and to divert attention from others? Some information divulged by Pożoga suggests these possibilities (Piecuch, 1996b:329–30), but there is no research on the subject.

To recapitulate, the following tasks were performed by the secret services during the period of social change in Poland often described as the 'Solidarity revolution':

1. The neutralization of those Communist factions that could pose a threat to the Jaruzelski group;

2. The downgrading – at least partly deliberate – of the status of the Party and the elevating of the Army and police to the role of the leading political and patriotic force;
3. 'Modelling' the opposition by exerting carefully measured influence to make it a fitting partner in the realization of reform conceived and implemented from above;
4. A reduction of the symbolic distance between the two sides to the political contract;
5. Operational control over the preparations and direction of the Round Table talks;
6. Preparation and reinforcement of economic endeavours surrounding the process of endowment of the *nomenklatura*, known as 'power conversion', especially in the case of such large-scale operations as FOZZ (see Case Study 3 in Chapter 8) and the transfer and management of Party funds in foreign bank accounts described in Chapters 7 and 8.

The secret services and their legacy in later stages of the transformation

It may be useful to distinguish between the two types of influence exerted upon the transformation process by the police-state security apparatus: first, the effects of deliberate actions executed by these agencies or with their help; and second, the structural-cultural impact of the institutional and personnel-related legacy of these agencies upon the general conditions of the formation of the new social order.

Specific influences include:

1. 'Spontaneous' lustrations[13] aimed at a public discrediting of political opponents, made possible by the private appropriation of a vast number of secret documents;
2. Targeting the Right. The supposedly democratic, post-communist secret services (UOP) participated in deliberate efforts to split anti-communist, right-of-centre groups in the early 1990s (see Chapter 8);
3. The creation of economic agencies and companies that were made possible by and founded on the overt and covert links of the secret service functionaries (for instance, arms trading and private security companies) (see Chapter 8).

The structural-cultural impact of the ramified legacy of the police-state apparatus refers to broader phenomena, including:

1. Capitalizing on cultural capital (knowledge, skills) and social capital (personal bonds, contacts, connections) accumulated by secret services personnel (see Chapter 6);
2. Subjecting some opposition élites to direct and indirect control (through the infiltration of their social circles and gaining control over their symbolic/moral capital);
3. Accumulating a specific type of secret social capital through web-like secret service networks utilized in privatization schemes, in the foundation of new financial institutions and in the development of hybrid (state/private) property;
4. Accumulating a peculiar, negative political capital – through, in large measure, covert privatization of damaging secret documents – and using it to secure impunity by causing the near-paralysis of the police, prosecution and judiciary (see Chapter 8 and 9);
5. Long term by-products of the police-state, such as the destruction of the public ethos (for instance, the lack of statutory lustration contributed to the domination of public life by people frequently of dubious integrity and reputation); the loss of trust in public/social life (constant smearing, denigration, slander); the insecurity of hundreds of thousands of people who had some (albeit fleeting) informal contacts with Communist secret services and who still live in fear of potential disclosure of their identities if an eventual lustration is conducted carelessly and vindictively; and, consequently, the existence of a climate that prevents any action that would help to clear and settle the legacy of the police-state.

Recapitulation

This chapter highlights a shift in the Communist authorities' treatment of the opposition. In the first part of the 1980s, they tried to destroy or, at least, incapacitate it. This policy led to a considerable expansion of the MSW, and gave an extra boost to the position of the secret services in the overall power structure. In subsequent years, following Gorbachev's ascension to power in the Soviet Union, the focus shifted towards the recognition and inclusion of some segments of the opposition into the ruling élite's complex strategies. As a result, the ensuing transformation took the shape of a negotiated revolution, and its essence was that the new élites were allowed to enter but not fully replace the old élites.

This operational strategy was much more intricate than Marx's tactics of inhibition and facilitation. A revolutionary movement was moulded and harnessed to induce radical change compatible with the interests of

the ruling élites of the threatened regime. It was a masterful engagement of the vast resources of the militarized police state in the process of political change. Opponents became partners through a complex scheme of repression, manipulation, division, vilification, co-opting and apparent reconciliation. By absorbing the moral capital of the opposition through partnership, the old power networks were effectively shielded from a public denunciation of both their totalitarian past and their private take over of the economy. This was tacitly understood as fair compensation for their peaceful surrender of their political monopoly – the monopoly that, in the eighties, became a burden not only to the country but also to themselves.

III

After Communism: The Posthumous Life of the Police-State

6
The Capital Conversion Process

> All over Eastern Europe was a quiet flap of turning coats...
> (Ash, 1990:142)

A transfer of power?

George Schöpflin claimed that 'an authoritarian élite sustains itself in power not just through force and threat of force but, more importantly, because it has some vision of the future by which it can justify itself to itself' (1990:6; 1993:228). In a similar vein, Ash spoke about 'the ruling élite's loss of belief in its own right to rule' (1990:142).[1] There are reasonable grounds to believe, however, that the main reasons why the late communism's élite, or its more dynamic networks, relinquished their political monopoly without much resistance were less a lack of ideological self-legitimation than the process of their conversion into capitalists, which suited their long-term interests better than did the economically bankrupt and internationally shunned communist system. Moreover, they could no longer count on the Soviet Union to back them with its military might and, therefore, could not continue to use external threat as a guarantee for their continuous rule. The more perceptive among them saw the system as completely exhausted and unreformable, and decided that their long-term interests could be served better by its radical transformation. The vision of their own future rather than that of a better society was the most likely guiding force behind their strategy.

The dialogue with the opposition leaders, initiated officially by Minister of the Interior General Czesław Kiszczak, culminated in the Round Table talks (6 February–5 April 1989). This momentous political step was preceded by major economic reforms advanced by Prime Minister

Mieczysław Rakowski, who replaced Zbigniew Messner (1985–8) in September 1988. Rakowski introduced important legal bills which were favourable to the process of economic endowment of the *nomenklatura*, including the 23 December 1988 Law on Economic Freedom and the 31 January 1989 Law on the Commercialization of State Enterprises. In his account of that period, historian Andrzej Albert (Wojciech Roszkowski) notes: 'Existing restrictions on the creation of private companies were removed and dealing in foreign currency was legalized. Private foreign exchange agencies sprang up all over the country. The authorities were creating opportunities for the state and Party administration functionaries to make a move to the private sector' (Albert, 1994, vol.2:871).

A telling sign of changing times was the fact that the post of Minister of Industry in Rakowski's government was held by a man who was 'a ''rank and file'' Party member and one of the richest private entrepreneurs, skilfully exploiting (like thousands of others) the line of contact between private manufacturing and the state sector in which a pivotal role was played by the – as a rule local – group of *nomenklatura* Party nominees' (Paczkowski, 1995a:61).

The Party inner leadership understood that political reforms were unavoidable, but they hoped that Round Table negotiations would result in only a limited political pluralism, whereby the Party would maintain its leading role and the 'constructive' opposition would be granted some role in the existing power structures to help and legitimize the process of economic reform. Indeed, the electoral reform negotiated at the Table seemed to guarantee the dominant position of the Party and its allies, with 65 per cent of the seats in the *Sejm* (or Lower House in the new two-chamber parliament) reserved for them in advance. Although seats in the newly created Senate were open to free elections, its powers were limited. According to archival documents, Prime Minister Jaruzelski counted on winning the votes of the 'undecided centre' of society, and considered that anything less than 40 per cent of the seats in the Senate would be 'disastrous' (Paczkowski, 1995a:65).

To prevent Solidarity from setting up a proper election machinery, the date for parliamentary elections was set by the government for 4 June 1989, merely two months after the signing of the Round Table agreements. Nevertheless, the vote was an unequivocal triumph of Solidarity candidates, who won 99 out of 100 seats in the Senate and all the *Sejm* seats for which they were allowed to compete. The first round of balloting, with at least 50 per cent support required to win a seat, ended in total humiliation of the Party. Its coalition managed to secure only 3 seats in the *Sejm* and none in the Senate. After the second round, they

filled the seats guaranteed for them, but none of the seats for which opposition candidates were allowed to run.

Kiszczak, proposed by Jaruzelski as the new Prime Minister, failed to form a government. The disastrous election results and the Kiszczak fiasco led to a split in the Party coalition, and the two satellite parties threw their support behind a Solidarity candidate for Prime Minister, Tadeusz Mazowiecki. Jaruzelski became President, and the two key ministries of National Defence and the Interior remained under Communist leadership until July 1990. Two other ministries headed by Party representatives – Economic Co-operation with Abroad and Transport, Shipping and Communication – were also of strategic importance.

Since Poland was the first country in the Soviet bloc to abolish the communist monopoly, the opposition forces had to be careful not to provoke a violent reaction from either the Soviet Union or the domestic apparatus of coercion. According to Edward Wende, a renowned defender in political trials under communism and a senator in the 1989–93 period, the Round Table talks were underwritten by a secret agreement. He claimed that the Party put forward the following conditions: 'We will give up political power, you will give us a free hand in economic matters. . . . We will give you the power, you will not search our pockets' (Wende, 1994:3). While we have no way of verifying whether such an agreement was explicitly negotiated and achieved, it can be argued that *the whole process of systemic transition unfolded as if such an agreement were in force*.

The 'peaceful transfer of power' in Poland was a gradual process whose most revolutionary feature was the abolition of the Communist party's monopoly through legalization of political associations. The commonly used term 'transfer of power' does not adequately represent the actual process, however. We share Foucault's view that power is not a tangible entity that can be, for example, transferred from one actor to another, but a relational and multi-faceted phenomenon. Power permeates social relations; individuals and groups use certain strategies or practices to perpetuate or enhance their influence or to resist or subvert the technologies of power to which they are subjected by others. Practices of power are made possible and reproduced by much more than official seats of power (the government, the ruling party, and so on), and political power relations become 'interwoven with other kinds of relations (production, kinship . . .) for which they play at once a conditioning and conditioned role' (Foucault, 1980:142). It is through this 'interconnectedness' that general conditions of domination are

expressed and maintained and general strategies of ruling are given some cohesiveness. After Foucault, we see these global strategies as constituting a framework within which dispersed and localized procedures of power are reinforced, transformed or adjusted.

Although the strategies used by the communist state are much more coercive and flagrant than those prevalent in democratic societies, they cannot be viewed as separate from society. These strategies should not be conceptualized as something that can be simply lifted and neatly extricated from the body of relationships (as well as individual human bodies) in which they have been embedded. In the context of our research, instead of regarding power as confined to the 'political sphere' conceptualized as separate from society, we believe that it is more fruitful to view communist practices of power in broader terms, as 'a multiform production of relations of domination' (Foucault, 1980:142). The resultant mobile systems of relationships and strategies were not only inseparable from the dominant communist system, but also, in time of change, provided 'the conditions of possibility for the formation of certain orders' (Gordon, 1980:236) rather than others. Although the overall political system, or regime, was generally perceived as alien and oppressive, these social relationships and related localized networks of power became routinized and normalized through complex processes of rationalization and internalization of specific rules and practices. They constituted frameworks within which people defined themselves and others in hierarchical or horizontal terms, shaped their expectations and justified their failures.

The well-entrenched technologies of power, experienced, deployed and opposed in the myriad of social relationships under communism, were produced by both the co-ordinated efforts of the police-state apparatus and the private or quasi-private practices of élite networks. They were criss-crossed with other power relations, supported by less articulated, secondary power technologies related to family life, church, neighbourhoods, queuing for food, peer groups, gender roles, age, occupation, education, and so forth. Within this complex power web, all relations were somehow connected, affected and modified through their inextricable co-existence. The depiction of the creation of the Solidarity-led government in 1989 as an act of transfer of power ignores this ramified nature of the relations of domination. It was an act that concerned only a limited area of decision-making powers at the highest and most abstract levels of political practice.

On the institutional level, the 'transfer of power' designation is also inaccurate because the police-state apparatus that provided logistic

support and a protective umbrella to the pervasive web of relations of domination – notably the Ministries of the Interior and Defence – remained in communist hands for a full year following the 1989 elections. Moreover, they retained their grip over the lower echelons of power in almost all institutions and state agencies.

Power conversion

Perhaps a more applicable metaphor is provided by those authors who speak about the 'power conversion' process, such as Jadwiga Staniszkis (1991). This concept refers to a situation where a group which holds a privileged position under one political system through its control of resources of certain kinds is able to preserve its privileged status under a new system by shifting its control to resources of a different kind.

Empirical research (Domański, 1996; Szelenyi and Szelenyi, 1995; Szelenyi, Treiman and Wnuk-Lipiński, 1995; Wasilewski, 1995; Wasilewski and Wnuk-Lipiński, 1995) has confirmed that one of the features of the post-1989 transformation was a conversion of political assets into economic ones (that is, capitalist property). The bulk of the *nomenklatura* class succeeded in retaining its dominant position by exerting control over the spontaneous and formal privatization processes, capital formation, and creation of new economic and financial institutions. A smaller but still significant segment of the former political *nomenklatura* (approximately one-quarter) managed to hold on to their senior decision-making posts in various domains of public life during the succession of Solidarity-led governments in the 1989–93 period (Wasilewski, 1995:118). The ex-communist élite's access to political power rapidly expanded, however, in the wake of their electoral victories of 1993[2] and 1995,[3] resulting in a near-monopoly of power at all levels of public and economic administration that lasted until the September 1997 general elections. In short, *they appear to have initially traded their political capital for economic capital and then used the latter to regain political power.*

Once the communist structural context that constrained the shift in property rights was left behind, it became critically important to the *nomenklatura* class to build a new context capable of sustaining their newly acquired property rights. Staniszkis conceptualizes their strategy with reference to what she calls the 'politics of institutionalization'. That is to say, the informal power networks that could not officially institutionalize their power position used various techniques to promote anarchy within the state as a method of quasi-institutionalizing their control over crucial economic and political processes.

Staniszkis describes this period as a phase of political capitalism that was marked by co-ordinated efforts geared towards:

- Establishing an infrastructure of market institutions that conveniently corresponds to the needs of the group exerting pressure;
- Ensuring selectively restricted access to the institutions that reduce market risk exposure and operating costs (underwriting facilities, export guarantees, government loan guarantees);
- Ensuring the maximum externalization of operating costs along with the maximum internalization of benefits;
- Influencing the parameters of economic activity. This particularly applies to exchange and interest rate policies (Staniszkis, 1995:36).

In doing so, these corporate networks did not rely on direct pressure upon the central authorities, but instead attempted to depoliticize decisions concerning these vital areas, define them as technical matters and bring them to the bureaucratic level relatively unaffected by the democratic process. Staniszkis argues that although this kind of politics remains outside the realm of conventional political institutions (such as parliament and political parties), the politicians themselves (parliamentarians, cabinet ministers) play an active part in it. Their role, however, is not to exercise public control over the political process, but rather 'to oil the wheels of a process which they hope will bring personal gain or party political advantage' (Staniszkis, 1995:47). The strategies described lead to the *depoliticization and technocratization* of fundamentally important decisions that are 'being hijacked from the political structures of the state' and to the *privatization of certain components of the state* that are 'being diverted to the promotion of group interests rather than the public interests' (ibid.). According to Staniszkis, these political strategies of institutionalization 'do not demolish the façade of democracy – they just ignore it' (ibid.). This also leads to the depoliticization of society which loses interest in politics and treats elections and building of democratic institutions as a mere façade that serves to divert attention from the vital processes that occur elsewhere (Staniszkis, 1994b:21).

Following the 1993 electoral victory of the ex-communist forces, their ruling coalition continued in a new context, the pattern noticed by Staniszkis. Major legal bills submitted to the parliament by the coalition showed a clear preference for vague laws that delegated important legislative powers to the executive branch and granted inordinate levels of discretion to administrative bodies. This type of legislation

creates vast potential for corruption and the promotion of private interests. According to Antoni Z. Kamiński and Jan Stefanowicz, who analyzed these bills: '[they] invariably contain a formula according to which the law is binding unless the Council of Ministers, or a minister, rules otherwise. . . . What is worse, often a bill deals with procedural particulars, while leaving the issue of substance to the executive branch' (1995:5).

A 1997 report prepared by the Centre for Monitoring of Legislative Projects of the Association of Polish Economists confirms that this tendency continued throughout the four-year period of the ex-communist coalition's domination of parliament, and was far more pronounced during that time than during the 1989–93 period. The authors explain it partly by the legacy of the communist legislative practice that those returned to power in 1993 were accustomed to, but – more importantly – they view it also as a result of 'the deliberate shaping of the law in a way that allows the rulers to maximize their profits from ruling through conceding the greatest possible scope of discretion to the executive apparatus' (Stefanowicz and Winiecki, 1997:12; see also Stefanowicz, 1997; Winiecki, 1996). A tacit feature of legislation of this kind is the ample room for favouritism and corruption it creates. The legal constructs in question include numerous clauses of discretionary exceptions and exemptions in many bills of vital importance to the economy, including laws governing public contract bidding, state credits and subsidies, obligatory state reserves, tariffs, customs, taxes and various types of licensing. According to the report, there is hardly any decision – for instance, in the allocation of public contracts – that could not be justified under these new laws (Stefanowicz and Winiecki, 1997: 7). This systematic legislative predilection for 'empty-shell' laws created ideal conditions for the selective promotion of economic ventures undertaken by certain groups and individuals and the effective blocking of viable business prospects for others.

Multiple capital conversion

The power conversion process involved a timely and skilful deployment of various forms of capital, including social capital, based on networks of mutuality, reciprocity and trust. 'Social capital' encompasses aspects of social structure or social relations that are used as 'resources . . . by the actors to realize their interests' (Coleman, 1990:305). These resources can be characterized in terms of ability to trust, rely on other people and predict their reactions based on shared rules of conduct (Putnam, 1993).

We agree with George Kolankiewicz's thesis (1996:429) that in the absence of conventional capital, a transition between an order based on the redistributive principle to one based on the market principle can best be conceptualized in terms of the deployment of social capital (network capital) in conjunction with the process of conversion of various assets (political, economic, cultural, and so forth).

Despite general awareness that the former *nomenklatura* transformed itself into the core of the new capitalist class, most sociologists stop short of inquiring into the implications of this transplantation of the dominant class of one system into the equivalent position in another. Moreover, while students of the East/Central European transformation pay some attention to different types of capital (for, example, Szelenyi and Szelenyi, 1995; Wasilewski, 1995), they usually ignore the forms of non-economic capital engendered specifically by the practices and networks of the police-state. We return to this issue in Chapter 8.

For the majority of society, networks represented a necessary vehicle of survival. They were coping mechanisms through which individuals secured the necessities of life, gained social status and shielded themselves from the harshness and arbitrariness of the omnipresent state. With the end of both the shortage economy and the party-state, many of the advantages of this type of network capital disappeared. Some new benefits – for instance, opportunities for private employment, help in job-hunting, access to second-hand goods – could still be derived from some of those old coping networks, but their cohesiveness was weakened through new political divisions and material polarization related to the rapidly emerging, unfamiliar economic opportunities and the ethos of individual success.

A different form of social capital, however, had been accumulated by members of the underground opposition. Given the police-state's constant efforts to infiltrate, control and ultimately co-opt or destroy any dissenting groups, the ability to trust was of uppermost value and the degree of interdependence and cohesiveness very high. With the rise of the mass Solidarity movement in 1980, the scope of this normative community was instantly expanded, and it engendered an unprecedented surge in status-blind social capital, generously extended to strangers and built on a positive vision of co-operation and collective identity. Suppressed by the police-state forces in December 1981, with many of its leaders and organizers interned, the movement and the vast social capital it generated had largely dissipated by the mid-1980s. The pressure of ever-worsening economic privation, runaway inflation and the pauperization of the intelligentsia contributed to a greater reliance

on personal coping networks and usually Church-based charitable and cultural circles. The core opposition groups – their bonds strengthened by the shared experience of internment and persecution under Martial Law – developed their own exclusive social enclaves, founded on friendship, trust, the politics of resistance and access to Western aid and support systems. Their moral capital,[4] although dramatically diminished compared to its peak during the Solidarity ascendancy in the 1980–1 period, was still considerable, largely due to the support and moral recognition of the Catholic Church.

The strategies of the police-state were geared towards undermining the bonds formed through the Solidarity movement and fomenting divisions among the intelligentsia by persuading some of its highly respected members to join new consultative bodies (such as the Patriotic Movement of National Renewal (PRON) and the Consultative Council) that were portrayed in the official media as genuine platforms of political pluralism. This approach is elaborated, for example, in a 1987 memorandum to the then First Secretary of the Party Jaruzelski, by Pożoga, Ciosek and Urban (Urban *et al.*, 1992; see Chapter 5).

In their long memo, the so-called 'group of three' advised Jaruzelski about the bleak diagnosis by the Ministry of the Interior of the situation in the country. It was portrayed as threatening 'the downfall of [both] the current ruling team' (Urban *et al.*, 1992:61) and the systemic principles of socialism (66). The authors also argued: 'Experience tells us that yesterday's foe, when drawn into the orbit of power, tends to become an eager ally rather than a covert enemy' (80). 'If we announce bold plans for political reforms, we should make an effort to entice part of the opposition into joining our game. But it is necessary to use also political means to weaken and marginalize the professional counterrevolutionaries' (81). A few months later, Ciosek became secretary general of the PRON. These manoeuvres were instrumental in depleting the social and moral capital of the awakening society, and constituted efforts to construct a semblance of moral credibility for discredited communist rulers.

When in 1989 the opposition forces became the ruling bloc, they treated their social/friendship networks as the prime pool of candidates for various important posts, and they used their moral capital to push through necessary but painful reforms. Both forms of capital served them well in the short run, but the difficulties of transition – élitism, political in-fighting, acceptance of the growing presence of the Church in public life and their tacit support for the virtual monopolization of the economic capital by former communists – led to their electoral defeat in 1993.

A very different type of social (network) capital had been accumulated by those who belonged to the privileged strata of communist society. They were linked by patterns of informal exploitation of their formal positions and mutual reinforcement of their economic and political assets. Diversified networks of well-placed players were able to open a whole range of complementary opportunities, vital for active promotion of personal and familial prosperity as well as political scheming and manoeuvring. Such offensive (as opposed to defensive or coping) and self-serving (as opposed to pro-social) networks formed at various levels of the party-state power hierarchy and effectively privatized its structures and assets. This is epitomized by the phenomenon of 'dirty togetherness' (see Chapter 3, note 34), which – according to Podgórecki – created

> 'perverse' forms of loyalty based on a matrix of different, more or less connected, partnerships aiming at making use of all formal and official structures in order to take them over for private goals, taking advantage of their administrative potential and formal power (Podgórecki, 1993:99). [Since] the pool of official positive decisions is limited . . . the dirty partnership uses its private connections to take over part of this pool for itself. Hence, less is left for official procedures. Sometimes dirty togetherness takes over the entire pool (Podgórecki, 1994:115).

When the systemic environment in which such powerful self-seeking, offensive networks operated began to inhibit their potential to thrive, the more ambitious among them started to re-group and prepare for eventual systemic reconstruction. In so far as a network's social capital (connections, network-facilitated access to resources, patterns of co-operation, and so on) exceeded that of other groups in cohesiveness, scope and vertical range, and in so far as it was able to employ measures to divide and neutralize other potentially viable networks, that network was best positioned to turn this capital into other forms of assets under new systemic conditions.

The final period of communism in Poland was marked by intense factional struggle within the ruling party and its security apparatus, which expedited the advancement of those individuals and networks that were the most viable candidates for class conversion. They were generally younger and better educated, with military or civilian security connections and entrepreneurial or managerial skills. Many of them had started their political careers in the apparatus of Communist youth

organizations, and many of the relationships linking them date to that period. Uninterested in ideology, they managed these organizations more like private enterprises than strictly political bodies, and their main interest lay in the monopolization of resources and profits.

These new *apparatchiks* came from Communist families and took for granted the privileges of the élite life, but differed from their parents in many respects. Their parents were often poorly educated, did not know foreign languages and were encumbered by their stale ideological mould. 'The young ones were ''up-to-date''. They read. . . Western literature, frequented the American embassy, dressed fashionably and had stylish wives. . . . In their eyes, anyone who did not treat the Party as a career vehicle was simply dimwitted and indolent' (Glapiński, n.d.: 109). They were materialistically motivated and orientated towards the West, but also maintained close ties with their Soviet counterparts and pursued common economic interests with them.

Some of them were active in university Party committees,[5] which enabled them nearly to monopolize foreign scholarships and educational trips made available to Polish scholars by foreign (mostly American) universities and foundations, especially in the area of business and management, culture and communications. Others, through their involvement with secret services, frequently travelled abroad on intelligence, industrial espionage, foreign trade or other missions. In the course of their globetrotting, these new cosmopolitans forged many useful friendships and established valuable contacts with academic and business circles in the West.[6] Back in Poland, however, their careers and ambitions were closely tied to their advancement within the Party apparatus and/or the secret services. This advancement was also contingent on their good relations with the Soviet embassy and its KGB contingent.

In the late 1980s these rejuvenated power networks were enthusiastically embracing the new opportunities offered by the marketization and privatization of both the Polish and Soviet economies. With the changing political landscape, however, their social capital appreciated in value as they needed to prepare themselves for the anticipated retaliatory policies of the winning Solidarity bloc. They sought to fortify their networks with the social and material resources of the police-state, expand their international connections (with the East, the West and the 'global governance' agencies) and turn their peaceful political surrender into moral capital. Their new party, the Social Democracy of Poland (SdRP), was founded in 1990 on the old party's wealth and organizational structure, the security apparatus's resources, intelligence

and ability to expunge the past (by burning, hiding or doctoring archival records) and the dominant networks' social and human capital. (It was also backed and furnished with funds by the KGB; see Chapter 7.) Unified by the insecurity of the revolutionary change, and primed for defending themselves against possible attempts at retribution or challenges to their economic endowment, the post-totalitarian police-state *nomenklatura* networks presented a formidable force. When the feared reaction did not materialize they were free to apply all their mobilized resources to promote themselves in both economic and political terms. Ironically, the unresolved issue of their responsibility and accountability for the communist past became one of the key sources of division and disintegration within the post-Solidarity camp, strengthening further the ex-communists' standing in the new political arena (Wnuk-Lipiński, 1994; Zubek, 1995).

Their superior economic and social capital notwithstanding, ex-Communists needed to acquire the moral capital deemed essential for their recognition as a legitimate political force. Among the strategies employed to remedy this deficiency were the following:

1. Turning their unwavering allegiance to the Communist party into a virtue ('Honourable men do not abandon a sinking ship.');
2. Stressing their wisdom and selflessness in voluntarily giving up power for the good of Poland;
3. Stressing the discontinuity between the Stalinist period (totalitarian, possibly criminal) and the subsequent period (not free of errors, but essentially welfarist, civilized, almost democratic); rejecting any responsibility for the former and identifying themselves with the latter's alleged true socialist policies and enlightened reforms;
4. Skilfully rewriting history by describing the communist period as filled with exaggerated or imagined achievements and benefits (counting on the natural insecurity of people faced with a radical change and their need to be reassured that their lives during all those years had some meaning and their labours were somehow contributing to progress);
5. Refurbishing individual biographies;[7]
6. Emphasizing the dangers of imposing any moral criteria upon political and social life because of their authoritarian potential and threat to such fundamental principles as freedom of conscience, separation of religion from the state, and so on (that is, attempting to diminish the importance of moral capital for political legitimation);

7. Spreading rumours and manipulating public opinion into seeing the Catholic Church and Polish patriotism as the main menace to democracy, while presenting themselves as its most reliable and dignified guarantors;

8. Capitalizing on the moral failures of the competition and exploiting sharp disagreements among post-Solidarity parties over ethical issues, especially with regard to the question of accountability for the communist past.

Many of these efforts were actually assisted by the post-Solidarity left's[8] conciliatory rhetoric and apparent convergence of interests and normative references. There is plenty of evidence that 'the post-Solidarity left engaged in vigorous myth-making and in obfuscation of the events of the 1980s, and invested heavily, for instance, in re-inventing General Jaruzelski's image as a hero and saviour of the nation' (Zubek, 1995:290). Their preoccupation with the evils of clericalism, nationalism and populism led the leftist moralists to focus their rhetorical onslaught on the Church and marginal traditionalist parties, while sheltering the former communist forces from any criticism (see Wnuk-Lipiński, 1994). This was an important factor in paving the way for the 1993 electoral victory that allowed the elements of the old regime to create a coalition government (see note 2). Anne Applebaum comments on this process:

> Much of the hysteria about nationalism in the last five years originated within the nations of Central Europe, where groups of intellectuals, particularly ex-dissidents, often perceived new right-wing or populist parties as threats. . . . In 1990 Adam Michnik, one of Poland's leading ex-dissidents, wrote an article accusing then-candidate Lech Wałęsa of irresponsible nationalism and anti-Semitism on the Op-Ed page of *The New York Times*. Michnik's article was widely received as the work of a neutral, independent intellectual and widely repeated; in fact, Michnik was a leading supporter of a political party that opposed Wałęsa. . . . In the end, the feuding and rancour that these kinds of accusations created among former dissident allies served only to assist Poland's former Communist Party to victory in the 1993 parliamentary elections. (1994:8–9)

Voytek Zubek also elaborates on this point:

> Right until the bitter end . . . the [post-Solidarity] left continued its anti-right campaign, relentlessly warning society about the threat

from the right by issuing various dramatic and ponderous anti-right manifestos despite the fact that by then it was clear that the right was probably not going to win any parliamentary representation.... Virtually unchallenged, for the post-Solidarity parties were too absorbed with fighting one another..., the SdRP's electoral vehicle, the SLD coalition, campaigned in peace and promoted its image of professionalism, responsibility, politeness, experience, and merit. Because it was only marginally challenged, it escalated its campaign promises by pledging that its government would alleviate all the socio-economic hardships that the Solidarity-led transition had imposed on society, without, however, altering the basic directions of the reform (1995:299).

Realizing that, despite their efforts, they were unlikely to accumulate much moral capital, the former communists seem to have opted for strategies that would both contribute to the dissipation of the competition's moral capital and aim to reduce the use value of this type of capital in the political realm. Instead, they stressed objectivity and neutrality and a strictly professional approach to governing.

Under communism, the *nomenklatura* élite enjoyed power and economic advantage but no prestige. Although those of its members who were directly connected with the Ministry of the Interior were particularly ostracized and constituted a virtual ghetto, others too were socially shunned and viewed as corrupt opportunists. They worked hard to destroy the traditional normative systems that not only highlighted their lack of moral capital, but also perpetuated the disjunction between the mechanisms of reproduction of political/economic capital and those related to the reproduction of moral capital. Yet the clear-cut situation of a foreign-backed, oppressive regime helped to preserve the symbolic significance of moral criteria, despite the undeniable process of gradual moral degradation of society as a whole. The general sense that the price of power and wealth was one's moral integrity was well-established and marked the élite with an indelible – or so it seemed at the time – stigma, while bestowing a certain dignity on those whose modest circumstances testified to their moral backbone.

The negotiated revolution (the Round Table agreements initiated by the Minister of the Interior) sanctioned the élitist approach to change-management, alienating socially but legitimating formally the two élites involved: the compromised Communist élite and the persecuted opposition élite. To be precise, it legitimated the Communists (already alienated) and alienated the opposition (already legitimated

informally). In terms of moral capital, the Communists could only gain, while the opposition could only lose through the resultant power-sharing arrangements ('our' Prime Minister – 'your' President, Ministry of the Interior and army).

The exercise in shared-power and the new cross-élite comradeship resulted in the dissolution of moral leadership. The conceptualization of society as a moral entity lost its earlier vigour. The Catholic Church, which had played a prominent role in creating a moral metaphor for an intrepid society, could no longer be considered a viable guarantor of the project whose moral purity was sacrificed by the expediency of the top-down revolution. That revolution's moral blindness led to rewarding the Communist *nomenklatura* with a generous pick of the national economy and the successor of the totalitarian, Communist party with that party's immense wealth. A revolution that left most of the former personnel of the control apparatus in place resulted in a predictable indulgence for the criminal schemes of the former *nomenklatura* and those members of the new liberal élite who were seduced by the immense opportunities for quick, if not fully legitimate, profits.

Strongly promoted by the new ruling élites, the consumer society ethos, with its basically apolitical and amoral character, satisfied the need for a sense of a broader (European, Western, post-industrial) membership and rendered the past irrelevant. It made unity unnecessary (through the diversity of the market on offer) and diversity less threatening (through unity of purpose within the consumer culture). For those who live within the consumer society paradigm (even if consumption is still a desire rather than reality), moral and political interpretations of the world become redundant.

The initial aspiration for a truly modern, law-based, rationally ordered and solidly anchored society was displaced, especially among the young, by a detached, relativist, multi-faceted, changeable project of postmodern self-promotion and new expressions of connectedness with the broader world and its endless offer of new identities. The idea of a biography as a fixed fact and the notion of responsibility for one's past were quickly transformed into a concept of biography as self-creation and recreation through a constant re-construction of time and place depending on one's needs and shifting vision. These complex changes in collective and individual consciousness were directly conducive to deliberate and instrumental attempts to manipulate both the images of the collective past and individual biographies. They aimed at creating new heroes, discrediting the old ones or implanting some corrupt representatives of the past period into the symbolic ranks of

the intelligentsia, traditionally defined in Poland by its mission to serve the country and the people.

The evolving political competition, in its most polarized, simplified version, may be read as a contest between two radically different metaphors. The apparently winning, consumer-society metaphor was embraced by former Communists because it promised to obliterate the past, 'problematize' morality and render issues of patriotism irrelevant within the global market. In contrast, the moral-society camp, torn between the righteousness of some of its political leaders and the limiting bounds of Church teachings, clung to traditional concepts of truth, history and the nation.

In Poland, finally sovereign and free, the moral society option seemed to have lost its magic power to mobilize and unite. During the 1995 presidential election campaign, many people related to the cynical slogan of Lech Wałęsa's rival, the former Communist official Aleksander Kwaśniewski. 'Let's Choose the Future,' a slogan coined by Kwaśniewski's image adviser, a leading French advertising expert, Jacques Seguela (Ash, 1996), was a telling sign of Poland's entry into the communication age. Kwaśniewski's weakness – his stained past – was turned into a virtue, while the man who once represented the hope for a future was rendered passé.

An even more poignant indication of a shift in the value and relevance of moral capital in the post-communist reality was the fact that Kwaśniewski was elected president following the disclosure that throughout his election campaign he had lied about having a Master's degree and had concealed considerable economic assets registered in his wife's name. It appears that the influential post-communist networks concluded that their quest to acquire moral capital was not only unrealistic but altogether superfluous. This would explain, for instance, the January 1996 election of Józef Oleksy as the leader of the SdRP soon after his long-term, close friendship with a KGB resident in Poland was revealed and led to his resignation as Prime Minister.

While it would be fatuous to claim that all shifts in relative value of various types of capital were engineered by former Communist élites, it is clear that there has been a well-organized effort to replace moral credibility with such criteria as experience, political professionalism and an organizational base as measures of political worthiness. Significantly, these criteria could be met by former members of the Communist apparatus, whereas all other contenders for political power had no or little governing experience, were amateur politicians, and had no material resources or political infrastructure to compete

with the post-communists' organizational base. Past membership in Communist officialdom, perceived at first as an indisputable handicap in the new political reality, had been transformed into a valuable asset.

A good example of this transformation is provided by the 1996 Civil Service Bill[9], which stipulated that a condition of eligibility for top-rank positions was seven years of relevant work experience, including four years' experience in management posts (s.28.1). The opposition parties fought for a reduction in the managerial record required, but lost. As a result of the implementation of this bill, the coalition of ex-Communists installed their own people in those posts, without even having to consider opposition candidates, who did not have sufficient 'managerial records'. Since the new law established these posts as permanent, 'non-political' appointments, even the electoral victory of the opposition parties in the 1997 elections did not give them the authority to replace these appointees.

The relatively simple theory of capital conversion, according to which former Communists traded their political capital for economic capital and then used the latter to regain power, needs therefore to be enhanced to account for more subtle processes related to social and moral capital conversion. The social capital available to the *nomenklatura*, and mobilized in their economic offensive and in anticipation of retaliatory policies that never materialized, was crucial in enabling their class conversion. This capital's political roots and its offensive and self-serving nature, however, threatened to highlight the dearth of moral capital, which could not be compensated by any other form of capital available to this class. A process of rapid erosion of the value of moral capital, and its supplantation by other types of assets available almost exclusively to the former *nomenklatura*, paved the way to this class's successful political reincarnation. For the first time, it had succeeded in bringing into line all the kinds of capital required for the legitimation and reproduction of its privileged status.

7
Transforming the Police-State

The Context

Communism's dissolution in Poland was effected through a negotiated revolution instituted from above. Once the vital role of the secret services in the everyday operation of the Leninist regimes is acknowledged, it is logical to ask what role they played in this top-down liberalization process, and what policies were implemented by new democratic governments with respect to this apparatus and its weighty legacy.

Through frequent uprisings and organized resistance to communism Polish society was able to generate significant civil society/non-state enclaves. As we have already noted, this also made secret penetration on the part of the communist state more necessary. The long period of decadence and the gradual disintegration of the regular party-state control system following the military's suppression of the Solidarity movement in December 1981 particularly contributed to the state's greater reliance on the secret services.

As documented in the previous chapter, following the 1989 semi-free elections the representatives of the pragmatic wing of the opposition accepted the shared-power idea and, at least tacitly, consented to 'soft landing' provisions for the Communist *nomenklatura*.[1] Only in 1994 did Leszek Balcerowicz (deputy Prime Minister in 1989 and the mastermind of Polish economic shock therapy) acknowledge what the anti-Communist right-wing opposition had been claiming for some years: a price had to be paid for the bloodless character of the Polish revolution and that price was letting the Communist *nomenklatura* reap the benefits of state property acquired before 1989. He said his government put the brakes on the 'privatization' initiated by the former communist regime,

but 'it was impossible to entirely avoid their enfranchisement' (Wielo-wieyska, 1994:3). This tacit (?) arrangement contributed to a peculiar balance of power which fettered the ability of key Solidarity actors to rid Poland of its police-state heritage.

The Ministry of the Interior, the police and the secret services

General Kiszczak, the communist leader who, in his capacity as Minister of the Interior, had officially initiated and subsequently co-ordinated the Round Table negotiations, retained his office until July 1990. This enabled him to manage the initial stage of the police-state transformation.

In anticipation of purges in the Security Service, at least 6000 of its functionaries were transferred to the regular police (*Milicja*).[2] Subsequently, in a July 1990 'reorganization', a number of police officers were fired to make room for an additional contingent of former SB personnel (Bochwic, 1990:13; Jachowicz, 1990a:3). Furthermore, throughout 1989 and the first half of 1990, Kiszczak's staff was busy purging the archives of compromising materials and preparing itself for new tasks ahead (see Chapter 8).

A few days before the formation of a new government by Tadeusz Mazowiecki in 1989, the last Communist cabinet passed a resolution empowering the Ministry of the Interior to make internal changes without authorization from the Prime Minister (Albert, 1994:900).

New legislation

In April 1990, the parliament passed a package of three bills related to the status of the police, the Ministry of the Interior and the State Protection Agency (the new secret service or UOP).[3] Despite widespread expectations of major changes in the philosophy and organization of this infamous sector of the communist state, the new legislation was very closely modelled on laws directly influenced by Martial Law and enacted in 1983 and 1985. Those laws were patterned on the 1959 legislation governing the police and Security Service. The new law's main innovation was that it dissolved the SB and established a new, smaller service, the UOP. It remained, however, subordinate to the Ministry of the Interior, which maintained its *de facto* superministry status, enabling it to continue to dominate many areas of social and administrative life. The new law confirmed the ministry's right to be involved in economic activities to supplement its budget, thereby, to quote Senator Leszek Piotrowski, leaving 'essentially untouched the

structure of the Ministry of the Interior as a police-political-economic complex' (*Senat R.P.*, 23, April 1990:98).

The new legislation did not undertake to remodel the ministry and its police branches into depoliticized, accountable, democratic organizations that were respectful of human rights. Many critics pointed out that provisions relating to the use of force, wiretapping, and some other measures did not meet European legal standards (*Senat R.P.*, 23, April, 1990:98,100,113). Another remarkable feature of these bills was their zeal to preserve all the privileges that functionaries of these agencies had enjoyed in the past. Indeed, the bills read more like charters of rights and privileges for employees than a conscientious delineation of employee responsibilities and powers.

The non-democratic lower house of the parliament (*Sejm*), dominated by former communists and their allies, passed the bills by overwhelming majority. The debate in the Senate[4] (*Senat R.P.*, 23, April 1990:97–181), where 99 of the 100 senators represented Solidarity, was uniformly and emphatically critical of almost all aspects of these laws. The senators believed the laws threatened to petrify the structural legacy of the police-state and its informal mafias, and argued the need to decentralize the strictly necessary services and implement major personnel reviews. Senator Anna Bogucka-Skowrońska expressed this point of view:

> If such a structure is not completely crushed, it has a natural tendency to re-create itself through mutual interpersonal contacts, habits, [and] the entire mentality of these people . . . It is necessary to shatter the family clans of functionaries, which dominate all police posts, . . . to destroy the whole bureaucracy, to smash what I have called the mafia networks based on personal ties, various interests and their not-always-legitimate political [agendas] (*Senat R.P.*, 23, April 1990: 119–20).

Interior Minister Kiszczak defended the three bills and painted an alarming picture of escalating crime and looming terrorism that could only be countered by a strong and well-equipped police apparatus (*Senate R.P.*, 23, April 1990:156–64). His deputy, Krzysztof Kozłowski, the first Solidarity politician in the MSW, acknowledged that the bills were simply a clumsy attempt to revamp the old communist statutes, resulting in 'a bad law', 'a triple monstrosity that parades as a new law' (*Senat R.P.*, 23, April 1990:130). Nevertheless, he appealed to senators to accept the bills because they at least provided a legal basis for the immediate dissolution of the SB and significant trimming of the

ministry. In addition, they prohibited party membership by MSW employees. Despite their overwhelmingly negative evaluation of the bills, senators voted in favour of the package.[5]

Vetting of the SB cadres

Based on this legislation, the SB was disbanded and its members were entitled to apply for jobs with the police, the new security agency (UOP) or other related organizations. Many former SB operatives took advantage of early retirement provisions. Of the 24 000 former SB, Intelligence and Counterintelligence functionaries, 14 000 decided to undergo a 'verification' (or vetting) procedure carried out by newly created qualification commissions, whose mandate was to exclude applicants who had previously violated the law or basic human rights. Ten thousand applicants qualified and about 4 000 of them ended up working in the UOP (Miodowicz, 1996a:7). Central and viovodeship qualification commissions consisted of senators, Members of Parliament (including many former Communists), lawyers and representatives from police headquarters, as well as members of the Solidarity Union and other deserving citizens.[6]

The verification procedure had a number of flaws, however:

1. A large proportion of SB personnel files disappeared and commissions had no access to them (Bochwic, 1990:12, Niemczyk, 1994:13);
2. Several commissions included former dissidents who were secret-services collaborators (Widacki, 1992:118);
3. Some of the decisions by regional commissions were made under direct orders from the Central Qualification Commission;
4. In some cases commission members were outsmarted by experienced operatives who had a clear information advantage over their evaluators;
5. It has been alleged that many Commission members feared secret revenge from disqualified SBs (Henzler, 1990a:1) and some were likely targets of blackmail. The SB had very detailed information about most people associated with opposition circles and was aware of possible weaknesses or past mistakes;
6. The requirement for verification did not apply to functionaries working in the observation section (Bureau B); archives (Bureau C); communication and encrypting systems, operational techniques (Department T), passports office and the personnel office, while Intelligence and Counter-Intelligence operatives were treated in a very indulgent manner (Henzler, 1990a:6).

In 1993 two-thirds of the UOP operational staff were old hands from the pre-1989 MSW (Konieczny 1993:5). Many of the disqualified SBs found employment in the regular police force and various private security agencies (Chećko, 1992; Dziadul, 1991b, 1992; Henzler and Mojkowski, 1993). Following their 1993 electoral victory, deputies from the ex-communist camp repeatedly demanded a reassessment of the verification process, the reinstatement of at least some of the disqualified SBs and even an outright annulment of the legal consequences of verification.[7]

Neither the regular police,[8] who were implicated in many repressive actions against the opposition,[9] nor the military secret services, who were extensively involved in the surveillance of opposition and church circles, were subject to verification. The military services were reorganized in 1991, their size was considerably reduced and personnel changes were effected, yet the whole process was executed and controlled internally, with no external scrutiny allowed (Malejczyk, 1994:7).[10] As of April 1998 no legislation had been enacted to regulate the functioning of these services. The initial resolve to focus military secret services' attention solely on defence-related intelligence and counter-intelligence has eroded and clear signs of the return of old methods and personnel were reported in 1997 (Cielemęcki, 1997:27).

The legacy of 'popular justice'

The new leadership acted more decisively with respect to two special agencies subordinated to the MSW, namely the giant Voluntary Reserve of the Citizens' Militia (ORMO) and the arbitrary and extremely repressive misdemeanour boards (*Kolegia do spraw wykroczeń*) (see Chapter 3). They exemplified the old regime's propensity to create a fiction of 'popular justice' in order to strengthen totalitarian control over society.[11] In the words of the senator who presented the bill abolishing ORMO to the Senate:

> It was a kind of fiction, because the ORMO never was a social organization, it was simply one of the agencies of the Ministry of the Interior, the agencies which penetrated all social life including . . . the workplace. . . . Thus the ORMO became an element of the totalitarian order, one of its . . . pillars. It was an organization that served to protect the state's omnipotence; it was not so much concerned with securing order as with subjugation of society and surveillance (*Senat R.P.*, 13, Dec. 1989:7).

This giant voluntary force was disbanded by the parliament shortly after the formation of the Solidarity government.

In June 1990, the new parliament passed a bill amending the status of the misdemeanour boards. According to Senator Edward Wende, who presented this bill to the Senate, 'those wholly servile bodies showed exceptional zeal in meting out pseudo-justice after all public demonstrations held on holidays and anniversaries of special importance to our nation. And they did it . . . with a total disdain for the law and the people' (*Senat R.P.*., 26, 1990:63; Piecuch, 1996b: 142, 226). Based on the new law, misdemeanour boards were constituted as an integral part of the court system, and their decisions became subject to a normal appeal procedure. Members of the boards were to be chosen by local elected councils and not by agencies of state administration. While a full transfer of misdemeanour cases to the courts was seen by the government as the best solution, the budgetary constraints precluded this course of action ('Raport o kierunkach . . .', 1992:109).

The parliamentary commission for secret services

In concluding their 1990 debate on the package of three police-related laws, the senators argued there was an urgent need for a parliamentary commission charged with oversight of the MSW, UOP and the police. Five years later, the Parliamentary Commission for Secret Services was finally established in October 1995.

The Commission is authorized to deal with complaints against the civilian and military secret services, to review nominations for directors and vice-directors of these services, and to give opinion on relevant legislative initiatives. The Commission's first challenge came in December 1995, when the UOP, still under President Wałęsa's jurisdiction, made an allegation that Prime Minister Józef Oleksy, a former communist official, had been spying, first for the KGB and later for Russian Intelligence (from at least 1983 until 1995).

A special commission was formed using Parliamentary Commission guidelines. It was broadened to include members of all opposition parties and granted investigative rights. While its mandate did not entitle it to study the substance of the allegations – they were investigated by the Military Procuracy and were eventually dropped – the commission assessed the legality of UOP evidence-gathering methods. Despite fears of undue pressure by ex-communists on the special commission's proceedings, its preliminary report found no fault with the secret services' work. The partisan divide within the special commission – with the majority of its members representing the ruling

ex-communist coalition – did find expression in the final report, how-ever. The report's conclusion, endorsed by coalition members' votes exclusively, implied that the officials and agents involved might have violated the law. Minority conclusions to the contrary were attached to the report (*Gazeta Wyborcza*, 16 Sept. 1996: 16–19). As of early 1999, no judicial proceedings or any other action have been initiated with respect to this matter.

Although it was created too late to halt the abuses and misuses of power prevalent within the secret services during the earlier transi-tion years (see Chapter 8), the Parliamentary Commission proved its limited but plausible usefulness in its handling of the Oleksy affair. Yet the extraordinary nature of this case and the creation of a special commission makes it impossible to assess the Parliamentary Commission's ability to monitor and guide the operation of secret services.

The Parliamentary Commission for Secret Services' potential effective-ness is undermined by its lack of investigative powers and the absence of regulations that would prevent members of the party or coalition in power from dominating it. Furthermore, its prestige has been eroded by the ruling coalition's refusal to respect its obligation to consult the Commission on proposed changes of chiefs of secret services. Following the revelations about Prime Minister Oleksy's alleged collaboration with foreign secret intelligence services, the chiefs of both the UOP and Military Secret Services were replaced without any attempt to consult the Commission about these changes.

The broadening of police powers (1995)

An important deficiency in the police organization has been the lack of judicial control and civilian oversight of the regular police. Complaints against the uniformed police are handled internally by the police. Yet, in spite of the lack of judicial control and external oversight, in July 1995 parliament granted new powers to police forces (including the secret services).[12] Rules related to the use of arms were relaxed,[13] and the almost unlimited use of covert methods of evidence-gathering, includ-ing electronic surveillance and mail inspection, was predicated on administrative[14] rather than judicial authorizations. In urgent cases, the authorization can be obtained *post factum*.[15] Many important aspects of these procedures, such as the exact criteria of applicability, the duration of surveillance and rules governing the handling, storage and destruction of evidence thus obtained, are not specified by the law – they are to be subject of future internal regulations. Furthermore, the

new law empowers the police to use entrapment techniques including provocation and police-controlled illegal transactions.

Many critics argued that the new police law was regressive, a step towards the return of the police-state.[16] Both the Ombudsman and the chair of the Helsinki Human Rights Foundation described the bill as a major threat to human rights (Grabowska, 1995; Nowicki, 1995a,b). Later, it was revealed that in July 1996 the Minister for the Interior issued an edict directing that undercover agents had to be employed in post and telephone offices to enable mail and telephone surveillance in authorized cases, and he publicly confirmed that this was already a routine practice (Czaczkowska and Olczyk, 1996; Marszałek, 1996).

Its potential usefulness in combating organized crime notwithstanding, the broadening of police powers – especially in the absence of any attempt to provide for proper judicial control, civilian monitoring and privacy legislation – is unlikely to contribute to better control of state/organized crime, and it opens new venues for the abuse of state power by the ruling élite. It adds to the confusion about the status and role of the post-communist police forces, and considerably increases opportunities for corruption[17] and direct police involvement in political trickery.

In January 1997 the MSW was reorganized and renamed. The UOP was left out of the new Ministry of the Interior and Administration (MSWA) and was subordinated directly to the Prime Minister. The Law on the Civil Service,[18] passed in July 1996, defines which posts within ministries are political (minister, deputy minister and the minister's political cabinet) and which are not to be affected by changes of government. Nevertheless, one of the first moves by the new minister, Leszek Miller, was to replace the chiefs of key services (the police, the Border Guards and the State Fire Brigades), thus politicizing instead of depoliticizing the services in question.

It is difficult to estimate changes in the overall size of the apparatus of coercion relative to the late 1980s. The 1989 numbers of employees of various MSW services (shown in Table 3.1) are not directly comparable to the numbers available for 1997 because of major structural differences between the organizations concerned. What transpires, however, is a relative expansion in the overall size of the guards and police-like formations, and a reduction in the size of the secret services and anti-riot forces. These trends are illustrated in Table 7.1, which compares 1989 and 1997 employment data. The totals given in the table should not be read as total numbers of all police and paramilitary functionaries, because only those agencies which could be reasonably compared and for which we could obtain data are included. Moreover, some disbanded

Table 7.1 Employment in some MSW services in 1989 and 1997

1989		1997	
Service	**Number of posts**	**Service**	**Number of posts**
Milita	62 276	Police[a]	95 700
Anti-riot (ZOMO)	12 566	Preventive/Anti-Terrorist Police Squads[b]	6 800
SB, Intelligence, Counter-intelligence	24 390	UOP	6 000
Border Guards	7 388	Border Guards	17 300
Vistula Military Units	10 000	Vistula Military Units	12 000
Total	110 320	Total	137 800

Source: Based on several sources, including Markiewicz, 1989, 1997 and Piecuch, 1996:402.
[a]Without civilians and the special preventive/anti-terrorist squads.
[b]Part of the Police.

organizations, such as the very large voluntary militia ORMO, were not replaced by any equivalent organization after 1989.

As Table 7.1 shows, the size of the regular police (formerly the Citizens' Militia) increased by one-third between early 1989 and 1997, while the secret services (excluding military services for which we do not have reliable data) shrunk by three-quarters. Special (anti-riot, anti-terrorist) forces were reduced almost by half and their nature changed considerably. Among many agencies controlled or co-ordinated by the MSWA, some employ large numbers of highly trained troops. They include industrial guards who guard state banks and industrial plants (29 000 functionaries); railway protection services (6 700); municipal and county guards (6 500) and the State Fire Brigades (30 000). Apart from the state and secret police, several other bodies are issued with firearms and live ammunition; they include the Border Guard, the Vistula Units, industrial guards and railway protection services. Most of the services listed have broad powers to stop, search, arrest and, if necessary, use force against individuals (Markiewicz, 1997:3–9).

According to a statement issued by Police Chief Jan Michna in 1998, about 8 per cent of the police force is comprised of former SB officers (Kozubal *et al.*, 1998:7). Moreover, about two-thirds (4 000 of 6 000) of the UOP operatives worked for the secret services under the old regime (Konieczny, 1993:5; Miodowicz, 1996a:7). These figures suggest

a significant degree of personnel continuity between the pre-1989 police
state and its present-day successor.

The Procuracy

Another pillar of the defeated police state, the Procuracy, was revamped
by a law passed in the spring of 1990.[19] It introduced some changes that
were consistent with the process of democratization: it removed 'protec-
tion and strengthening of the political system' as this agency's defining
goal; placed the Procuracy within the justice system, which changed its
status from an 'independent' agency that in practice answered to the
Ministry of the Interior; prohibited prosecutors from holding any party
membership,[20] and abolished the Procuracy's oversight of the whole
field of compliance with and administration of the law. Yet the law
resembled the 1990 bill reorganizing the Ministry of the Interior in
that it was redolent of the communist past. While no longer as mighty
as its predecessor, the Procuracy remained extremely powerful; its con-
tinuing role as a 'defender of the social interest' was not clarified;
prosecutors still had to obey the orders of their superiors rather than
the dictates of their conscience (although they were entitled to ask for
instructions to be given in writing) and their unjustifiably privileged
position, including their immunity from prosecution, was preserved in
the new law. The legislation contained vague provisions for a review
(rather than a systematic verification) of the inherited prosecutorial
cadres.

When it reached the Senate, the bill on the Procuracy was severely
criticized. Some senators were especially concerned about the lack of a
proper 'verification' procedure that would allow elimination of those
prosecutors who were notorious for violating the law, working in tan-
dem with and covering the illegal actions of the Party apparatus, SB and
militia (for example, *Senat R.P.*, 22, March 1990: 32, 35, 36, 40–41, 45).
Nevertheless, senators accepted the bill and filed no formal objections.
Subsequently, a review of prosecutors was carried out and 6 to 10 per
cent of them were fired (Herzog, 1991: 1). After the 1993 elections that
returned former communists to power, some of these prosecutors were
quietly reinstated (Jachowicz, 1995:1).

The judiciary

The independent role of the judiciary was restored by the introduction
of the principle of the separation of power and the institutionalization

of judicial control over government through remodelling judicial agencies, including the State Tribunal and Constitutional Tribunal. Another important development was the creation of the National Council for the Judiciary,[21] elected partially by the judges themselves and designed to serve as a form of self-government and a guarantee of judicial independence. The Ministry of Justice is responsible for the management and supervision only of the organizational and administrative aspects of the operation of courts of law, and the minister must consult with the Council on most matters (Murzynowski, 1995:53–4). Nevertheless, the importance and credibility of these revolutionary changes were undermined by the government's decision not to carry out any verification of judges based on their past records.

Deputy Minister of Justice Professor Adam Strzembosz remained faithful to his earlier published ideas in steadfastly refusing to conduct any review of judges inherited from the communist era. In his September 1989 article he argued that despite tremendous political pressures, Polish judges had tried very hard to preserve their integrity; they had been among the first professional groups to form a Solidarity union (joined eventually by 1000 of 3000 judges) and had dodged the implementation of the special criminal law provisions under Martial Law as well as the exceptionally harsh law of May 1985 (marked by summary proceedings and obligatory prison sentences for a large number of offences). Aware that not all judges had showed resistance, and that there were also those whose total subservience to the Party resulted in great harm both to individual defendants and to the judiciary, Strzembosz maintained that 'once normal conditions [were] established, the judiciary [would] cleanse itself of morally depraved, compromised individuals' (Strzembosz, 1989). He reiterated this claim in the Senate, in November 1989, in his official capacity as deputy minister of Justice in the Solidarity-led government of Tadeusz Mazowiecki (*Senat R.P.*, 12, Nov. 1989:54).[22]

Yet, with the passage of time, it became evident that an uncritical reliance on the inherited judiciary during the period of systemic transformation was a stumbling-block in securing the independent administration of justice. This opinion was expressed by a number of senators in May 1990, when they concluded that the approach adopted by the ministry had proven fundamentally flawed (*Senat R.P.*, 25, May 1990).

The situation was quite different in the Supreme Court, however. After the first fully free parliamentary elections, in 1991, when Strzembosz became president of the Supreme Court, replacing his Communist predecessor Adam Łopatka, all Supreme Court justices had their appointments terminated. Of the 118 justices appointed in 1987, 97 were Party

members, including all 51 members of the Criminal Law Chamber. Ten justices of this Chamber did not even have a university education; many gained their degrees during their judicial career (Mizerski, 1995). Under communist law justices were appointed for a five-year term, and their re-appointment depended on their conformity with the expectations of the political centre. The heads of the four Supreme Court Chambers (Criminal; Civil; Administration, Labour and Social Insurance) used to be appointed according to a rigid formula: two of them were nominated by the Communist party and the remaining two by its two satellite parties. In 1990 the limited terms of Supreme Court justices were abolished,[23] their political subordination was removed and the mandate of the Supreme Court to issue judicial policy guidelines, binding on lower courts, was terminated. Out of 100 former justices who applied for re-appointment, only 22 (mainly specialists in civil and administrative law) were retained, and the overall number of justices was reduced to 73. The new Supreme Court's main task consists of interpreting the existing law in response to questions submitted by lower courts.

In May 1993 a new law on courts, designed to remedy the failure to carry out a 'verification' of Communist judges, introduced a special procedure for repealing judges who had violated the principle of judicial sovereignty.[24] The law was condemned by many critics, however, as an attack on the principle of judicial independence and an attempt to politicize courts. It was also described as being incompatible with such fundamental legal precepts as *nullum crimen sine lege, lex retro non agit*, and the statute of limitations. Furthermore, by empowering the Minister of Justice to initiate the procedure against a specific judge, the law was believed to conflict with the separation of power principle. The Ombudsman, Professor Tadeusz Zieliński, promptly submitted a request to the Constitutional Tribunal to review this controversial amendment (Frey, 1993:9; Murzynowski, 1995:55; Rzecznik, 1994:94; Zieliński, 1993:9).

In November 1993 the Tribunal announced its ruling disqualifying this provision as unconstitutional. The law was annulled by parliament in June 1994. The Solidarity minority in the Senate tried to muster support for a revised version that would be in force for a limited period of time only and would enable the removal of judges who had drastically and systematically violated the rules of legality in their judicial practice under communism.[25] They argued that, far from curtailing judicial independence, this enactment would strengthen it by upholding the constitutional duty of the judge to be independent in her/his

rulings (*Senat R.P.*, 27, 1994:18–29, 36–8). Yet the post-communist majority in the Senate voted against any provisions that would allow the removal of compromised judges.

Eventually, in the aftermath of the 1997 elections, won by the post-Solidarity forces, a law was enacted that deprived compromised judges of special pension privileges. Another bill, passed by the *Sejm* in December 1998, introduced a disciplinary court process for judges suspected of major abuses of office under the old regime.

Paradoxically, the adoption of the rule-of-law rhetoric and its glorification in public discourse have proved to be an effective barrier to deeper reforms of the justice system required for the realization of these principles in practice.

Prisons

There were two amnesties in 1989, bringing the number of prisoners down to 40 321 (106 per 100 thousand population), compared to 110 182 (or 295.1 per 100 000)[26] in 1985 (Gruszczyńska and Marczewski, 1995:18). In subsequent years the number rose gradually, reaching 58 000 in 1997 (Kubicki, 1997:84), renewing concerns about overcrowding in prisons that are housed in buildings so old that many of them are practically uninhabitable.

A radical reform of the prison system began in 1989. About 40 per cent of the correctional staff was replaced by the new director of the Central Prison Administration, Paweł Moczydłowski. Some took early retirement, some were dismissed as a result of disciplinary proceedings, some decided to leave on their own accord (Jasiński, 1995:66; Moczydłowski, 1994:4). The reforms were aimed at breaking with the repressive model of corrections; opening the system to public scrutiny; improving complaint procedures and creating avenues for prisoners to complain to outside agencies; and increasing the use of furloughs and liberalizing parole policy. Organizational changes included the abolition of the regional administration of prisons and granting more independence to individual prisons, enabling them to develop their own schedules of activities and programs within the general guidelines. In many institutions prisoners became involved in creating their own correctional programs (Jasiński, 1995).

Anti-authoritarian reforms undertaken in the early post-1989 period were highly effective. The brutality of the former system was dramatically reduced; prisons became significantly safer; incidents of self-inflicted injury diminished considerably; hunger was eliminated

(although the quality of food was still unsatisfactory) and prisoners took advantage of their newly won right to complain directly to Members of Parliament, representatives of human rights organizations, the Ombudsman Office and prisoner support groups (Jasiński, 1995:66–7; Moczydłowski, 1994:1, 4). The practice of granting furloughs was expanded considerably.[27]

Human rights violations, measured by standards codified by international conventions, while still happening in isolated cases, definitely ceased to be the prevailing policy and practice (Rzepliński and Kremplewski, 1996:156). Yet, by the mid-1990s, a gradual shift in correctional policy became noticeable that involved a move in the direction of re-centralization of the correctional system, the re-introduction of secret services to prisons and considerable curbing of the furlough policy.[28]

The Party

Following the collapse of the communist government, the Communist party (the Polish United Workers' Party or PZPR) continued to be legal (and it remained in existence until January 1990, when it dissolved itself voluntarily). Party cells were expelled from the workplaces, however, and a ban on any party membership was imposed on employees of agencies controlled by the Ministries of Defence and the Interior. The constitutional amendment of 29 December 1989 removed the article that established the PZPR as the leading political force. Yet, unlike, for example, the Czech Republic, in Poland there was no official denunciation of communism as a criminal regime.

At the Eleventh Congress of the Party (27–30 January 1990), the most active group pressed for the disbanding of the Party and the turning of its congress into the founding congress of a new social-democratic party that would distance itself from Marxism-Leninism. A resolution was passed on ending the Party's life and transferring its property to a new party (the Social Democracy of Poland or SdRP) (Janowski, 1992:174). The chairman of the new party's Executive Council became Aleksander Kwaśniewski, former leading activist in the Socialist Union of Polish Students and a cabinet minister in the 1980s. The post of Secretary General went to Leszek Miller, an experienced *apparatchik* and a former Politburo member (Mołdawa, 1991:396).

It was later revealed that the founders of the successor party[29] were assisted by a special loan of $1.2 million and 500 million in Polish currency, arranged by the KGB to finance their founding congress and the publication of a newspaper. The loan was also to be used to set up

private businesses in such a way as to attract foreign capital and to distance the ownership from the party itself, while making sure that the profits could be used to finance the party's agenda (Janecki, 1996a,b; Hugo-Bader, 1996). When the issue of the loan from Moscow was exposed in October 1991, Mieczysław Rakowski, the Party's First Secretary in the 1989–90 period, attempted to shield the SdRP, but circumstantial evidence indicates that the principal figures in the new party were at the very least aware of it (Janecki, 1996a; Parachimo-wicz, 1991). Rakowski and Miller were charged with obtaining an informal loan from the Soviet Communist Party. Eventually the charge against Miller was dropped when the prosecutor involved refused to sign the request to strip him of his parliamentary immunity and, after much legal haggling, following the 1993 parliamentary elections the case against Rakowski was discontinued due to 'the minimal social harm involved' (Janecki, 1996a; Ordyński, 1994a; Parachimowicz, 1991). On both occasions, the prosecutor general was a former Communist official.[30]

By taking over the Communist party's wealth, the SdRP gained an immense advantage over other parties that were struggling with no financial bases to speak of. In the late 1980s the Party became actively involved in economic activities designed to multiply its financial resources. Legal changes introduced by the previous communist government, led by Rakowski, had not only been instrumental in enabling individual *nomenklatura* members to transfer property rights to valuable pieces of the national economy to themselves but also provided a legal vehicle for the inclusion of the Party itself in the process of privatization of the state economy (see Chapter 6). For example, on 16 November 1987, at a meeting of the Central Committee's Secretariat, a decision was made to 'undertake appropriate actions in order to augment the PZPR's [Party's] revenues . . . , investing its reserve funds in productive enterprises' (Perzkowski, 1994:301–2).

One of the ventures that resulted from this recommendation was a limited liability company *Transakcja*, created in 1988 in conjunction with the Party-controlled giant state publishing and distributing conglomerate, *RSW 'Prasa-Książka-Ruch'* and the Central Committee's Academy of Social Sciences. Company branches were developed in various regions by respective Party Committees. After the Party's dissolution, its successor, SdRP, took over 149 of the company's 150 shares (Perzkowski, 1994:302).

A February 1989 memo to the Central Committee Secretariat from its Intra-party Economics Department stated:

> New legal regulations contained in the law on economic activity of 23 December 1988 aroused huge interest in provincial [Party] committees.... [They] propose to launch many new initiatives.... These usually include creating co-operatives, establishing limited liability companies, entering joint-stock companies by share purchasing, depositing money in commercial banks, purchasing bonds, starting businesses in the area of both services and production. (Perzkowski, 1994:302)

At the same time the Party was claiming to be so financially strapped that the Central Committee decided to allocate itself a supplemental subsidy from the state budget (an equivalent of $13 million in 1988 and probably much more in 1989; Perzkowski, 1994:299–300).

When the possibility of losing their political monopoly started to be taken seriously within Party circles, the process of investing Party funds and liquidating Party assets began in earnest. Moreover, in 1988 the Foreign Affairs department of the Central Committee opened special bank accounts abroad where large amounts of foreign currency were transferred from Poland, including massive credits obtained by the Party from state banks (Janecki, 1996a). In 1988–9 the National Bank of Poland (NBP) provided the Party with 800 blank permits for transporting foreign funds abroad, enabling Party officials 'to take out of the country suitcases full of foreign currency and stash it away in places of their own choice' (Kudzia and Pawelczyk, 1998:24). In 1989, when the inflation rate was in the several-hundred-per-cent range, the Party received an 18-billion-zloty loan from a state bank at 3 per cent interest (Dudek, 1997:86).

In October 1989, the Politburo resolved that an economic collaboration with other communist parties within the disintegrating Soviet Bloc would be another way to generate funds. This collaboration was formally directed by the Department of Foreign Affairs of the Central Committee of the Soviet Communist Party, but most of the cadres of that department were actually employed by the First Directorate of the KGB (Janecki, 1996a:21).

As a result of these developments a whole host of foundations, joint ventures, joint-stock companies, partnerships, holdings and private banks were launched, dissolved, converted and multiplied with frantic speed. Founding members of the SdRP were among the most active and effective actors in these complex profit-making schemes (Janecki, 1996a, b; Hugo-Bader, 1996). Their party inherited many foreign bank accounts, both old and new, set up by the Communist party, the

'*Transakcja*' company, and many other economic ventures such as the Politburo's Economic Agency or '*Savim*' company (Mikłaszewicz, 1996a,b). Moreover, in 1989, limited liability companies established and co-ordinated by the Party engaged in a massive illegal takeover of the Party voivodeship committees' assets, including their fleets of cars and other cashable possessions. These stolen assets have never been recovered by the state treasury.

According to the report of the then official liquidator of the Party's estate, Józef Palinka, the Party was a registered shareholder in 36 joint-stock companies at the time of its disbandment. Ninety per cent of these companies were established after September 1989 (Kęsicka and Now-akowska, 1996:20). The Party's shares were taken over by the SdRP voivodeship committees who were frantically channelling the defunct Party's funds into these profitable businesses. Yet, during the three and a half months separating the enactment (on 9 November 1990) and the promulgation (on 27 February 1991) of the law that established the state's ownership of the Party's assets,[31] these burgeoning ventures turned suddenly into failing operations and many of them were declared insolvent (Kęsicka and Nowakowska, 1996:21, 23). No trace of these companies' once-plentiful capital and gains has ever been offi-cially uncovered. The current liquidator of the Party's estate, Andrzej Herman, confirmed that companies in which the SdRP invested its predecessor's funds were deliberately caused to fail because 'before the enactment of the Law on Economic Circulation, bankruptcy could be quite profitable' (Herman, 1998:5). There is also no doubt that these bankruptcies served to muddle the origins of the wealth in question and forestall any attempt at expropriation or prosecution.

The SdRP's protestations of destitution notwithstanding, it is evident that it took over the considerable wealth of its predecessor, and its leading members have been involved in profitable international busi-ness ventures on the basis of funds (loans, credits, appropriations) which they have never publicly accounted for. It is significant that the legal status of the Communist party's assets was not decided until February 1991, when the law nationalizing the Party's property came into effect. It was passed too late to be effective and the SdRP chose to evade it. In 1994 an amendment passed by a parliament dominated by former Communist forces legitimated the *status quo*. The amendment granted the SdRP continued use of the Party's wealth and established SdRP's ownership over that portion of this wealth that had been financed by Party membership dues. Although President Wałęsa vetoed the amend-ment, his successor, President Aleksander Kwaśniewski, withdrew the

veto. A challenge submitted to the Constitutional Tribunal by opposition parties resulted in a 1997 ruling that gave the state treasury full property rights to the Communist party's assets and limited the SdRP to membership revenues from the period between August 1989 and February 1991, when the law nationalizing the Party's assets came into effect.

In spite of a series of civil suits launched by various local governments against the SdRP, most of which confirmed that it illegally appropriated considerable material and financial assets, the SdRP has ignored court orders and has steadfastly refused to pay the assessed amounts (AN, 1996; Kuchanny, 1996). Its official bank accounts have been kept empty, precluding legal confiscation of their funds. In February 1997, seven years after the dissolution of the party, the SdRP was ordered by a court of law to reveal its assets.

In March 1998 Konstanty Miodowicz, former chief of UOP counter-intelligence, revealed that in 1991 he had provided the Procuracy with substantial documentation of illegal transfers of the Party's money to banks in Switzerland, the USA, and Great Britain; but the case was never formally investigated (JJ and GUZ, 1998:2; Jakimczyk, 1998b:5). Any assets that SdRP may eventually acknowledge are therefore unlikely to represent its actual wealth.

In October 1997 Marek Belka, Minister of Finance in the Democratic Left Alliance/Polish Peasant Party government and a former Communist, signed a cosy deal between the SdRP and the State Treasury (*Skarb Państwa*). The SdRP agreed to repay to the Treasury the equivalent of $1 million US, with no interest, over 10 years. This figure was said to represent the accumulated interest on the SdRP's debt stemming from illegal use of the Communist party's property. In February 1998, several months after the government change, the Supreme Chamber of Control was asked to reassess the deal. The Chamber is to establish whether it conforms to standard terms of trade and binding law.

Before the deal with SdRP was concluded by the government dominated by that party, the Warsaw Voivodeship Court stayed proceedings against the SdRP in two major cases involving about $6 million US. The deferment was imposed because of a legal question submitted by the then Minister of Labour Leszek Miller to the Supreme Court. Although the Court ruled on the question in April 1996, the cases were not reactivated until October 1997, when the government of former Communists lost the elections. The timing was important because, according to Polish law, if a case is stayed for three years it must be discontinued (Domagalski, 1997:16; Herman 1998:5).[32]

The manipulation surrounding the fate of the Party's wealth exemplifies how the SdRP, the key party in the ex-communist coalition government of 1993–7, used its democratically legitimated control over state institutions to create favourable conditions for its dubious business activities. On the positive side, however, it must be noted that certain rulings by the Supreme Court and Constitutional Tribunal went against that coalition's interests, suggesting that the grip of the police state was receding and the fundamentals for the rule of law had already been laid.

During the communist period, the Party ruled in an alliance with two pseudo-parties. While fully subordinated – also by means of infiltration – to the Party, they were included in the distribution of important *nomenklatura* posts. Of the two satellite parties, the United Peasant Party (ZSL) has become an important player in the new political environment. ZSL abandoned the defeated Party following the 1989 parliamentary elections but, reincarnated as the Polish Peasant Party (PSL), in 1993 it formed a ruling coalition with the Democratic Left Alliance (SLD), which was founded by the SdRP for election purposes.[33] In the familiar fashion a system of *nomenklatura* was devised to divide various spheres of influence between the coalition partners. After the SdRP, the PSL is the party most active in the pursuit of private and party economic interests, capitalizing on its political control of various sectors of the economy and taking advantage of the rapidly expanding system of state subsidies, tax and custom exemptions and specially targeted state funds. These discretionary measures and funding mechanisms have become a powerful tool for both the political entrenchment and economic enrichment of the coalition of party élites.

Given that, in the contemporary world, real power resides in the realm of the economy, the former communists' dominant position is virtually guaranteed, regardless of their standing in parliamentary elections. Moreover, their access to strategic information and their experience in managing and manipulating it are far greater than any other party in Poland.

Apart from an economic and information base of unmatched magnitude, the SdRP's influence and effectiveness are derived from the highly developed, vertical organizational structures inherited from the Communist party; the well-rooted habit of party discipline among its constituencies; the backing of the old *nomenklatura*-based new capitalist class; and a continuing grip on a multitude of associations and organizations created under communism and related to the daily affairs of

ordinary people, affecting their needs, hobbies and leisure activities. Examples of such associations include housing societies, organizations of fishermen, hunters, philatelists and recreational gardeners. While they were allowed to evolve into social entities that had some usefulness to their members, they had always been tightly controlled by the Party and the secret services. The non-communist governments of 1989–93 did not recognize the importance of these inconspicuous but vital links of Party influence, and failed to stimulate the growth of new, genuinely non-political, informal organizations.[34]

The SLD's legislative record in the post-1993 period points to a systemic vision strongly conditioned by the doctrine of democratic centralism, assimilated by these politicians in their earlier lives. Antoni Kamiński and Jan Stefanowicz analyzed several major bills submitted to the parliament by the SLD and concluded that there was a clear pattern of anti-democratic, anti-legal and anti-liberal motivations underlying all these legislative proposals:

> Behind the statutes pushed by the apparatus of the SLD–PSL coalition, one can see an outline of a unified systemic model, whose main feature is the realization of short-term interests of the administration/party groups at the expense of the public good. Corruption in application of the law may be tolerated for a relatively long time . . . Corruption in the realm of law-making is a time-bomb planted under the state edifice . . . The legislative power has self-limited itself in its law-making function in favour of the executive power, whose prerogatives have been expanded beyond the limits defined by the principle of division of power. (Kamiński and Stefanowicz, 1995:5; Kamiński, 1997)

Yet, despite the coalition's majority in the parliament, some of the most extreme examples of this legislative trend were prevented from becoming laws or were at least shelved. This was possible due to internal disagreements within the ruling coalition, criticism by the opposition parties and independent experts and the Constitutional Tribunal's rulings. Nevertheless, the trend existed, and it was described as alarming by the parliamentary Constitutional Commission which concluded, in 1996, that the Polish legal system was plagued by communist-style 'xerox law' – unpublished edicts and interpretations of deliberately vague statutes, issued by ministers and other central government officials and sent by fax to the subordinate units, resulting, as a rule, in additional burdens to citizens.

Finally, there are many unanswered questions about possible links between leading members of the SdRP and the KGB. We only signal here the persistence and importance of these questions, without trying to answer them. It is known, however, that in the late 1980s Soviet intelligence services intensified their activities in Poland in anticipation of major political changes that might result in their loss of direct links to the Polish secret services and the Party. Close social ties between the Party élite and members of the Soviet Embassy were already part of the standard code of conduct for those aspiring to climb the political ladder or to remain at its top. The last Communist Prime Minister, Rakowski, confirmed this pattern of behaviour in his 1996 interview:

> There is no doubt that for many years, participation in the leading bodies of the Party depended in considerable degree on a positive evaluation by Moscow. . . . If someone talked to a representative of the Soviet Embassy and knew that that person would pass on the content of their conversation, he tried to make sure they would describe him as a 'good comrade'. I think that was a natural thing since Poland was, to a lesser or greater degree, in a relationship of dependency with the Soviet Union. (Rakowski, 1996: 18)

The first non-Communist minister of the Interior, Krzysztof Kozłowski, also commented on this phenomenon, in the context of the Prime Minister Oleksy affair:

> Until the spring of 1990, Soviet comrades were daily visitors in the offices of the Ministry of Interior. . . . This situation changed radically in the spring of 1990. From that point, the Russians began constructing a regular intelligence net, similar to what they had in other Western European countries. This net does not consist exclusively of typical agents, the Russians also sought to include personalities from various élites to be used as trust-worthy sources of information. Józef Oleksy maintains today that he did not know that his friend was a KGB agent. Yet, firstly, the UOP warned him against these contacts. Secondly, using this kind of excuse – as do many of his colleagues from the former PZPR [the Party] – he seems not to have noticed that in 1989 Poland became a sovereign state and, by the same token, the contacts that in the 1980s were not *de facto* treated as spying had now changed their meaning. . . . Formerly, nobody in the PZPR saw anything wrong with them. On the contrary, for the Party activists it was a chance to speed up their career (Kozłowski, 1996:3).

There is no doubt that close relations between the KGB residents and some Communist politicians continued after 1989. Stanisław Janecki, a well-informed journalist, elaborates:

> Contacts between leading PZPR and, later, SdRP politicians and Russian diplomats, and above all KGB officers, have been frequent. The more Poland distanced itself from Moscow, the more intensive the KGB efforts to secure sources of information became. They targeted younger, dynamic, ambitious, power-hungry opportunists, who were in a hurry to ascend to the top of the party hierarchy.... Initially, KGB officers' contacts would be of purely social nature and would not go beyond small favours, gifts for wives and children or procuring articles in short supply. With time, these contacts imperceptibly grew into a kind of dependency upon the agent. Then, the acquired knowledge about the 'friend', his weaknesses and peculiar inclinations, was utilized. (Janecki, 1996a: 19–20)

In February 1997, in a surprising move, Minister for Co-ordination of Secret Services Zbigniew Siemiątkowski, a SdRP member, stated publicly that Polish counter-intelligence had gathered evidence indicating a considerable intensification of contacts between Russian diplomats and Polish politicians and revealing systematic attempts by Russian secret services to take over strategic sectors of the Polish economy (Białkowska, 1997; Paradowska, 1997c; Szemplińska, 1997; Urban, 1997).

Lustration/decommunization

As we indicated in Chapter 2, the term 'lustration' refers to the screening (or vetting) of candidates for and holders of important public offices to identify (and, usually, bar for a certain period) former secret-services collaborators. 'De-communization' is based on a similar exclusionary principle applied to former Communist Party officials and those who held important *nomenklatura* posts.

While the objects of protection are similar in both cases (senior public offices, elected representative bodies, judiciary, state mass media),[35] the subjects of exclusion are not. Not only do they target different groups of people, but each process requires very different justifications and procedures, since the secret collaborators operated under cover while the *nomenklatura* post holders enjoyed their power openly.

The post-Round-Table political front, dominated by the liberal Left and led by the first non-Communist Prime Minister, Tadeusz

Mazowiecki, played a key role in thwarting any attempt at lustration or decommunization in the early post-1989 period. When a centre/Right government led by Prime Minister Jan Olszewski was formed in December 1991, the question of lustration was raised with renewed vigour.

In May 1992, the *Sejm* passed a resolution that obliged Interior Minister Antoni Macierewicz to provide full information about possible SB collaboration among high-ranking state officials and members of the parliament within nine days. The minister was also asked to provide, at a later date, relevant information about judges, prosecutors, defence lawyers, as well as local administration officials and elected councillors. However, when Macierewicz submitted a list of 64 names including senators, members of the lower house, and cabinet members who had allegedly been classified in the SB files as secret collaborators (*Tajni współpracownicy*, n.d.),[36] a political scandal erupted and the whole process was stopped. A 16-hour parliamentary debate culminated in a no-confidence vote that brought down Olszewski's government (Grajewski, 1996). A special commission was created to investigate the manner in which the list of collaborators was produced (Osiatyński, 1992). The May resolution was subsequently found unlawful by the Constitutional Tribunal. Andrzej Milczanowski, Macierewicz's successor, blocked access to the files in the secret-services archives, thus preventing any verification of the list. He offered a standard public apology to all those who had lodged court challenges for their having been classified as collaborators. These announcements stated simply that the minister had not proved that the files in his possession confirmed the named person's collaboration with the Secret Service. None of the cases were studied by the courts, as no files were released to them.

This failed attempt at lustration, based on an *ad hoc* parliamentary resolution rather than a proper law, mobilized many groups and political parties to prepare their own lustration/decommunization proposals ('Jak lustrować?', 1992; Rzepliński, 1992). Within two months, six draft bills were submitted to parliament and – despite strong opposition from the post-communist parties – were sent to the relevant parliamentary commissions for deliberation. Four of them combined lustration and decommunization, while two other bills aimed at lustration only. The whole process was stalled, however, due to resistance from the SLD deputies. It is noteworthy that among the SLD and PSL members of the parliamentary commission dealing with the issue of lustration law, several were identified in the Macierewicz list as secret collaborators. Prior to the September 1993 general elections, most parties publicized

their views on lustration: only the two parties clearly linked to the former Communist party strongly opposed it, but considerable opposition was also expressed by the Democratic Union, the party led by Mazowiecki (Zaremba, 1993:4).

Following the 1993 elections and the creation of the ruling majority coalition by the two post-communist parties, the former *nomenklatura* re-occupied important public posts and took firm control over the legislative process. In June 1994, two new lustration bills, prepared by the opposition parties, were voted down on the first reading. The only bill approved for further deliberation was a *de facto* anti-lustration measure submitted by the SLD.

In July 1994 five new legislative proposals were received by the parliament. Only one of them barred collaborators from holding important public offices. Another proposal required that candidates for such offices would file a statement as to their possible past collaboration with or employment by secret services. Making a false declaration was to be subject to criminal sanctions. Two other bills focused solely on the question of access to secret archives and their removal from the Ministries of the Interior and Defence. Finally, the SLD proposed that all key state bodies establish internal commissions authorized to investigate whether people being considered for senior offices could pose a security threat. The question of past collaboration with secret services was vaguely formulated as a possible criterion. There would be no sanctions for collaboration, and the bodies in question would be free to disregard information received from their commissions in making their decisions. This bill – uniformly criticized by opposition parties and outside experts – was the only one that survived its first reading and was forwarded to a parliamentary commission (Grajewski, 1996:11–2; Krasowski and Zaremba, 1994:1; Czaczkowska and Groblewski, 1994:3; *Sejm*, 25, July 1994:111–70).

The SLD leaders justified their approach by emphasizing that employment or secret collaboration with the Communist secret services could not be held against anyone, since these services were legal agencies of the state (Zaremba, 1994:3). Public opinion polls indicated that this view was contrary to the prevailing public attitude. For instance, a survey of a representative random sample of the Polish adult population, conducted by the reputable OBOP agency in 1994, found that 75 per cent of respondents believed that former secret collaborators should not occupy senior state posts. Seventy per cent believed that there were former collaborators among high-ranking office-holders at the time of the survey (E.Cz., 1994:2).

The SLD did not seem to be interested in passing even its own version of 'lustration', however, and there was no further action on the matter until February 1996, when President Aleksander Kwaśniewski submitted a new legislative proposal to the parliament. Faced with the spying accusations against his friend and co-founder of the SdRP, Prime Minister Oleksy, the president wanted to appear to be doing something constructive. Nevertheless, his proposal of a law on the Commission of Public Trust was widely interpreted as being guided by a vengeance motive and directed against the opposition. In the following months, four other proposals were introduced to the parliament by various parties (Grajewski, 1996; Kęsicka, 1996). Only one of these proposals, prepared by the Solidarity Union, included both lustration and decommunization measures.

By February 1997 the special parliamentary Commission on Lustration had prepared a compromise bill. It was opposed, however, by the SLD deputies, who then submitted their own substantially different proposal. The compromise bill targeted members of parliament and senators, top state officials, on the central and regional levels, judges, prosecutors and senior management of the public media. The candidates or incumbents would have to declare whether they had collaborated with the secret services, including intelligence and counter-intelligence (both military and civilian), in the period between 1944 and 1990. Their declarations would be published and checked by a Lustration Court using the archives of the UOP and the Ministries of Defence and the Interior. A special appeal procedure was also elaborated. No sanctions would apply to collaborators, but making a false statement would be a criminal offence punishable by up to five years' imprisonment and a ten-year ban on holding important offices.

In contrast, the SLD proposed entrusting the lustration procedure to the UOP chief (a political appointee), who would conduct it in secret. The proposed list of offices that would be subject to lustration was unrealistically long, while the secret services concerned were defined narrowly, and excluded intelligence and counter-intelligence. The collaboration would have to have been *intentionally* directed against the democratic oppostion, Catholic Church, free trade unions or the Polish state. To be accepted, the archival proof of secret collaboration would have to contain the person's signature and declaration of the will to collaborate.[37] The finding by the UOP chief would be conveyed in confidence to the investigated person and could be appealed against, first to the same UOP chief, then to a Lustration Court and, in the last instance, to the Highest Administrative Court. The finding

would be made public only when this procedure was concluded (Para-dowska, 1997b). The SLD bill would have made a mockery of the idea of lustration and prevented any non-partisan security screening for candidates and occupants of senior state posts. Moreover, by excluding secret collaboration with intelligence and counter-intelligence, the bill sheltered SdRP activists who were most likely to be involved with these services (Paradowska, 1997b:22).

Eventually, the Extraordinary Parliamentary Commission on Lustra-tion prepared a revised version of the compromise bill. Criminal sanc-tions for filing a false declaration concerning past collaboration were dropped. Candidates for and holders of the listed offices who failed to disclose their employment by or secret collaboration with secret services were to be barred for ten years from occupying those posts. Defence lawyers were added to the list, bringing the number of posts involved to about 20 000 (Paradowska, 1998:5). The law was enacted thanks to the support of a large proportion of PSL deputies and senators who defied their senior coalition partner, SLD. It was passed by the *Sejm* on 11 April 1997, with 214 deputies voting for the bill, 162 against and 16 abstain-ing. The Senate rejected all the amendments proposed by the SLD senators and the President, and accepted the bill without reservations. The SLD fought to exclude the intelligence and counter-intelligence services and include a clause, proposed also by the President, that col-laboration would have to have involved deliberate actions detrimental to the democratic opposition, churches or national aspirations for sover-eignty (Kozłowski, 1997a).

In a rare act of disrespect for the SLD's preferences, President Kwaśniewski signed the bill, probably in response to pressure from centrist groups who urged him to show himself as 'president of the whole nation' and not merely of former Communist élites.[38] As soon as the Lustration Law was promulgated, in August 1997, a group of more than 100 SLD deputies submitted a petition to the Constitutional Tribunal asking for a review of its constitutionality and consistency with international conventions signed by Poland. They asserted that the law relied on the principle of self-incrimination (violated the right to be silent); did not specify the forms and nature of collaboration; repudiated the presumption of innocence; penalized unintentional wrongdoing; modified passive electoral rights; and introduced agencies not specified in the constitution. Their other complaint was that the law did not distinguish between acting on the citizen's constitutional duty to be watchful for 'enemies of the people' and acting on other motives (Claris, 1997). Except for two technical points, the

Constitutional Tribunal ruled in October 1998 that the law was fully constitutional.

Even before the law was passed, Antoni Zieliński, the chief of UOP archives, was replaced by an old SB hand, who according to the former anti-communist opposition had been involved at the turn of the 1990s in the illegal destruction of secret services files (Rabiej and Stankunowicz, 1996:24). In a further attempt to neutralize any future lustration law, the government dissolved the section responsible for piecing together the content of destroyed secret-service files (AMC, 1997a:2).

Moveover, the UOP chief, Andrzej Kapkowski, had issued a secret directive that enabled former secret collaborators to evade lustration procedures if they were re-recruited by the UOP. None of the prominent politicians who were included in the Macierewicz list admitted in their pre-election declarations to have been collaborators. Under the new law, all MP candidates were obliged to file declarations that were to be verified by the Lustration Court (IGO, 1997:2).

Following the enactment of the Lustration Law, many ex-Communist coalition politicians, including the Prime Minister, the UOP chief and the Minister of Justice, criticized it publicly. The politicized climate did not help the process of electing judges for the new Lustration Court. Judges were reluctant to co-operate, and it proved impossible to find candidates for all 21 seats on the bench. This led to an amendment that entrusted lustration cases to the Court of Appeal in Warsaw.

The unending saga of parliamentary bickering over lustration bespeaks the strength of the forces interested in blocking any procedure that could provide an effective and orderly mechanism for the security screening of politicians and other figures of public trust. In all probability, the new lustration law will be manipulated to serve the interests of specific groups and not the security of the Polish state.

The lustration debate

There are various ways of portraying lustration. It has been represented as an instrument of revenge and settling of accounts; a necessary step in revealing and preserving the truth about the totalitarian past; a vehicle for a moral renewal in politics; and a prerequisite for national security. The 1990s brought a large number of Western publications on this topic, and at international conferences 'worried liberals from the West, McCarthyism in mind, discoursed earnestly on the folly of score-settling and the wisdom of amnesties and active forgetfulness' (Holmes, 1994:33–4). Accordingly, Polish opponents of lustration often refer to

Poland's aspirations to join the Western world and portray defenders of lustration as an embarrassment and a major obstacle to this objective. They are described as nationalistic, parochial, un-Western, backward-looking and generally uncivilized.

A study of Polish public discourse on lustration, conducted by Maria Łoś in the mid-1990s, shows the intricacy and ambiguity of the language used in lustration debates. She argues that:

> The process of construction of new moralities and new politics has become inseparable from and contingent upon the process of construction of new truths about the past and the present. Official utterances and public debates with respect to lustration are a vital part of this process. Political and moral questions about the choice of proper policies toward former informers and secret police agents tend, however, to generate a peculiar ambiguity, wherein political and personal interests are easily disguised as moral concerns, and righteous attitudes are always suspected of hiding some dark secrets.
>
> The ambiguity inherent to the Secret Police archives' knowledge-status is paralleled by the ambivalence demonstrated in actual political decisions made by the post-1989 Polish leaders. The same politicians who opposed any form of lustration law and any other form of legitimation of the Secret Police files as a source of truth have, nonetheless, used them routinely to check security backgrounds of large categories of people active in politics. The procedures and the scope of these screening operations have never been disclosed and no law has ever been passed that would authorize and regulate such actions. (Łoś, 1995:118)

The study revealed the diversity of themes in these debates: concerns that society may not be able to handle the truth about the extent and depth of its secret infiltration; fears of abuse of the information revealed through lustration; claims that the evil nature of secret files disqualifies them as a source of truth; dread of repeating the methods of the totalitarian state; the need to prevent a 'fabrication of history'; stress on the necessity of historical deterrence; moral outrage at the political and economic advancement of former informers; and anxiety about the perils of having undisclosed former collaborators in positions of authority, when their past may still hold power over them.

While the 'national security' argument can easily be abused, there are compelling concerns supporting the argument which go beyond an assumed weakness of character in former collaborators. The fact

that the secret services in Poland were completely dependent on and subservient to Soviet command heightens the probability both of continued links between some individuals and foreign states and their vulnerability to blackmail.

As Zybertowicz has shown in his earlier book, in the early 1990s networks of former SB operatives, secret collaborators and *nomenklatura* members effectively subverted the political integrity of the state and its key organs. They manipulated the legislative process, prosecution, adjudication and communication. He emphasizes his observations with a poignant question: 'Does the game continue to be: I know about you and you about me – and we both keep silent? What consequences for Polish democracy does this kind of mutual blockage have?' (Zybertowicz, 1993:59).

A similar but more openly political account of the threat to state security, enhanced by a failure to conduct lawful lustration, is contained in a secret Ministry of Interior report prepared for Prime Minister Jan Olszewski in May 1992. It was leaked to the press and reprinted in several print media:

> There is some basis to the supposition that an uncontrolled circulation of secret documents from the former civil and military secret services is the hidden impetus behind many unfortunate decisions made by various state organs; the source of impunity in various financial scandals; as well as the force responsible for a certain direction in information policy. (Grocki, 1992: Appendix 1)

This view has also been endorsed by the highly respected Supreme Court President Strzembosz, who in his 1994 interview talked about 'the potential threat presented by former security services/*nomenklatura* networks who in a convenient moment can try to influence the functioning of the state' (Strzembosz, 1994). Nevertheless, this type of discourse is often dismissed by its critics as conspiracy theory.

A credible argument can be made that lustration is only 'security screening for jobs at the top' and not a criminal indictment, and therefore from the legal point of view it is almost analogous to the security checks existing in all democratic countries. Given the scale of the inherited security problem in Poland, one would expect a serious search for the best legal formula that would be both efficient and minimize the threat to the dignity and personal goods of individuals screened for high offices. Yet, as Łoś found in her study, 'procedural and legal-institutional issues occupy a marginal place in the debate'

(1995:154). The Lustration Law, enacted in 1997, is a good example of yet another political compromise that may prove unworkable at the level of its legal implementation.

What often seems to be forgotten is that lustration cannot be a goal in itself; it can only serve as a tool within a broader project of rebuilding society after a very long period of imposed totalitarian rule. Yet, in the public debate surrounding lustration:

> one looks in vain for reflection on the possibility that lustration, like many other institutions, has the capacity to foster justice and injustice, equality and inequality, democracy and terror, peace and war. And that the legal context in which it occurs or fails to occur, and broader social processes of reconciliation, negotiation, retribution, or internal cold war, are the key to lustration's constructive or destructive impact. (Łoś, 1995:161)

8
Privatizing the Police-State

Introduction

As the previous chapter suggested, the process of transforming the police state had a less visible dimension – rather than simply disappearing, it disintegrated through the privatization of its diverse resources. Those resources included highly skilled personnel, sensitive information, domestic and international contacts, personal data and secret police files, networks of secret informers, surveillance equipment and expertise, operational blueprints and technology, and economic enterprises set up by the secret services. Many of these resources were secret, so their privatization required covert actions, likely undertaken by both hidden actors and prominent figures engaged in behind-the-scenes activities.

Privatization of the police-state also provided an invisible structure and distinct environment for many major elements of systemic transformation in Poland, including the privatization of the economy. It is one of the central theses of this book that the privatization of the police-state was a crucial factor in the subordination of important aspects of the transformation process to the short- and long-term interests of the old system's political elite. 'Privatization of the police-state' is used here as a metaphor or an ideal type in the Weberian sense – a model to be unfolded. It denotes a complex, multi-level, ramified – social, political, economic – process that is not easily captured by the traditional conceptual tools of social science.

Understood literally, privatization of the state denotes exploitation of a state's institutions for private ends (see, for example, Kamiński, 1997; Kojder, 1995a:317–51). This general notion is applied in our study to a specific historical context, which transforms it into a much sharper and

more meaningful analytical concept. First, these privatized state institutions were developed within a communist police-state, which determined their unique nature and distinct hierarchy of actors. Second, this particular process of privatization was an integral part of a broader process of systemic transformation characterized by privatization of the means of production and exchange. Third, the process took place in East/Central Europe, where systemic change was combined with a geo-political shift toward Western civilization, symbolized by the drive to join the NATO and the European Union. Fourth, the concrete process of privatization of the communist police-state occured in a period of rapid globalization, marked by heightened fluidity of normative boundaries at all levels of human (inter)actions (see Chapter 10).

As indicated in Chapter 2, we operationalized the 'privatization of the police-state' process by referring to such empirical indicators as, first, selective private appropriation and/or destruction of the archival records of the Party and secret services; second, the converting of certain functions of the police-state into private operations; third, the active role of secret services and their agents in large-scale schemes that converted state resources into private capital for a select group, and fourth, the infiltration and manipulation of various agendas of the state. We address these hypothetical domains in the following four sections of this chapter.

The privatization of secret files

The mishandling and abuse of secret files encompass much more than their illegal destruction. Individual files and larger portions of the secret archives of civilian and military secret services and the Communist party were copied, stolen and sold. A separate operation involved the illegal seizure of the Party archival documents by the post-Communist Social Democratic Party, the SdRP (Rakowicz, 1996:2).

At least three major well co-ordinated operations aimed at the selective destruction and/or the privatization of archival secret documents were conducted in the second half of 1989 and early 1990. Lesser activities in this area continued, however, and new abuses were uncovered as late as 1997 (AMC, 1997a:4). The three major operations were:

1. The destruction of the minutes of Politburo and Central Committee Secretariat meetings from 1982 to 1989. This was ordered in December 1989 by the then president of Poland General Jaruzelski. Among many other sensitive matters, the minutes covered discussions of the

'Iron' scandal (see Chapter 4), Father Popiełuszko's murder (see Case Study 2) and the imposition of Martial Law (see Chapter 4) (Rzepka, 1994:4; Albert, 1994:899). The Parliamentary Commission on Constitutional Responsibility investigated the legality of this deliberate and massive destruction of Party documents and was expected to decide whether Generals Jaruzelski and Kiszczak – both implicated in this operation – should be tried by the State Tribunal. The case, initiated at the beginning of 1993, was dropped two years later, however, when the Commission became dominated by members of the ex-communist coalition (SLD and PSL).

2. The destruction and manipulation of the MSW's operational files between August 1989 and March 1990 (Jachowicz, 1990b).[1] Andrzej Milczanowski, the Interior Minister from 1992 to 95, claims that:

> Based on estimates made by the Ministry of the Interior and the State Protection Office [UOP], about 60 per cent of the so-called operational files . . . of secret collaborators have been destroyed . . . . [I]n some voivodeships it was 90 per cent. Destruction of files was not a random exercise. It was done selectively . . . . [A] large part of the material that was related to secret collaborators among the former opposition was spared, while those documents that could discredit Party comrades or people useful to them were eliminated. (Milczanowski, 1997:33–4)

Other sources estimate that in 1989–90, about 40 to 50 per cent of the content of secret services' central archives was either destroyed or illegally removed. Similar operations were conducted in regional archives, but their scope differed considerably. For instance, in Gdańsk – the birthplace of Solidarity movement – only about 5 per cent of the archival material was retained (Janecki and Łuczak, 1997:27).

The general information inventory, which constituted the chief part of the MSW archives, (Bureau C), shrank from 3 million entries in 1987 to 2.5 million by the end of 1990 (Janecki, 1996b:23). (It is important to keep in mind that in 1989 there were about 100 thousand registered secret collaborators.)

The trio who ordered the files destruction were MSW generals: Henryk Dankowski (the Interior Vice-Minister from 1986 to 1990), Tadeusz Szczygieł and Krzysztof Majchrowski. In February 1991 the Procuracy laid criminal charges against them (PAP, 1991:2). None of them were detained, and the charges were stayed at the outset of the

trial in July 1993 (Miziak and Jachowicz, 1993:3). As a result of an appeal the trial was resumed, in camera. But after prolonged haggling the court dropped the case again, in December 1995, on the grounds that the crime in question was committed before October 12 1989 and was therefore subsumed under the political amnesty of 1989 (PAP, 1995/96:2).

3. Destruction of most of the files of the Military Counter-Intelligence (Directorate III of the Internal Military Service (WSW)) at the turn of 1989 – about 20 000 dossiers out of the total of 26 000 (Domagalski, 1995:15). Although the media sounded the alarm about the file destruction in July 1990 (Jachowicz, 1990b), it was not until December of that year that the Military Procuracy started its investigation. Six years later, after a protracted legal process, the former WSW chief General Edmund Buła and his four subordinates were finally convicted. They were given short suspended sentences (Ordyński, 1996b:12).

According to deputy Janusz Okrzesik, who chaired the Sejm sub-commission that investigated the WSW files scandal: 'The destruction of military and civilian secret services files started in the whole Eastern Bloc at about the same time. One can surmise that it was an operation supervised by the KGB.... [B]efore destruction the files were microfilmed. It is likely that [these microfilms] are now outside of Poland' (Okrzesik, 1991:2).

It is worthy of note that due to the lack of lustration of the judiciary, Procuracy and Members of Parliament, it is quite possible that among the officials who investigated the mishandling of secret files there were former secret collaborators of the very services that the accused men had previously controlled.

Frequently the stolen files were treated as a unique insurance policy for use in difficult situations.[2] Former Vice-Minister of the Interior Jan Widacki, who co-ordinated the verification of the SB cadres in late 1990 (see Chapter 7), reported that several former SB functionaries offered to return some secret services files in exchange for positive verification (Widacki, 1992:25).

At least until September 1997, some functionaries of the communist secret services responsible for the files' mismanagement were still employed by the UOP (AMC, 1997a:2). Moreover, in January 1997, the then Minister for Co-ordination of the Secret Services, Zbigniew Siemiątkowski, reported that one-third of about 20 000 former SB functionaries not employed by the new services were in possession

of 'sensitive' knowledge. Although they were legally obliged not to divulge this knowledge, a whole new market for state secrets emerged, regulated predominantly by principles of supply and demand (Siemiątkowski, 1997:3; Dubiński and Małachowski, 1993).

Some media controlled by ex-communist circles (for example, the weekly *Przegląd Tygodniowy*, initially managed by the last Party First Secretary Mieczysław Rakowski, or *Nie*, whose founder, owner and editor-in-chief Jerzy Urban was a spokesman for the communist government during the 1980s) regularly publish classified documents of the communist MSW, including personal dossiers of alleged secret collaborators.

In brief, the destruction, theft and illegal use of secret files were designed to achieve the following aims:

1. The destruction of evidence of the dependence of Polish communist authorities on the Soviet centre. (When the illicit destruction/reproduction of files was initiated, Soviet 'advisors' were still attached to both military and civilian secret services) (Ochocki, 1992:2207; 'Raport . . . ,' 1992);
2. The destruction of evidence of numerous unlawful actions (state crime), including both those performed routinely as well as those especially tailored to particular circumstances (Okrzesik, 1991:2; Sulka, 1989; Jurkiewicz, 1991:7);
3. The destruction of traces of ramified covert operations aimed at infiltration and manipulation of dissident groups and the Catholic Church (Okrzesik, 1991:2; Grocki, 1992:26; Ochocki, 1992:207);
4. Providing a smoke screen for 'privatization' of the files;
5. The preservation of compromising evidence about other members of the *nomenklatura*, while destroying those pertaining to one's own network;[3]
6. The utilization of former and present secret collaborators' files to control and manipulate them; some of the SCs quickly emerged as prominent figures on the new political scene or rapidly advanced in business;
7. The sale of files to journalists, foreign intelligence services and domestic private security companies, some of which were active transnationally and have considerable leverage and hundreds of employees (see next section);
8. The utilization of secret files for smear campaigns against political and business adversaries.

There still remain many unanswered questions. Who has which files? Do the Russians have copies of all or most of the files? (see 'Raport'..., 1992:5). What is the nature and extent of the influence which those who posses secret files exert upon important state institutions such as the Ministry of Justice, UOP, State Police, Main Customs Office (GUC) and the state administration in general?

The private security industry

The first private detective agency opened for business in Poland in 1986, but the rapid expansion of the private security industry can be linked to the enactment of the Economic Activity Act of 23 December 1988.[4] The services provided include: contract undercover work; property and personal protection; recovering property; debt enforcement; detective work; and competitive (business) intelligence collection.

According to cautious estimates, the overall turnover of the industry in 1995 was about 120–160 trillion Polish (old) zlotys, the equivalent of about $5 billion US, nearly three times as much as the overall revenues of the giant state monopoly Polish Telecommunications (Markiewicz, 1996:25). By 1992, private security companies employed more than 100 000 people, while the state police numbered 95 000 (Czapska, 1994; Hugo-Bader and Wiernikowska, 1994:6; Małachowski, 1992:9).

By the end of 1996 there were 7177 registered private protection and detective agencies, and more than 5000 of these were established between 1989 and 1993. According to conservative assessments a roughly similar number operates illegally (EWJ, 1996:8). As a result of the lack of state control over this new industry, it is difficult to estimate the size of its workforce – official figures range from 47 000 to 250 000 (Woyciechowski, 1997:6). A large proportion of the owners, executives and staff in the protection industry are former Communist and post-communist secret services operatives, police and military personnel, anti-terrorist experts, correctional service functionaries and from related professions.[5] Many former chief commanders of the militia (MO) and secret services, as well as generals from the Army and the MSW, own, manage or work for such companies[6] (Markiewicz, 1996:26; Skłodowski and Woyciechowski, 1997:3). Some large agencies employ more than 1000 people, and have branches in many regions of Poland (Markiewicz, 1996:27).

The number of press publications devoted to the private security industry is immense. Mostly they describe half-legal, illegal and

blatantly criminal activities rampant within the industry. These include illegal debt collection (involving threats or the actual use of violence), kidnapping, forcible confinement, torture, robbery, the secret bugging and filming of apartments, using private security companies as covers for criminal rackets, not to mention acts of ordinary hooliganism or the practice of hiring people convicted for violent crimes. The lack of supervision over the protection industry extends to the black market in arms, in which the industry is heavily involved. There exists an obscure and illegal zone in which the private security companies and the state police overlap: the companies rent spaces in police buildings; use police facilities to train their own employees and/or police or military personnel; and exchange sensitive and confidential information with police officials (Dolińska, 1992; Januszewski, 1995:1; Kęsicka, 1994; Łuczak, 1996; Łuka, 1995; R. B., 1996). Other typical activities include forbidden moonlighting by police officers; trading in sensitive police data (for example, lists of stolen cars, confidential data on business companies, public data banks and criminal records) and 'unofficial' subcontracting by the state police and the UOP of private companies to plant electronic listening devices and spy on targeted individuals (Marszałek, 1994:11; Świątkiewicz, 1996; Woyciechowski, 1997:6). For instance, in 1996 the owner of one of the best-known private agencies, which specialized in recovering stolen cars, paid about 500 Deutschmarks to police, customs and Border Guard officers for tips helpful in locating stolen cars (Ćwikliński, 1996:4).

Many alarming practices occur in the often fuzzy area between the criminal world and the protection industry. Because the courts of law are extremely inefficient at debt collection and conflict resolution in general, there is a strong demand for informal enforcement both among business people who operate legally and those connected with the unregistered, second economy.

According to Antoni Macierewicz, who was Minister of the Interior in the 1992 right-wing government of Jan Olszewski, verification of the militia and the civilian security service (see Chapter 7) was underwritten by a tacit agreement which allowed fired functionaries to establish private security firms. Macierewicz links this to the decision to dissolve the economic crime divisions based in voivodeship police headquarters – a move demonstrative of the state's deliberate attempt to inhibit its own capacity to deal with economic crime (Macierewicz, 1995:10). Even if there was no actual conspiracy behind these developments, they evolved as if there actually was one.

In the 1980s the SB owned and/or controlled an unknown number of small private businesses in Poland. It seems likely that during the transformation to democracy some of them were taken over by groups of former operatives-turned-private-entrepreneurs, some of whom were also active in the newly established private security industry. It was easy for them to take advantage of available means of violence to intimidate business competitors, for instance by planting bombs on their premises (see Gadowski, 1996:5).

It was not until 1991 that the MSW was granted the right to supervise protection and security companies (Rybczyński, 1995:33), and a relevant office in the ministry's Administrative Department was not established until February 1993. It had only eight members of staff, was headed by a former SB agent and had no computerized information system (Skłodowski and Woyciechowski, 1997:3; Woyciechowski, 1997: 6). In 1995 the Deputy Director of the Department claimed that the number of offences committed by private protection companies was miniscule (Rybczyński, 1995:33). However, of only 30 companies inspected in 1992, business concessions were revoked in eight cases; in 1993 the respective numbers were 59 and 12; in 1994 80 and 16; and in the first eight months of 1995, 50 and 7 (Juchniewicz, 1995:33). These figures suggest that serious irregularities were uncovered in approximately one-fifth of the companies inspected.

Although protection (security) company employees are not registered, vetted, licensed or properly trained, they have access to weapons, sensitive information and sophisticated technical equipment. There is no screening for those who want to establish or manage a company of this kind. Pressed by media criticism, the MSW started to work in 1991 on a law that would regulate the private security business (Marszałek, 1993, 1995).

Alarming revelations about dubious or outright criminal conduct rampant within these unregulated services forced the Supreme Chamber of Control (NIK) to undertake a comprehensive eight-month probe of the industry at the beginning of 1996. Many unlawful activities were exposed, largely corroborating media reports. Various agencies were involved in prostitution, extortion, arson (as a means of intimidation or in connection with insurance frauds), defrauding organizations that hired them, bloody turf wars with competing businesses and the illegal employment of state police, UOP, state fire brigade and Border Guard functionaries, as well as people with criminal records. Among the recorded anomalies was a high-ranking official in the main Inspectorate of Supervision and Control of the Ministry of the Interior

and Administration who owned a private agency and was allowed to work there on a part-time basis. Janusz Wojciechowski, the head of the NIK, commented on the total lack of regulation of the private security services: 'It is not specified what the protection and detective agencies may or may not do. Until now, no one has defined what the detective services are' (Łuka, 1997:18).

In August 1997, parliament finally passed the Law on Protection of Property and People,[7] but it was highly flawed. First, it did not cover agencies providing detective services. According to some analysts this was omitted in order to give detective companies a free hand because they provided essential, though unlawful, services to the Ministry of the Interior and Administration and the UOP through informal subcontracts. Second, the law allowed the industry a two-year period of adjustment, which, in practice, means the *status quo* continues (Skłodowski and Woyciechowski, 1997:3). Third, the bill – drafted by the SLD-controlled Ministry of the Interior and Administration, and enacted just days before the September 1997 elections – immensely broadened demand for private protection by making it compulsory for a whole range of state and private companies to retain professional security/protection services. The obvious conclusion is that the ministry's leadership (headed at that time by the SdRP's Leszek Miller) engineered favourable market conditions for their colleagues in the protection industry and ultimately a soft landing for themselves (see Woyciechowski, 1997:6).

In 1997, during the *Sejm* debate on the protection bill, some deputies expressed anxiety about the discrepancy between the legal constraints applied to the state police and those applied to private security companies. While the police are bound by a distinct set of rules, the private companies are permitted to do anything as long as it is not explicitly forbidden by the law. This may induce the police to 'hire' private security companies for some risky operations, for instance spying on members of the business community (Taylor, 1997:2).

In 1994 Marek Zieliński was sentenced to nine years' imprisonment for spying from the early 1980s for the Soviet and then Russian military intelligence (GRU). Formerly an SB major (in Department III), he was an analyst in the group of advisers to MSW Minister Kiszczak in the mid-1980s. At the time of his arrest Zieliński was the chief manager of the private security company *Dakota*, and co-founder and chairperson of the National Association of Protection and Detective Agencies. This last position provided him with unique opportunities for contacts with many former functionaries of the ministries of the Interior and Defence (Bereś, 1994b:5; Ordyński, 1994:11).

Early in 1994 Jerzy Konieczny, who until November 1993 had headed the UOP (being nominated for this post as a Solidarity candidate), founded a private security company, *Konsalnet*. Among the services offered were: debt enforcement; detective investigation; checking the financial credibility of domestic and foreign firms; probing the authenticity of documents; the protection of people; the application of lie-detector tests; and the detection of eavesdropping devices. By 1996 *Konsalnet* counted among its clients a number of wealthy and prestigious banks, firms and corporations, including those involved in the arms and petrol trades. Its Board of Directors was comprised of prominent business figures and included another former UOP chief, General Gromosław Czempiński.

In September 1995, Konieczny, who had earlier worked for President Lech Wałęsa, switched his allegiance to the SLD/PSL coalition government and became the secret service adviser to Prime Minister Józef Oleksy. In December 1995, during the so-called Oleksy affair (see Chapter 7), Konieczny acted as an intermediary between President-elect Aleksander Kwaśniewski and President Wałęsa, who endorsed the espionage charges against Oleksy. On December 29 Oleksy nominated Konieczny as Minister of the Interior. Konieczny held this position only for a few weeks, until Oleksy's resignation on 7 February 1996.

What has been revealed since, however, is that when Konieczny – ostensibly no longer linked to the MSW – founded his *Konsalnet* company in 1994, he was still an undercover officer of the UOP. When he served as an intermediary between Wałęsa and Kwaśniewski in the matter of the Oleksy spying charges, he played, in reality, a triple role: as undercover functionary of the MSW, adviser to the accused Prime Minister and director of a powerful private security company. Having tried unsuccessfully to get elected to parliament from the SLD list in 1997, Konieczny continues to chair the *Konsalnet*'s Board of Directors. His company – managed by two former operatives of the Communist foreign intelligence service, who had been screened out by the verification procedure of 1990 (see Chapter 7) – employs about 1200 people and is perceived as the pre-eminent economic intelligence agency (Jakimczyk, 1998a; Kublik, 1996a:2; Mac and Mistewicz, 1996:26; Michalik 1996:2; Schulz, 1994:5).

The shift towards democracy, accompanied by the reduction of the secret-services apparatus, released into the newly marketized economy a sizeable army of specialists in covert operations. They have maintained access to various resources related to their former careers and remain connected, through personal links, to all levels of power within the

post-communist state. *These developments have triggered a process in which state violence and crime (practised by former secret services) is being replaced with privatized violence/crime (practised by powerful post-police-state networks as well as private security agencies and other for-hire services). Some protection companies are also used as fronts for well-developed criminal schemes and are strategically placed to exploit and protect major illegal economic ventures as well as foreign intelligence operations* (Hugo-Bader and Wiernikowska, 1994:7–9; KĘS, 1996:4; Markiewicz, 1996:26; Woyciechowski, 1997:6).

It is not easy to estimate how many former secret collaborators of the secret services and the militia (including militia informers in criminal groups) have been drafted, bribed and/or threatened into co-operation with the private security industry, or how many secret files stolen from secret archives have been used for political and business purposes. According to an unidentified high-ranking official at Central Police Headquarters, criminal gangs try to bribe or blackmail state officials with compromising materials whose origin can be traced to the SB, militia or Procuracy (Janecki and Ornacka, 1998:30).

The consequences of uncontrolled growth of the private security business include:

1. Corruption, apathy and evasion of duties by the state police, who according to many reports, direct victims of violent or economic crimes to look for private rather than state protection and assistance (KĘS, 1996:4);
2. Illegal, informal enforcement of contracts;
3. The spread of violence-based modes of conflict resolution;
4. Privatization of parts of the communist security apparatus through the creation of private security and detective companies;
5. Blurred demarcation lines between the domains of private and public interest, and the reinforcement of the grey zone between the legal and the illegal.

The significance of these developments becomes more clear once the nature and extent of the abuse and misuse of the post-communist secret services and their links to the private security industry are appraised.

Operational aspects of large-scale economic scams

A close look at the biggest scandal of the transition era, the FOZZ scam and its offshoots, helps illustrate the hidden mechanisms of the

systemic transformation in Poland. The FOZZ affair was a protracted, ramified, international economic operation, whose execution also involved functionaries of the civilian and military secret services. Transfers of capital related to this operation were instrumental in establishing or bolstering many so-called *nomenklatura* companies, some of them now the leading businesses in the country. A scrutiny of the FOZZ operation also helps to illuminate some methods of manipulation of the media and the deliberate creation of disinformation.

The FOZZ operation's main actors and their likely sponsors include a number of individuals who held top state offices and, in some cases, still do. An analysis of the handling of the FOZZ affair reveals the inability of the fledging democratic state's justice system to bring to account those responsible for an enormous unlawful transfer of public funds to private subjects. Dubious international financial operations; corruption; legal trickery and obstruction of the police and procuracy investigations; intimidation; manipulation of the mass media; mysterious deaths and extensive links with the business world, politics and the media, are all germane aspects of the notorious FOZZ scam.

Case Study 3:   The FOZZ scandal

The Fund for Foreign Debt Servicing (FOZZ) was established in 1985. It did not have separate legal status, but operated within the institutional framework of the Finance Ministry. The FOZZ did not engage in economic activity; its purpose was to service and facilitate Polish investments in the East (ira, 1992:2). Under the last Communist government – based on the 15 February 1989 law, enacted a week after the commencement of the Round Table talks – the FOZZ was legally established. It was given much autonomy – it answered only to the Minister of Finance – and was authorized to manage the state assets entrusted to it. The FOZZ derived its funds from sources including state subsidies, obligatory wage deductions, foreign trade revenues and foreign currency reserves (Smolińska-Borecka, 1994:17). In 1989–90, the FOZZ had at its disposal the equivalent of around $1 billion US.

Ostensibly, the FOZZ was charged with the task of amassing the financial means to service the Polish foreign debt, about $45 billion US. Covertly, however, it was instructed to buy out Poland's debt on secondary markets, taking advantage of sale prices about four times lower than the nominal debt value. This contravened international law, but was the practice of various countries.

In March 1989 the Communist Minister of Finance Andrzej Wróblewski appointed a Supervisory Council for the FOZZ. The Council members included:

1 Janusz S.,[8] the Council's chairperson, Vice-Minister of Finance from January 1989 to 1991, later one of the accused in the FOZZ affair. According to a secret report prepared for Prime Minister Olszewski in 1992, S. was initially a secret collaborator and later a concealed employee of the MSW Intelligence ('Raport...',1992);

2 Dariusz Rosati, director of an economic institute, later employed by the European Economic Committee at the United Nations in Geneva. Rosati was a candidate for the post of Finance Minister in the Oleksy cabinet and in February 1996 became Minister of Foreign Affairs in the Cimoszewicz cabinet (both governments being formed by ex-communist coalition);

3 Grzegorz Wójtowicz – Vice-President and later President of the National Bank of Poland, first nominated for and later removed from this position on President Wałęsa's recommendation. Although Wójtowicz was initially charged in the FOZZ case, the charges were eventually dropped. According to the secret report prepared for Prime Minister Olszewski, he was a secret collaborator of MSW Intelligence. In the 1990s Wójtowicz chaired the Supervisory Council of the Bank of Commerce (Bank Handlowy S.A.) and, in Spring 1998, became a member of the Monetary Council of the National Bank of Poland on President Kwaśniewski's recommendation.

In September 1989, another member, Wojciech Misiąg, joined the FOZZ Supervisory Council. He was listed by Interior Minister Macierewicz in 1992 as a collaborator of the Communist secret services.

The 1989 law granted the FOZZ executive director almost unlimited freedom in managing the Fund's finances. Grzegorz Ż., who occupied this post, eventually became the main accused in the FOZZ scam. He had earlier worked as a legal counsellor in the Polish Embassy in Brussels and as the manager of the Luxembourg branch of the Bank of Commerce. According to credible sources, he had ties to Military Intelligence and was an intermediary in financial dealings related to Polish arms sales to Iraq and Libya (Bikont, 1991:16). While in Luxembourg he was allegedly a custodian of the Military Intelligence operational fund. Once again, according to the report prepared for Olszewski, Ż. was a secret collaborator of the Military Intelligence.

In order to cover their tracks, the FOZZ managers conducted their international financial operations through complicated chains of already existing or especially set up companies of ephemeral and elusive nature. Operations were conducted in various locations including the Dutch Antilles, Austria, Belgium, Germany, Luxembourg, Switzerland, the United States and the Guernsey Island. The FOZZ was authorized by law to engage in activities to augment financial resources. The FOZZ director was also allowed to have a special operational fund amounting to an equivalent of $170 million US. During several months, hundreds of millions of dollars were transferred abroad and processed through numerous banks and other financial institutions in a

manner that would make the future tracing of those operations practically impossible (Smolińska-Borecka, 1994:16).

As early as October 1989, an audit conducted by the Department of Fiscal Control and Supervision of the Ministry of Finance found 'irregularities' in the FOZZ operation. 'In the Spring of 1990, warning calls were issued not only to the [Finance] Vice-Minister Janusz Sawicki and Deputy Prime Minister and Finance Minister Leszek Balcerowicz, but also to the Supreme Chamber of Control, Military Services, Interior Ministry and the Intervention Bureau of the Senate. No one reacted to these alarms' (Krasnowolski, 1991b:20). While the FOZZ director G. Ż. was suspended by the FOZZ Supervisory Council in July 1990, he was finally dismissed by Balcerowicz only in September of that year. His dismissal not withstanding, on 1 December 1990 G.Ż. became an official adviser to the new FOZZ director, and later – until his arrest in August 1991 – he was an adviser to the FOZZ liquidator.[9] These roles enabled him to continue his previous activities (Krasnowolski, 1991b:20; Bikont, 1991:15; Kasprów, 1998b:5).

While the FOZZ liquidation, which was based on a bill passed on 14 December 1990, began officially in January 1991, the Procuracy launched its investigation several months later, in May 1991, after being prompted by information from a German citizen with whom the FOZZ had some dealings. According to a statement presented to the parliament in March 1995 by the Deputy Prosecutor General Stefan Śnieżko, who acted on behalf of the Minister of Justice:

> The gist of the FOZZ malversations consisted in transferring abroad many millions of US dollars, of which only . . . slightly more than $60 million US was actually designated for the purchase of the Polish debt . . . . The remaining funds – the total of $100 million US – were transferred, on orders from Grzegorz Żemek [the executive director] or Janina Chim [vice-director] and, as it was later established, were invested in several dozen businesses, neither on account nor on behalf of the FOZZ . . . . It has been established that FOZZ utilized a network of agents who passed to other subjects, unrelated to the FOZZ, the amounts specified, often by telephone, by Żemek and Chim . . . . These corporate or individual subjects used FOZZ funds as their own ('Informacja . . . ,' 1995:166).

Later, the chief prosecutor in the FOZZ case, Janusz Kalwas, indicated that some of the people who were dealing with the FOZZ funds were also suspects in other economic scams (Kalwas, 1993:8).

Its wide-ranging international operations notwithstanding, inside Poland the FOZZ was actively involved in extending credits to selected enterprises and companies. According to the Supreme Chamber of Control (NIK), these loans and credits were an important vehicle for transmission of the FOZZ money to private subjects. The interest charged was 8 per cent per annum at a time

when the prevailing rate was 9.5 per cent per month. No proper agreements were ever signed, although the FOZZ was taking financial responsibility for these loans. In February 1990 the equivalent of $10 million US (or $16 million, according to other sources) was transferred to the private Bank of Economic Initiatives (BIG; see Case Study 4). One of the BIG board members was married to a member of the FOZZ Supervisory Council. Furthermore, the BIG's director, Communist Vice-Minister of Finance from 1986 to September 1989, also held a place on the FOZZ Supervisory Council ('Informacja . . . ,' 1995:178).

The FOZZ beneficiaries included Zygmunt Solorz, who later became the owner of the biggest private television network in Poland, and Andrzej Wróblewski, Minister of Finance (1988–9) in the Rakowski cabinet and architect of the FOZZ Supervisory Council. Wróblewski became the president of Nywig, a company founded by the FOZZ, and of a major state bank (Pekao). Both director and vice-director of the FOZZ were members of the Supervisory Council of Nywig. The records of the Nywig company, kept by the district court that had registered it, disappeared soon after the FOZZ problems were first exposed. Based on reconstructed documents, however, it is evident that private persons, including Wróblewski, were stockholders in the company (Gargas, 1997:4; Krasnowolski, 1991:21).

Some of the FOZZ's extravagant investments are difficult to explain and it is not always clear whom they benefited (Smolińska-Borecka, 1994:17; A.M., 1994:13). A 1994 report prepared by the third liquidator of the FOZZ, Piotr Grześkiewicz, states:

> The FOZZ transactions abroad continued into 1991 despite the initiation of the liquidation process. It is not clear who was giving orders. It has been documented, however, that in the fall of 1990 several money transfers were made either on orders of Grzegorz Żemek, who no longer was the FOZZ director, or Janina Chim, who no longer was the vice-director. It is not known who was the recipient of the transferred funds because they were deposited into coded accounts which belonged to nonexistent companies. (Smolińska-Borecka, 1994:16; Bikont, 1991)

According to Anatol Lawina, who was in charge of the NIK inquiry, diverse political forces were interested in hashing the FOZZ affair (Bikont, 1991:16; Lawina, 1992:5). Speaking anonymously, a high-ranking official in the ministry of Finance maintained that 'Żemek had two protective umbrellas: one provided by the old nomenklatura who tried to bolster their position and the other by new power groups who needed money for their election campaigns' (Bikont, 1991:16).

The FOZZ investigation was one of the most expensive in Poland's history. The Procuracy interviewed 287 witnesses from several countries. Court trials aimed at recovering at least some of the FOZZ money were held in Germany,

the United States and Poland (Bikont, 1992:5; J.O., 1994:12). The FOZZ bookkeeping was so chaotic that two consecutive liquidators were unable to prepare a balance sheet despite their initial confidence that it would be ready by the end of 1991. The audit was formally completed in September 1992 (Bikont, 1992:5; Kalwas, 1992:7; Krasnowolski, 1991a:6), but according to the second liquidator, Hieronim Nowaczyk, 'it is impossible to have a reliable estimate of the state's losses because most of the financial operations conducted by the FOZZ were never registered' ((wk), 1991:3). Moreover, most of the missing funds were unrecoverable because many of the people behind various bank accounts were unknown, several of the debtor companies were bankrupt and the scope of many transactions was international (Smolińska-Borecka, 1994:16).

The FOZZ scandal revealed that during the communist period no agency was responsible for keeping track of Poland's external debt. When communism collapsed, it was impossible to determine the size of this debt (Dakowski and Przystawa, 1992:32; Krasnowolski, 1991b:20).

In July 1991, Michał Falzmann, the NIK inspector whose investigative zeal led to the growing public concern over the FOZZ scandal, died suddenly, allegedly of a heart attack. Many commentators and people close to him were not convinced, however, that this was the genuine cause of his death. Three months later the NIK chief, Walerian Pańko, who was also deeply involved in the FOZZ investigation, was killed in a car crash. According to various reports, 'experts cannot explain why the car carrying Walerian Pańko crashed' (Małachowski, 1993:8). In January 1992, the national daily *Gazeta Wyborcza* said that the FOZZ liquidation was practically paralysed by fear and that it was difficult to find a willing replacement for the deputy to the chief liquidator who had left the post (Bikont, 1992:5). In March 1993, when the FOZZ case was passed to the court, one of the suspects, Jacek Sz., died in a car accident (PAP, 1993:1).

Prosecutor Kalwas initially told the media that the investigation attempted to unearth deeper roots of the case and search for possible sponsors or initiators of the scam (Bikont, 1991:16; 1992:7). However, when asked by a journalist in March 1993 about the links to the secret services of many of the main actors involved, he replied: 'It was of no interest to us. The object of this inquiry was the circulation of the FOZZ funds and what mattered to us was who made those financial decisions' (Kalwas, 1993:8).

The lameness of the Procuracy's investigation is also evident in a statement made by the Deputy Prosecutor General Stefan Śnieżko:

In the evidence collected... in this multidimensional and very complex investigation, we did not come across any proof of the links between the FOZZ activity... and secret services. Nevertheless, just to be sure, we followed the only route available to us and asked the appropriate units of the Ministry of Defence and the MSW whether such links or the possibility

of such links existed. The answer was negative. ('Informacja . . . ,' 1995:177; see also Kalwas, 1994:10)

Just as in other cases described earlier in our book,[10] we witness here a total inability of the criminal justice system to investigate possible criminal activities of the secret services. Interestingly, among the eight Ministers of Justice in the 1989–98 period, four were identified as secret collaborators by two Ministers of the Interior, Macierewicz and Milczanowski. No available information indicates if the remaining four were similarly vetted and with what result.

The mass media played an active role in spreading disinformation about the FOZZ affair. The influential *Gazeta Wyborcza* underestimated the losses by a factor of a thousand (Pacewicz, 1991:3) and refused to print a correction (Dakowski and Przystawa, 1992:65). It also published false information to the effect that the mismanaged funds had been recovered (Kalabiński, 1991:1, 5). The monthly *Wprost* claimed that the exposure of the FOZZ operation blocked Poland's ability to reduce its debt. The media run by former communists consistently maintained that there was no such thing as the 'FOZZ affair' (Leszyk, 1998:12) and that 'conspiracy paranoia' marked all those who talked about the 'secret services connection' in the context of the FOZZ operation (Schultz, 1992:6).

As a result of an almost two-year investigation by the Procuracy, criminal charges were laid in February 1993 against six people, including Grzegorz Ż. (the FOZZ executive director), Janina Ch. (the vice-director), Janusz S. (former president of the FOZZ Supervisory Council) and Grzegorz W. (former president of the National Bank of Poland). Yet by October the court had ruled that the evidence was not sufficient and requested an additional expert opinion about the FOZZ losses. The Procuracy lodged an appeal and lost, but it waited another seven months before asking the Justice minister to establish a new team of experts to prepare the opinion requested by the court. It took a whole year to form the new team. Despite the very high honorarium offered, it was extremely difficult to find willing experts. After two consulting firms withdrew unexpectedly, the Procuracy submitted offers to:

> ten academic institutions . . . , six consulting firms and several distinguished specialists . . . Six academic centres refused co-operation, so did the private professionals, and with the exception of two consulting firms, the remaining institutions and firms did not answer at all despite repeated prompting [by the Procuracy]. (Kalwas, 1994:10)

Yet, in those two exceptions, the Procuracy uncovered connections linking the potential experts with the suspects and evidence of past co-operation with the FOZZ. Finally, two other firms came forward, and a team of experts was formed in November 1994 ('Informacja . . . ,' 1995:168). It took them another

three years to determine that the figures presented in the 1993 indictment were correct (Kasprów, 1998b:1). According to that estimate, the FOZZ losses caused by the accused amounted to $128 million US, 8 million German marks, 17 million French francs, 125 million Belgian francs and 35 million Polish zlotych.

If these funds had been used to buy the Polish external debt on the secondary markets, it would have been possible to buy three times more debt than was actually purchased by the FOZZ. As it happened, the purchase of the debt was only a marginal preoccupation of the FOZZ. According to the new statement of charges, presented to the court in January 1998, 54 per cent of the FOZZ transactions brought it financial losses (Kasprów, 1998b:1).

Another factor delaying the progress of the FOZZ inquiry was the high cost of investigating of FOZZ operations abroad (Dyka, 1992:13; Olszewski, 1992:33). The Procuracy's inadequate budget paralysed the agency's ability to break the criminal ties linking the various informal networks of the old regime.

The new charges did not include Grzegorz W. The key accused, Grzegorz Ż, spent 15 months in jail (from August 1991 to March 1993) and was released due to poor health. His health did not prevent him, however, from prominent involvement in various business activities (Papuzińska, 1994:3). In 1996, Grzegorz Ż. and another accused in the FOZZ case, Krzysztof K., were assisting the UOP in dubious stock-exchange transactions, involving UOP operational funds. This activity was also investigated (Leszyk, 1998:12; R, 1997:2; Kasprów, 1998b), and suggests that secret services continued to rely on their former agents or collaborators.

Another accused, Dariusz P., a former functionary of the Organizational Department of the Central Committee of the Communist Party and, in the early 1980s, a trade counsellor at the Polish embassy in Kenya, became, in 1986, the executive director of the central foreign trade agency Universal. According to a NIK report, Universal derived unjustified profits from its co-operation with the FOZZ (Łukomska, 1991:6), with which it signed 80 financial agreements (Ślesicki, 1994:13). In October 1990 Universal was privatized and became one of the leading companies in the Polish stock market (Frey, 1994:15).

Universal has had considerable influence in the mass media market and is generally viewed as a financial backer of the post-communist party, SdRP. Among other assets, it owns shares in a company that publishes the post-communist weekly *Przegląd Tygodniowy*, and it participates by proxy in another company that publishes the post-communist daily *Trybuna*. According to 1997 data, Universal was also indirectly connected to the publishers of the highly popular women's magazine *Zwierciadło*, and owned 20 per cent of the shares of the biggest private television network, Polsat (Gargas, 1997:4).

In 1997, under the ex-communist coalition government, Universal – whose president was a suspect in the FOZZ scandal investigated by the UOP –

financed an UOP commando team's participation in a survival exercises in the Sahara desert, in which a group of functionaries of the Russian anti-terrorist forces was also involved (AMC and RFK, 1997:2).

After communism's collapse, it was revealed that Trade Counsellors Bureaus abroad – where both Grzegorz Ż. and Dariusz P. had formerly been employed – tended to be staffed with intelligence agents (Wojciechowski, 1991). Likewise, central agencies of foreign trade employed undercover members of secret services (see Chapter 3).

Janusz S., a former Finance Vice-Minister, remained on the list of the accused in the FOZZ scandal and was charged with failure to take action to stop the abuses in the FOZZ.

Another accused, Janina Ch., the FOZZ Vice-Director and, in 1994, an accountant of Universal, had earlier worked in the foreign trade agency Elektrim. This state agency was one of the first to be privatized and have its stocks traded on the stock exchange. In August 1990 Janina Ch., Dariusz P. and Grzegorz Ż. established a new company called TRAST. According to a NIK report, TRAST borrowed the equivalent of $4 million US from the FOZZ. A month after the FOZZ affair was exposed in the press, the Main Customs Office entered into co-operation with the TRAST company. In the late 1990s a former SLD deputy, Ireneusz Sekuła, was charged with squandering public money in connection with a two million złotych down-payment he made in 1994, as the head of the Main Customs Office, for a building whose value, together with the land on which it was built, did not exceed one half of this sum. The owner of the building and the recipient of the inflated downpayment was Universal.

There are still many aspects of the FOZZ affair that remain fuzzy, including its cross-national context. It has been alleged, for example, but never proven, that FOZZ was part of a larger scheme of exporting funds (especially Western credits and aid money) from various former Soviet bloc countries to be placed at the disposal of the Soviet/Russian power élite. Nevertheless, there is already enough evidence to ascertain that very early in the FOZZ case:

An intricate web was constructed that interconnected Polish companies, Polish banks and other financial institutions and foreign companies. The nature of these Polish–foreign combinations, chimerical and overly complicated, makes one suspect that this complex web was woven by a person or a group who knew or guessed that the FOZZ would be involved in buying up the Polish debt, that it would handle hundreds of billions of *złotych* and that bookkeeping in these operations would be more lax than the state bookkeeping. (Smolińska-Borecka, 1994:16)

It is impossible, at least at this stage, to fully untangle this riddle, if only because of the failure by the Procuracy to investigate and follow the leads pointing to concrete links between a number of individuals involved and the Communist secret services.[11] Further investigation might shed more light on these links. One of them relates to the murky financial operations between the FOZZ and the Bank of Commerce. The latter used to service all the foreign transactions of communist Poland and was heavily penetrated by the secret services. The ill-fated NIK inspector, Falzmann, whose inquisitiveness helped to uncover the FOZZ scandal, believed that:

> The FOZZ affair constitutes only a small piece of a greater whole. That greater whole . . . encompassed currency operations of the Bank of Commerce. [These operations] are, in turn, a small fragment of a greater picture, whose essence lies in the hidden transfer of hard currency out of Poland. The fixed exchange rate of the dollar in Poland [contributed to extremely profitable operations]. ('Informacja . . .,' 1995:173)

This type of international financial transaction lies squarely in the domain of expertise of the former Communist secret services, and they were in the best position to provide the specialized skills required. The success of these operations was also conditioned by direct access to and possible influence on financial policies of the transition period.

The broader context notwithstanding, owing to its own ramified nature the FOZZ scam is sometimes described as the archetype and catalyst of all economic scandals of the transformation period in Poland. The FOZZ funds were channelled to many economic ventures that later helped ex-communists to achieve economic prominence (Kasprów, 1998a:10). This development is well illustrated by the BIG case (see Kasprów and Łęski, 1997).

Case Study 4: The BIG affair

Three days after the defeat of the Communist Party in the general elections of 4 June 1989, legal documents were signed establishing a private financial institution, the Bank of Economic Initiatives (BIG). Among its first shareholders were Deputy Secretary of State and advisor to the Communist Prime Minister Rakowski; the Universal executive director (Dariusz P.); the vice-president of the National Bank of Poland from 1989 to 91 (A. Olechowski) and the

president of the *Transakcja* company. The defence lawyer of FOZZ director Grzegorz Ż became a member of BIG's first Supervisory Council.

Ninety-eight per cent of BIG's shares were bought by major state companies that made their directors – as private persons – the Bank's shareholders. BIG's starting capital amounted only to the equivalent of $100 000 US. Nevertheless, many leading state companies did not hesitate to make sizeable deposits in this minor financial institution.

The state-owned Polish Insurance Agency (PZU), which under communism had been the insurance monopolist deposited the equivalent of $6.5 million US in BIG and agreed to a 10-year deferral of interest payments. The amount of deposit and its unusual terms are difficult to reconcile with the fact that PZU in 1990 registered a business loss amounting to $100 million US. This deposit alone was 65 times greater than BIG's worth. On 20 February 1990, the FOZZ deposited in BIG the equivalent of $16 million US. Eight days later, a sum equal to $10 million US was transferred by BIG to the state PKO SA bank, although – according to NIK – there was nothing in its agreement with the FOZZ that would authorize such a transfer. BIG's profit on this transaction alone was at least $180 000 US.

Ten per cent of BIG's shares were owned by *Transakcja*, whose president was not only a shareholder but also a member of BIG's Supervisory Council. As described in Chapter 7, *Transakcja* was founded by agencies making up the core of the Communist party's apparatus. After the Party's dissolution the BIG shares held by its Central Committee were taken over by the successor party, SdRP. One of the better known members of the Supervisory Council of Transakcja was Marek Siwiec, later SLD deputy, a member of the National Radio and Television Council and the head of the National Security Bureau subordinated to President Kwaśniewski.

The interests of the SdRP were represented in *Transakcja* by Leszek Miller, later Minister of the Interior and Administration in the ex-communist coalition government and currently the chairperson of both the SdRP party and the SLD parliamentary caucus. Under the threat of possible confiscation of the Party's assets by the State Treasury, *Transakcja* sold its BIG's holdings to Universal at a tenfold profit and disappeared from the market, its documentation apparently lost.

BIG continued to prosper, however, and in 1995 alone various state companies invested around 410 billion zlotych (approximately US $17 million) (Kasprów and Łęski, 1997:11). This enabled BIG to take over the Łódź Development Bank and more than 60 per cent of the Gdańsk Bank, a thriving, multi-branch financial institution.

The BIG's president, Bogusław Kott,[12] was a member of Universal's Supervisory Council and Dariusz P., the Universal executive director, sat on the FOZZ's Council (Bikont, 1991:14–5). In 1991, BIG extended a 300 billion złotych credit to Universal, a loan that amounted to 87 per cent of the bank's total capital.

The fact that BIG, a small and obscure bank, attracted a flood of state money, even though it payed very meagre dividends, begs for some explanation. Its connections with the Communist party élite and the secret services may help explain its agenda and its part in pumping state funds into nomenklatura companies. Among BIG's founders were A. Olechowski, who admitted to collaboration with Communist Intelligence. There was also the head of Polish Post, Telegraph and Telephone, an agency whose role in communist Poland was viewed as strategic and whose leadership therefore had to have close links to the secret services.

A scheme as ramified as the FOZZ operation could not be executed without several key ingredients: the resources and participation of various secret services; international and domestic contacts who had been cultivated for years; expertise and experience in international banking; links to the media; and, finally, willing support or extorted acquiescence from top governmental officials.

Looking back at the FOZZ and similar operations, it is possible to discern fundamental mechanisms at work. These schemes always involve a group of people who are backed by the old system's social, political and economic capital to ensure their successful reincarnation as leading capitalists. Both the FOZZ and BIG affairs show how early the *nomenklatura* realized the key importance of agencies that control and stimulate the flow of financial and capital resources for the construction of the new socio-economic order. Such organizations as banks, insurance and underwriting agencies, and public funding agencies, have played the role of meta-actors[13] of Poland's economic transformation. They have controlled and allocated the resources necessary for successful economic and political activity, including financial support for chosen political groupings, cheap credit for favoured businesses, the strategic use of compromising information and inside information – for example, on profitable privatization opportunities – channelled to friends. As a result, they have exercised enormous influence over the selection and movements of actors within the economic and political arenas of Polish life, and have shaped the rules and boundaries of both these spheres.

For the past several years the formally independent media have been influenced through the premeditated application of special funds earmarked by large companies for advertising and promotion. These companies – virtually monopolized by the former *nomenklatura* – have had an enormous impact on the emergent media market.

Given that the pattern of operation adopted by the FOZZ, BIG and other ventures of this type was enormously complex and required long-term planning and execution, the thesis about the existence and involvement of 'meta-actors' cannot be dismissed as an *a priori* notion inferred from some far-fetched conspiracy theories. It is a thesis that best explains and makes sense of the massive empirical evidence. Clearly such complicated schemes, requiring constant control over many economic, political, legal and personnel factors, could not succeed without powerful actors to ensure that elaborate preparatory, supportive and protective actions were covertly and expertly implemented.

The main mechanism of these co-ordinated efforts was the creation of conditions that would allow for the unrestricted flow of public assets into private hands, but would render ineffective any future attempts to reverse these new property arrangements. This was achieved through the creation of a suitable legislative framework, such as providing legal basis for launching special 'funds' or public funding agencies (*fundusze*) that were authorized to handle large amounts of money without the usual budgetary restraints and financial accountability. The funds were then staffed by a network of people who through their links to secret services, had developed many useful contacts at home and abroad, both in the West and the East. Their Western connections came from years of dealing with Western economic and financial organizations and through intelligence work; their Eastern/Russian links resulted from years of subordination to the centre in Moscow.

Introduced by 1988 legislation, the special 'funds' served to 'direct public money to private individuals or organizations or establish within the public sphere special funds that can be later appropriated by political parties that initiated them' (Kamiński, 1997). According to Staniszkis, 37 per cent of those special 'funds' were given commercial status, which put them outside the budgetary sphere and exempted them from external controls and budget cuts (1998:3; Misiąg, 1997). She concluded that this was an indication that Poland was still at the stage of post-communist political capitalism, where the profits of the economic activity were 'internalized' by economic actors and costs were 'externalized', that is, channelled back to the state (Staniszkis, 1994a:273, 274).

In essence, the most common methods of transforming public money into private capital, all well-tested by the FOZZ agency, consist of extending credits on exceptionally favourable terms, depositing public money in private banks and making direct transfers of state funds to private bank accounts. If and when a scandal is exposed, contacts in central agencies and the mass media are activated in order to prevent

full disclosure and prosecution, as well as to spread disinformation and divert attention from the scandal. For instance, media attention is directed to a multitude of minor details or false leads to wear out the public and produce the effect of saturation with meaningless and confusing 'information'. This strategy also has repercussions in the legal arena, leading to the over-extension and dispersion of the investigative efforts to follow many trivial or spurious clues.

Normally, personalities from different political camps are deliberately sucked into the affair at an early stage so that no party is interested in publicizing and prosecuting the criminal abuses. Two major factors make this possible: first, the networks' enormous economic means enable unlawful but hard-to-resist contributions to election campaigns of other parties. Second, the networks' access to secret-services archives assures operational connections to practically all strategic political milieux, and provides a compelling means of pressurizing them.

An appeal to the overriding interest of the state has often been made by politicians unwilling to tackle organized scams. Arguments are often made that even if there were some irregularities, they were insignificant compared to the damaging impact their exposure would have on the integrity of the state. By invoking the *raison d'état* argument, it is possible to block or at least limit the investigation and disclosure of large-scale economic scams. It is clear that the Ministry of Finance minimized the FOZZ affair and certainly did not want to give it any publicity (Bikont, 1991:16). It was claimed that any exposure of the scandal would lower the Polish state's financial credibility both nationally and internationally.

Once the hidden links among various political forces become embedded in key state institutions, any attempt to crush these illegal links appears to threaten the established course of public affairs and the country's international reputation. In 1994 former Prime Minister Bielecki stated: 'I reacted whenever I was informed about cases of state corruption. Even if this could threaten the foundation of the state. Broaching of the Art-B affair [a scam comparable to the FOZZ] could cause a panic in the banking system and, therefore, destabilization of the economy' (Bielecki, 1994:13). Adam Glapiński, the minister of Construction in Bielecki's liberal cabinet, commented on the situation he witnessed in 1991:

> Prime Minister Bielecki received straightaway from [Minister of the Interior] Milczanowski a list of [former Communist secret services] agents within banks and financial administration . . . He realized how

ossified and well connected this formation was. So, a decision had to be made: either we start a war which we can lose (since this apparatus could easily respond by creating a temporary confusion in the financial market and discrediting the new government . . .) or we could make friends with this lot. And, suddenly, liberals started to associate with people from the boards of banks, from the Finance ministry, the *nomenklatura*. (Kurski and Semka, n.d.:120).

Now we know that Bielecki's strategy was not effective in breaking down the petrified informal structures in the financial sector. Indeed, it is difficult to find a constructive strategy in a situation where *illegal, parasitic webs have permeated agencies important for the functioning of the state to such an extent that a battle against irregularities in public life threatens the integrity of these very agencies*. Inevitably under such circumstances, journalists and politicians who inquire into suspicious schemes and press for their exposure are accused of undermining the authority of key state institutions. It is therefore unlikely that in post-communist countries, where private and party interests are so deeply ingrained in public institutions, any of the ramified criminal affairs will be successfully uncovered and prosecuted.

In the light of our findings it should not come as a surprise that the only person convicted in connection with the FOZZ affair was the journalist who brought it to public attention, and who was prosecuted for violation of personal goods of the key suspects, Grzegorz Ż. and Janina Ch.

Our data reinforce the claim made by Staniszkis that only the existence of 'meta-actors' could provide the necessary foresight and organization to bring about the desired direction and scope of post-communist 'institutionalization' (Staniszkis, 1994/95). This type of institutionalization must be sufficiently co-ordinated to produce and synchronize favourable change in the legislative, economic, political, criminal justice and mass media realms. Furthermore, to be effective, the meta-actors had to be well connected to both state and private realms,[14] and this could only be achieved through access to the resources of the privatized communist police-state.

It seems that such an involved operation as the FOZZ was only possible because of a personal fusion of the civilian and military secret services, which Poland experienced under the military regime of the 1980s. Throughout that decade the civilian services were subordinated to the former high-ranking general who came to the MSW from the military services, Czesław Kiszczak, while the whole party-state

machinery was in the hands of his friend and military leader, General Jaruzelski (see Chapter 3). By making this observation we do not mean to imply that these two powerful politicians were themselves the 'grand manipulators' in the endowment of the *nomenklatura* scheme. What matters, however, are the structural and institutional conditions created under Jaruzelski, because without them criminal operations of FOZZ proportions would not be conceivable.

The privatization of the police-state and post-Communist secret services

According to the Constitution of Poland, the State Protection Agency (UOP), established in 1990, is responsible for intelligence and, broadly understood, for counter-intelligence tasks. It employs about 6000 people and has had seven chiefs during the first eight years of its existence. The verification procedure and *de facto* transformation of the old SB into the UOP left the auxiliary services and intelligence and counter-intelligence departments virtually untouched. In 1997 two-thirds of the UOP operatives were former SBs (see Chapter 7).

Until 1996 the UOP was subordinated to the Ministers of the Interior, who were from the Solidarity camp; the longest-serving was Andrzej Milczanowski, who held that post from 1992 to 1995. The service faced a difficult dilemma: while Poland was declared to be a democratic state based on the rule of law, the country was still in the grip of well-entrenched, partly hidden, post-police-state power networks that were difficult to tackle with fully transparent democratic measures.

It was both tempting and logical to use the secret services to try and undermine the post-communist networks' pervasive power. Yet it was also problematic. First, it meant that the secret services would engage in covert actions against networks that were permeated and fortified by vestiges of the Communist secret services which, in turn, were linked by personal ties and shared knowledge with the new service. Second, once operational tactics that stretch the boarders of legality are justified by the vital interest of the state, these extraordinary tactics can be easily extended into new areas, defined as politically vital by the ruling team. Clearly, in the volatile climate of a regrouping police-state, the paramount role of the secret services was both unavoidable and fraught with danger.

With the growing presence and influence of the old MSW cadres within the UOP in the early to mid-1990s and the agency's subsequent take over by the ex-communist forces under Aleksander Kwaśniewski's

presidency, the ability of the service to counter threats presented by the powerful remnants of the police-state became even more questionable. It is perhaps not surprising that under these highly ambiguous circumstances, the new/old civilian intelligence and counter-intelligence agency has been involved in and/or accused of a whole array of abuses of its mandate. Any evidence related to these accusations has to be treated with caution due to the strong potential for manipulation and disinformation on the part of the powerful players involved and the likelihood of selective disclosure of relevant information. Nevertheless, there are sufficient grounds to conclude that the UOP was an influential, although equivocal, force in the political life of post-1990 Poland. Apart from the lingering police-state legacy, the reasons for the UOP's conspicuous and questionable record include the following aspects of the conditions and mandate under which it operates:

1. While the UOP's counter-intelligence mandate means that it is expected to conduct security checks of candidates for important state posts, there is no legal regulation of the procedures involved. This situation invites an active and direct role by the secret service in the selection of the high-ranking state cadres;
2. Its control of the operational files of the communist civilian secret services gives the UOP a formidable amount of information about politicians and other personalities who were formerly targets of the police-state surveillance;
3. Given the lack of lustration and decommunization, former communist secret-services collaborators – many of whom now occupy important positions in both political and economic realms – remain unidentified easy targets for pressure and blackmail tactics by the UOP;
4. The UOP continues its predecessor's common practice of covertly employing functionaries of various state institutions (for instance, the postal services; Barański, 1998b:1) or private agencies (for example, the already-described case of the former UOP chief, Konieczny);
5. Following in the footsteps of its communist predecessor, the UOP supports a sizeable network of secret agents – according to our estimate, around 15 000 people – in various significant milieux, including political groups. This so-called *agentura* consists in part of old Communist agents, but a majority are new recruits (AG and TS, 1997:6; Kapkowski, 1998:3; Woyciechowski, 1994:7);
6. The UOP cultivates a large coterie, including a significant circle of journalists. They serve as convenient channels for 'leaking'

information, but they are also actively seeking sensational secret information. Both journalists and politicians rummage for scraps from the 'UOP kitchen' and exploit the 'grey intelligence zone' where political and economic currency is derived from bits of information divulged by the secret services (Janicki, 1996:18; AMC, 1996:5; Miodowicz, 1996b:12; '"NIE" kontra "Wprost,"' 1996:3–4; Remuszko, 1996:9).

These factors create an environment conducive to operational games that may easily get out of hand. Below we mention several examples of particularly dubious and/or the most politically exploited UOP actions. They created major scandals, often amplified or manipulated by biased or shoddy reporting in the media.

In the late 1990s the UOP was accused of conducting unlawful operational games from 1992 to 1994 that targeted the legal anti-Wałęsa opposition circles who loudly demanded lustration, decommunization and measures to halt the *nomenklatura* endowment process. Employing the surveillance and disintegration techniques perfected by communist services, UOP's actions surrounding the 1993 general election campaign were allegedly designed, first, to discredit one of the leading right-wing politicians, Jarosław Kaczyński (by leaking to the weekly *Nie* a fabricated declaration of loyalty to the communist regime carrying his signature), and second, to incite internal strife within and among rightist political parties. (It appears that the UOP was behind both the break-ins into the offices of these parties and the editorial office of a paper associated with them and with a dirty tricks campaign involving tyre-slashing and other incidents. In 1993 more than ten incidents that potentially endangered the health or life of rightist activists were reported and were later linked to the UOP's campaign against the right-wing anti-Wałęsa opposition; Barański, 1997:1; Chećko and Henzler, 1993:16; Jachowicz, 1997b:4; Jachowicz, 1997c:6; K.Gr., 1998:3; RAD, 1997:1; Strzałkowski, 1993).[15]

In 1998 the Procuracy attempted to launch an investigation of the UOP's covert involvement in stock-exchange dealings from 1991 to 1994. We have no way to judge whether these operations – conducted through a private company set up by the UOP – constituted a legitimate part of the UOP's operational tasks. Yet in the absence of a secure legal mechanism to verify the integrity of the security services' actions, the UOP remains vulnerable to both temptations to deviate and false accusations tarnishing its image.

When the Procuracy attempted to investigate the UOP's involvement in the stock exchange as well as its allegedly illegal use of wire-tapping,

these inquires were frustrated by the UOP's refusal to release its func-
tionaries from the duty to keep state secrets and to provide relevant
secret documents (Barański, 1998a:5; Ćwikliński and Wiśniowski,
1998:3; Schulz, 1998:2; Urban, 1998:3). There was no way to verify
whether the documents and information involved really warranted
secrecy. While the success of covert operations depends on full secrecy,
more experienced democracies have implemented elaborate safeguards
that are simply unavailable in the volatile post-police-state environment
in Poland. This poses a dilemma whereby a *transitional situation
simultaneously generates the need for sensitive operational methods to deal
with powerful covert networks and prevents any possibility of implementing
reliable controls over those secret operations*.

In 1993 a secret UOP directive[16] signed by the UOP chief in 1992 was
publicly exposed. According to its critics, the directive would permit
operational actions aimed at penetrating political groups. After much
public clamour and the eventual submission of the directive to the
Constitutional Tribunal, the UOP decided to revoke it (Dudek,
1997:243; Kęsicka, 1993:2). Yet the very fact that a secret order was
leaked and publicized and that it happened before a general election
points to internal problems within the UOP itself. So does the fact that
in at least two separate incidents the Procuracy was notified that UOP
functionaries had provided secret documents to businessmen under the
UOP's surveillance (Barański, 1997:1; Jach, 1996:4; MC, 1998:3; Miodo-
wicz, 1996b:12; RL, 1998:4).

In another publicized disclosure in 1996 a secret order issued by the
UOP chief from the ex-communist camp, Andrzej Kapkowski, was
leaked. Based on his order, the secret *agentura* was to be used to gather
information about the goings-on in workplaces and trade unions. Fol-
lowing intervention by the Parliamentary Commission for Secret Ser-
vices, the order was changed (Bondaryk, 1996:18; Mac, 1996;
Wróblewski, 1996).

More importantly, the UOP played an active role in the fall of
two Prime Ministers, Waldemar Pawlak and Józef Oleksy, while
another Prime Minister, Jan Olszewski, was toppled when his Interior
Minister, in compliance with a parliamentary resolution, used secret
services archives to compile a list of former secret collaborators
among sitting politicians (see Chapter 7). In the first case, in 1994,
the weekly *Wprost* exposed the links between Prime Minister Pawlak
and a company that was granted a series of attractive contracts
to computerize government departments. The president of the
company in question was Pawlak's colleague from the university and

one of the company's employees was a friend of the Prime Minister (Mistewicz and Witoszek, 1994). The nature of the information revealed in the press pointed unmistakably to operational sources. The secret services' involvement may also be inferred from the fact that for a while the company employed two renowned civilian intelligence officers from the communist era, who were later promoted within the new UOP/MSW structures. As a result of this disclosure, Prime Minister Pawlak, the leader of the post-communist rural party (PSL), lost credibility and had to leave office.

In the second case, described in Chapter 7, the same two intelligence operatives were involved in gathering evidence against another sitting Prime Minister, Józef Oleksy, who was publicly accused by the Interior Minister Milczanowski of spying for Russia. The case was never properly followed up by the justice system. Nevertheless, Oleksy resigned from office. At the end of 1995 and beginning of 1996, when the Oleksy scandal was at its height, the media were full of rumours and leaks of operational information on this and other, related, cases investigated by the UOP. The most serious and damaging to the future of the Polish intelligence services was the disclosure of the name of a KGB officer who was successfully recruited by the Polish intelligence service.

The UOP's conspicuous role in public affairs notwithstanding, there were also areas where its actions appeared to lack resolve and failed to have much impact. For instance:

1. The UOP failed to prepare a detailed account of the collaboration between the SB and KGB in the final two decades preceding the SB dissolution in 1990; this failure prevented a reliable assessment of the UOP's transparency to its Russian counterpart (Bondaryk, 1996:18). Nor has the collaboration between the SB and its East-German counterpart, STASI, been fully documented and properly recorded;
2. The UOP failed to reconstruct the missing communist operational files, which would be crucial not only for lustration/vetting purposes but also for tracing the connections among people who are the legitimate targets of the UOP's surveillance because they pose a threat to the security of the Polish state;
3. The UOP has not impeded large-scale economic scams that effected massive transfers of state funds to private individuals;
4. When those scams and other affairs were exposed, the UOP seemed incapable of providing proper evidence to enable successful prosecution. Either due to poor operational work or incompetent conversion of the operational data into trial evidence, the UOP's

input and contribution to the prosecution of state and economic crimes appears scanty;

5. The UOP has not done enough to help check the dynamic spread of organized crime in Poland, including foreign criminal organizations;

6. The UOP failed to make itself leak-proof and allowed its information to be regularly passed to the media, especially the weekly *Nie*. The former chief of Counter-intelligence, Konstanty Miodowicz, has asserted: 'The UOP has known for a long time the *Nie*'s source of information. I do not know and do not understand why the people involved have not been taken to account' (Miodowicz, 1996a:7).[17] While the media's vigilance is a highly desirable aspect of democracy, getting journalists involved in internal wars and political games of the secret services is not. Instead this practice is likely to discredit both the press and the agency responsible for the security of the state.

The list of the UOP's failures must be qualified, however. First of all, its mandate has been vague; secondly, Solidarity governments in the early 1990s had very unclear expectations of the UOP, leaving it basically to its own devices; and, thirdly, inadequate laws with respect to the economy and organized crime made it difficult to classify many flagrant abuses of the state economy as unequivocally criminal. In sum, it would not be fair to blame the service for the failures of politicians, legislators and the criminal justice system, who all contributed greatly to state tolerance of organized *nomenklatura* crime. In the words of the former Interior Minister Milczanowski: 'The links between the criminal underworld and politicians became normalized. And so, although there are enough grounds to speak about mafia in Poland, it is difficult to speak about ''mafiosi'' as distinct people. They are indistinguishable . . .' (From an interview conducted by M. Łoś in 1998).

While it is difficult to quarrel with Minister Milczanowski's diagnosis, it must be recognized that the UOP contributed to this situation by relying on old-regime operatives and initiating various questionable operations. It is evident that the role of the UOP in the political life of post-1989 Poland has been markedly different from that usually expected in democratic states.

Final statement

The four previous sections have shown that what we labelled *a priori* as a police-state privatization process did indeed unfold in Poland in the

period under consideration. Given the centrality of this finding to our book, we return to this issue in our concluding chapter.

The underlying question of the existence of any deliberate conspiracy has proved to be very difficult to research. Nevertheless, conjectural interpretation of the evidence points to a level of organization and co-ordination of various intricate schemes that would not be possible if the actions involved were purely reactive and spontaneous. Rather, a combination of pre-planned and carefully executed strategies, a relative unity of interests and the ability – due to superior resources and information – to respond coherently to unexpected developments, enabled the party/police-state élite to become the authors and principal beneficiaries of the state's massive privatization. As we have shown, post-communist privatization was envisioned from the beginning as reaching beyond the economic sector and into the core of the secret control apparatus. The latter was instrumental in securing *nomenklatura* interests in privatizing the economy and shaping the institutional context of transition.

9
The Failure to Prosecute Communist Crimes

Prosecution

There is a growing body of literature dealing with the choices and dilemmas new democratic regimes face when they try to address the wrongdoing and atrocities committed by their predecessors.[1] (We discussed some of the related issues in Chapter 7.) In the present chapter, we limit ourselves to tracing the empirical patterns related to how the criminal justice system and the legislature have handled these matters.

When the new Solidarity-led government was installed in August 1989, it warned against any calls for vengeance, but promised to prosecute crimes and major human rights abuses committed by Communist state functionaries. Nine years after the collapse of communism in Poland, the vast majority of state crimes committed under the former system remain unpunished. There has been only one major trial of persons responsible for Stalinist crimes against the Polish nation. It lasted three and a half years and eventually resulted in convictions on charges of torture and cruelty for all twelve defendants, former functionaries of the Ministry of Public Security. Eleven of the defendants were sentenced, in March 1996, to prison sentences ranging from four to nine years, while one received a suspended sentence. All of them appealed against their sentences. In a parallel case, a single defendant, charged with similar crimes, was sentenced to five years in prison. There are, however, numerous cases of major crimes, where all the necessary conditions for prosecution seem to be met – the crimes are well-documented, the culprits are identified and the relevant legal regulations are in place – yet no action is taken, despite the fact that Poland's courts, at least in principle, are now independent.[2]

There have been no convictions of top officials either from the Stalinist or post-Stalinist period. Even the president of the Supreme Court, Justice Adam Strzembosz, has declared that 'in Poland, there is no equality before the law; horrendous crimes [*zbrodnie*] committed [in the past] for political reasons are virtually ignored by the legal system' (1994:4). He also emphasized the criminal responsibility of many members of the Stalinist 'justice' system in Poland, who sanctioned torture and condemned hundreds of thousands of innocent people to death or long imprisonment in inhumane conditions. He found the impunity of these officials unacceptable and disagreed with those who claimed that prosecution after such a long time would be too cumbersome. In his view, 'technical difficulties appear insurmountable [only] when there is no political will [to prosecute]' (1996:17).

While Justice Strzembosz and many other supporters of prosecution are willing to make concessions to the advanced age of those concerned and do not insist on making them actually serve their sentences, they want to hold them accountable. The backers of this approach maintain that such trials would strengthen the new democracy, help reveal the facts and serve as a warning for the future (Strzembosz, 1994:5). Others prefer to leave the past to the historians and emphasize the political context of these abuses. Heated debates notwithstanding, the issue of 'historical justice' appears to have been resolved by default, simply by persistent dodging, by the post-1989 political élites, of any actual or potential legal actions against those responsible for the police-state crimes of the past era.

Even in those very rare cases in which legal action is initiated against individuals suspected of violent state crimes committed during the communist period, the police, the Procuracy and the judiciary move extremely slowly, bureaucratic obstacles appear again and again, and an impressive array of legal chicanery is employed to prolong or stall the proceedings. Political manipulation, as well as the intimidation of judges, prosecutors and witnesses, have been well-documented. The few post-Stalinist cases that did reach the court despite flagrant political interference, endless legal haggling and conspicuous stalling tactics, include: the 1970 Gdańsk massacre that resulted in several dozen deaths (Case Study 5, below); the shooting deaths of the nine 'Wujek' miners in 1981 (Chapter 4); the 1982 assault on the crowd in Lubin (Chapter 4); the 1983 murder of Przemyk and the 1984 murder of Father Popiełuszko (Case Studies 1 and 2). Only one of these trials (Case Study 1) has resulted in convictions. Of the remaining four cases, all of which

ended in acquittals, the Court of Appeal ruled that they should be retried because they were handled improperly.

The case against those accused of being responsible for the 1970 massacre of workers in Gdańsk illustrates some of the problems that have plagued trials of high-ranking officials of the communist era (Case Study 5).

Case Study 5:   The Gdańsk massacre trial

In the 1970 Gdańsk massacre case, twelve people – politicians, generals and colonels – were criminally charged, in 1995, with responsibility [*sprawstwo kierownicze*] for the deaths of 44 persons who had been killed by troops in a military assault on protesting workers. Among the accused were former high-level officials, including a Deputy Prime Minister, the Interior Minister, the Minister (General Jaruzelski) and Deputy Minister of Defence, and several high-ranking military dignitaries (Podemski, 1995c:22). According to archival data, at a special meeting, the then First Secretary of the Party, Wiesław Gomułka, authorized the use of live ammunition against workers, and his decision met no opposition (KB, 1995).

The investigation, initiated in the fall of 1990, lacked a good plan or organization. Three and a half thousand witnesses were questioned, at least 90 volumes (200 pages each) of mostly handwritten evidence were produced, but it was clear all along that the manner in which this material was being compiled by the War Navy Procuracy[3] would make a trial very unlikely (Lanckorzyński, 1996; Podemski, 1995a,c). There was, for example, no attempt to do ballistic tests that would establish whether the troops fired directly at the crowd or – as the Procuracy claimed – the fatalities had been accidentally caused by ricocheting bullets. It seemed that the War Navy Procuracy hoped to drag the investigation out until 1995, when it would have to be discontinued under the statute of limitations.

Because of the efforts of an aggressive new head of the Gdańsk district Procuracy, Leszek Lanckorzyński, in 1993, the investigation was turned over to the civilian jurisdiction, where it belonged. Lanckorzyński gained access to secret files of the 1971 investigation that were said to have been destroyed but that had been saved by someone in the Procuracy. They contained forensic evidence, including protocols from autopsies and the bullets removed from bodies of the victims, which disproved the ricochet theory. When his intention to proceed with the case became clear, Lanckorzyński was subjected to strong pressure from his superiors who tried to dictate a specific framing of the charges. When he ignored their orders he was suspended in his prosecutorial duties and dismissed from his office as the head of the District Procuracy. He was informed about this decision by the then Minister of Justice and later Prime Minister, the SLD politician Włodzimierz Cimoszewicz. Lanckorzyński's

successor shared his fate when he tried to continue the case (Lanckorzyński, 1996).

When the case against the 12 accused eventually reached the trial stage, the Gdańsk district court made three consecutive attempts to frustrate the case by trying to dismiss it, trying to move it to the War Navy court and, finally, by asserting that the only appropriate venue for this kind of trial was the State Tribunal. The district Court of Appeal ruled against each of these moves, however (KB, 1995; Lanckorzyński, 1996; Podemski, 1995c). Even when the repertoire of jurisdictional and other challenges was exhausted, the beginning of the trial was repeatedly postponed when various defendants failed to show up in court, allegedly for medical reasons.

In 1996 the court discontinued proceedings against the Ministers of National Defence and the Interior (Jaruzelski and Kazimierz Switała). It ruled that the charges against them implied violations of the constitution that should be dealt with by the State Tribunal. Given that they were not charged with violating the Constitution but with responsibility for murder committed by troops executing their action plans, the court's decision had no legal justification. In any case, the matter was not submitted to the Tribunal as this would have required an initiative from parliament at a time when it was dominated by the ex-communist coalition. Eventually, the Court of Appeal ruled that Jaruzelski should be criminally indicted and face trial. As of mid-1998, court proceedings against four military and police officials had been suspended and the opening of the trial of the remaining defendants continued to be delayed because it proved impossible to gather all of them for a formal reading of the charges. Jaruzelski was among those who claimed they were unable to appear in court for health reasons, although his health did not prevent him from working in his office and appearing frequently on television and radio interviews, where he vigorously defended his good name.

The small number of cases brought to trial and their inept handling, described here and in Chapter 4, suggest a near-paralysis of the post-communist justice system in cases involving criminal violence by the communist security and military apparatus. They also demonstrate the total impunity of high-ranking officials who were directly or indirectly responsible for the murderous effects of these actions and were actively involved in cover-up schemes related to them.

In addition to the evident failure to prosecute even those major human rights abuses that were criminal under the law that existed then, our research has uncovered a number of other strategies aimed at securing the impunity of those implicated in such crimes, including struggles over the statute of limitations; the courts' access to secret services operational files; and parliamentary privilege.

The Statute of Limitations

In April 1991, the Polish parliament passed a law which stated that the statute of limitations did not apply to Stalinist crimes against humanity. This was a symbolic gesture that emphasized the applicability of an existing article of the 1969 Criminal Code that had been interpreted as pertaining to war crimes only. The new interpretation was fully consistent with international law, notably the United Nations Convention of December 1948. In September 1991, the Constitutional Tribunal ruled against expanding the category of crimes exempted from the statute of limitations beyond crimes against humanity, but it did not rule out the feasibility of an extraordinary bill on a circumspect postponement of the expiration of statutory limitations in a well-defined category of cases.

Indeed, given that most of the serious, violent police-state crimes were criminal even according to the prevailing law of the time, the legal controversy around the right to prosecute centred not on the issue of retroactive criminalization but on a possible retroactive reinterpretation of the statute of limitations in relation to this type of crime. To quote a Hungarian legal scholar, Csaba Varga:

> The source of the dilemma is that the same regime [that] enacted the law…also initiated deeds [that] can be classified as crimes, while hindering the prosecution of these deeds and even rewarding their perpetrators – and, moreover, succeeding in remaining in power for decades. By the time [the regime] collapsed, the time fixed in the law on statutory limitations…had already passed (1993:2; 1995).

Although it may seem reasonable that where 'prosecution was hindered, the mere physical passage of time could not initiate statutory limitations' (ibid., 5), and that by postponing its commencement, we show that we 'take seriously the old law' (ibid., 6), many lawyers and political actors in East/Central Europe have vigorously argued against such a move. Indeed, the Hungarian Constitutional Court pronounced in its 1992 decision that the original terms of statutory limitations must be observed. It ruled that, '*one*, statutory limitation is not self-limitation of the punitive power of the state but one of the basic rights guaranteed to every subject and that, *two*, statutory limitation is one of the constitutional pillars of legal security and, as such, it cannot be interfered with by legislative means' (ibid., 9).

The minutes of the Polish parliamentary debates provide an interesting insight into political divisions over a 1995 bill on deferment of the starting-date of the statutory limitations period in cases of serious crimes allegedly committed by functionaries of the state apparatus at the time when effective prosecution of such crimes was precluded. The only political bloc vigorously opposing the legislation was the ruling ex-communist SLD. Its representative, Krzysztof Baszczyński, declared that, according to his parliamentary caucus: 'The proposed amendments are contrary to the principles of the democratic state based on law.' And he added: 'I wonder how long we are going to continue these exorcisms over the past' (*Sejm* R.P., 2 March 1995, 44:108–9).

Nevertheless, the momentum in favour of the bill was so strong that even the SLD's coalition partner, the rural party PSL, supported it. Its representative, Stanisław Bartoszek, offered the following argument: 'By blocking enforcement, the state authorities enabled, in a criminal manner, an expiration of the statute of limitations and secured the impunity of the perpetrators. Thus acquired rights should not be legally protected and should be removed by a legislative act that would allow investigation and prosecution' (*Sejm* R.P., 2 March 1995, 44:110).

Thanks to the PSL's support, the bill was passed and the Criminal Code was amended.[4] Based on this amendment, the normal statute of limitations period for serious crimes against persons, liberty or the justice system committed by state functionaries in the 1944–89 period is counted from 1 January 1990, when their prosecution became politically possible. The timing of the bill was very significant because of the approaching 25th anniversary of the December 1970 massacre of workers in Gdańsk. Prior to the amendments, the statute of limitations on the murders would have run out. All the earlier stalling tactics surrounding this case were carried out with an eye on this date. The bill was a blow to Jaruzelski and his co-defendants, as well as to the ex-communist power bloc that was adamant in condemning the bill. Yet neither the passage of the bill nor the inclusion of its provisions in the 1977 Constitution put an end to the manoeuvres that involved both the defence and the prosecution (Case Study 5). Early in 1998 a journalist wrote: 'This trial will never end. The Procuracy...intends to call ''only'' 1200 witnesses. I have calculated roughly that given the current pace of dealing with this case, the last witnesses – if they live so long – will be called to give their testimony in the year 2043' (Ostrowski, 1998:21).

The courts' access to secret files

The law on state secrets and related regulations contained in the 1990 Law on the MSW, UOP and the Police has been repeatedly used in subsequent years to deny the courts access to vital information safely hidden in the Communist secret archives. Despite many legislative proposals, no independent agency has been created to handle the archives, and they remain in the hands of the Interior Minister, the new security agency UOP and the military secret services. All these agencies have relied heavily on former communist security-forces cadres. Their solidarity with former colleagues and, indeed, their fear of exposure of their own past deeds may be understandable. Perhaps less evident is why the non-communist governments of the 1990–3 period failed to challenge and revise laws that denied the courts access to the communist operational files that were crucial for identification of the secret-police individuals involved in various cases of alleged murder, torture and other major violations of human rights. A number of important investigations and trials were aborted when potentially critical evidence was refused by the Interior Ministers of the day, on the basis of the clearly outdated law. This reluctance to act suggests that the former secret services continued to have a strong grip on these governments, both through secret collaborators and because some members of the post-Solidarity political élites were involved in business ventures with former members of the *nomenklatura*.

In June 1994 the Constitutional Tribunal ruled that unless disclosure threatened the state's interest, the 'state secret' classification did not apply to the identities of former secret services operatives and collaborators. The Tribunal found the existing law on this matter inadequate and urged the parliament to initiate necessary changes (Bieroń, 1994:15). The following year, Minister of the Interior Andrzej Milczanowski decided to declassify those archival materials from the period 1944–56 that were kept in the Central Archives of his ministry and in the UOP; in 1996 this period was extended to 1965. His order did not extend, however, to the personal data on operative officers and secret agents. Nor did it apply to all operational records contained in the archives.

In 1995, the Law on the MSW, UOP and Police was amended to make it easier for the prosecution to obtain necessary classified material or to secure the release of witnesses – former or current functionaries of these agencies – from the obligation to keep state secrets. The new law dictates that if the Minister of the Interior refuses the public prosecutor's request, but the Minister of Justice in his role as the prosecutor general concludes

that this would prevent prosecution of major crimes of violence, Interior has to grant the request. These changes did not apply, however, to the military secret service archives. Moreover, legal enactments do not necessarily translate into deeds when there is no independent control over archival material and both ministers represent the same government. In any case, the time that passed between 1989 and the eventual partial loosening of the strict laws eroded considerably the feasibility of successful prosecution of those past wrongdoings.

Parliamentary privilege

Prosecution for past and current crimes is also blocked by the extremely generous provisions of impunity attached to elected offices. Following in the footsteps of the Communist Constitution, the temporary Little Constitution of 1992 and – even more explicitly – the new Constitution of the Polish Republic of 1997 granted full immunity from civil liability, arrest, criminal prosecution and even criminal investigation to members of parliament and senators. While civil liability for actions taken in connection with official duties is barred absolutely (unless personal goods are involved), immunity from prosecution for violations of criminal law is tied to the duration of the politician's term. This immunity extends to all offences, from impaired driving and fiscal and economic offences to violent crimes, including crimes under investigation prior to the elections (Banaszak, 1994). This privilege may be suspended by a two-thirds majority vote in the respective chamber (the *Sejm* or Senate) with at least one half of the members present.

This sweeping privilege, granted to 560 individuals (460 members of parliament and 100 senators), has provided shelter to a sizeable number of people suspected of a range of offences, including state crimes and the appropriation of public money. The best-known cases include Senator Aleksander Gawronik, a one-time SB employee accused of major fiscal offences and implicated in one of the notorious financial scams of the transition era ('Art-B'), and Ireneusz Sekuła, the deputy Prime Minister in the last communist government and a member of the post-communist parliament, suspected of large-scale fraud. In both cases, recommendations to lift these individuals' parliamentary privilege went to a vote and failed to pass; in the case of Senator Gawronik, by just one vote – his own (Paradowska and Janicki, 1995). Sekuła's parliamentary privilege was eventually lifted by parliament, following massive criticism by the mass media, the public and opposition parties of the ruling coalition's protection of alleged criminals. By that time, potential charges were expanded

to include the illegal investment of considerable public funds and offences related to conflict of interest, stemming from the period of his presiding over the Main Customs Office (GUC) in 1993–5.

There have been many other cases, however, in which parliament refused the Procuracy's requests to revoke the immunity of incriminated parliamentarians. Parliament's power to block investigation and prosecution of serious crimes opens the door to inter-party deals based on reciprocal support for perpetrators coming from their ranks; it also creates a debt the individual being protected may be expected to pay back through financial pay-offs, illicit opportunities or political loyalty. Those who enter parliament in order to fend off prosecution for their earlier economic offences sometimes contribute to the election campaigns of several key parties to ensure their support in advance. This appears to be what happened in the case of Senator Gawronik, for example (Poppek, 1994:13).

Yet, in many cases, the Procuracy itself has not been very eager to press for the revocation of the privilege of well-connected parliamentarians. In one such case, Minister of Justice Jerzy Jaskiernia dismissed a senior public prosecutor, Jerzy Zientek, hours after the prosecutor signed a request for the suspension of the parliamentary privilege of presidential candidate Aleksander Kwaśniewski. The request was made in connection with Kwaśniewski's failure to disclose in his property/income declaration considerable assets owned by his wife. Needless to say, the Procuracy's request was promptly withdrawn (Jach., 1995/96).

The issue of parliamentary privilege was one of the points of contention in the debates leading to the enactment of the new Constitution. In spite of a number of proposals[5] (including one from President Kwaśniewski) that attempted to limit the scope of immunity granted to the parliamentarians to actions related directly to their office, the long-awaited Constitution, passed by the Parliament in 1997, went in the opposite direction, making the sweep of that privilege even more inclusive.

While in some cases, privilege is used to block prosecution of offences committed while serving in parliament (for instance, many impaired driving cases), it is widely believed that some individuals have sought elected office and received organized backing from their party in order to avoid prosecution for crimes committed earlier or for criminal involvement of a more continuous nature. There is a striking parallel here with the former practice of some Communist Party members who used their membership as an effective shield from arrest and prosecution, even for common criminal offences. They could not be charged unless the Party consented by expelling them from its ranks.

The past is history

A number of factors have to be taken into consideration in explaining the evident paralysis of the justice system with respect to communist state crimes:

1. The first post-1989 government opted for a full and unqualified continuity of the state and law and an evolutionary, rather than revolutionary path of change. This choice implied a deliberate reluctance to prosecute former state crimes and a preference for inaction or even formal absolution of responsibility for the past abuses of power and at least lesser state crimes. The pressing and enormous needs related to socio-economic restructuring and the importance of looking to the future rather than the past were also often invoked as reasons for downplaying the issue of past human rights abuses.

2. The 1980s mobilization of police-state resources, aiming first at suppressing Solidarity and later at tying it to the process of top-down reform and class conversion of the *nomenklatura* has contributed to the enduring strength and influence of former secret-service networks. They form an invisible but powerful web that pervades the new state security services, private security companies, the criminal underground, the private and state economy and agencies of the state apparatus. The lack of openness about past secret collaborators currently active in important areas of policymaking, the legislature, administration, the criminal justice system and the media has left these institutions vulnerable to hidden pressures and the effects of covert actions, both past and present, sponsored by state secret services and private agencies or networks.

3. The strategy adopted by the last communist Interior Minister, General Kiszczak, and the Party's First Secretary, General Jaruzelski, was to be perceived and to become key players in the 'transition' process – the champions of democratic revolution and political partners of the Solidarity leadership. Both these veteran Communist politicians became top office-holders in the first semi-democratic government, and they were visible guarantors of the continuity of the state, the security apparatus and the conversion process of the *nomenklatura* into a capitalist class. Jaruzelski became the President of Poland[6] and Kiszczak combined the offices of deputy Prime Minister, the Interior Minister and the Chair of the Committee for Legality at the Council of Ministers.[7] The Committee was a body established by Jaruzelski in the Martial Law period and preserved by the first Solidarity Prime

Minister, Mazowiecki. The peculiarity of this committee was that the Justice Minister, Prosecutor General and the Supreme Court president were all subordinated to its chairman, the Minister of the Interior. This successful strategy meant Kiszczak and Jaruzelski, at least in the initial post-communist period, were both untouchable and extremely powerful. Any investigation of past state crimes that could lead to their exposure had to be discouraged. According to our data they appear to have been implicated in the majority of serious cases of state-sponsored criminal violence and cover-up schemes in the period studied.

4. The ability of former Communist élites and power networks to maintain their dominant economic and political position has been expedited by their collective and individual metamorphosis. Their new socio-democratic and capitalist façade would be threatened by a credible exposure of their dark past as individuals and/or as part of the collective that ruled a criminal regime. The former young *apparatchiks* would have their carefully crafted image as pragmatic technocrats sullied if their Polish and Soviet intelligence connections were revealed, for example, through the disclosure of communist military intelligence archives. The conspiratorial nature of the communist police-state produced dense ties of shared culpability among the Party and security cadres; most of them were culprits and could be indicted for some illicit deeds. It is therefore not surprising that they continue to be collectively interested in keeping their past out of the courts. The ex-communist parliamentary bloc SLD has proven to be an unabashed and relentless opponent of any legislative measures that could undermine these efforts.

5. The communist legacy of a corrupt and politically servile justice system; failure to conduct lustration or verification of judges; decades of negative selection for the judiciary and, especially, for prosecutors' appointments; personnel continuity in the secret services and police: all have contributed to both the justice system functionaries' considerable solidarity with former élites and their susceptibility to corruption, blackmail and manipulation.

6. The considerable means of intimidation that the former secret security networks have at their disposal can always be deployed when other tactics to obstruct justice or political process fail.[8] Useful for these purposes are numerous private security companies dominated by former secret service operatives, especially those screened out by the SB/UOP verification procedures (see Chapters 7 and 8).

7. The lack of lustration of the post-1989 top state officials made some of them obvious targets for various pressures and blackmail. This concern may apply to several Justice Ministers/Prosecutors General.
8. Drastic underfunding of the justice system[9] in the transition period was at least partly responsible for the high level of vacancies; the outflow of younger, better educated and abler lawyers to the private sector and the acceptability of corruption as a source of income augmentation for many of those who remain.
9. Finally, there are very real problems of complexity, inadequate evidence and difficulty in handling these cases in democratic courts of law. Many of these crimes took place long ago and they were accompanied by organized denial, manipulation, destruction of evidence, and so forth. The stalling tactics implemented in the post-1989 period have been calculated to render these crimes less and less prosecutable, due to the sheer passage of time and related problems of fading memory, the advanced age of some defendants and witnesses, and expanded opportunities for manipulation, disinformation and interference with due process.

In sum, aside from more philosophical arguments, there are powerful interests vested in the often-repeated slogan that the past should be left to historians and kept out of courts of law. However, in the absence of any interest among the 'political class' in Poland in taking the route of a Truth and Reconciliation Commission, the choice of post-apartheid South Africa, the courts may be the only forum for disclosure and clarification of some of the most disturbing aspects of that past. This applies not just to the crimes prosecuted, but, even more importantly, to the mechanisms of ruling that made them possible.

IV
Conclusion

10
The Globalization of the Post-Communist Transformation[1]

The specific time at which the disintegration of communist systems took place is significant. Since the volatile, global, end-of-the century context has both conditioned this process and been affected by it, it is important to assess the relevance of this context to the process of privatization of the police-state described in this book. Structural and normative interconnections among multiple, simultaneously occurring transformations – post-communist, post-industrial, post-national, post-modern – have to be recognized as an integral part of the explanation of the processes unfolding in East/Central Europe.

The post-industrial techno-cultural revolution

The breakdown of the Communist economic community[2] impelled Poland to join the post-industrial, techno-cultural revolution and global economy, which rendered both the old skills and the traditionally large industrial working class obsolete. This class, which had been meant to be the basis of the 'workers' state' but eventually became the backbone of the Solidarity movement, crumbled when the glorified, mammoth, state-owned heavy industry plants were revealed to be antiquated not only in systemic but also in technological and symbolic terms. They not only belonged to the world of the command economy, but also to another technological and cultural era.

The sudden decline in the political status of the working class as a recognized force in society enabled other political forces to move freely in the pursuit of their goals. Although trade unions have continued to hold a strong position in the state economy, workers have ceased to be an identifiable class, let alone the protagonists of a national movement for change.

The restructuring of the industrial base had to proceed within the context of a global shift from the manufacturing-jobs sector to service- and knowledge-based job sectors. The post-industrial super-symbolic economy (Toffler, 1991) demands skills that are very different from those traditionally required in stagnant, centralized smokestack industries and overstaffed bureaucracies. New jobs demand flexibility, adaptability and continually evolving skills. Yet contrary to the myth zealously promoted by communist propaganda – that Poland's excellent 'socialist' system of education produced a highly educated population – university education was accessible only to a tiny élite and most members of society completed only very basic vocational schools or on-the-job training.[3] Needless to say, the educational opportunities available to the *nomenklatura* children were far superior to those accessible to average Poles.

By keeping the educational level of the population low, and by controlling opportunities for foreign travel and contacts, the party/police state promoted and catapulted into the international arena its own élite, who became part of the new international class. Moreover, global technological changes shifted the centre of economic activity to the areas where former secret service operatives and younger, cosmopolitan *nomenklatura* activists could capitalize on their experience and expertise in fields including (dis)information technologies, languages, foreign banking, economic and technological espionage, advertising, market intelligence, public relations, image-making, security and communications.

The post-national and postmodern 'state of mind'

Post-national tendencies, salient in the contemporary world, constitute another important dimension of the context that shaped and was shaped by post-communist structural transformations. As a result of the Soviet bloc's collapse, Poland and other Central and East European countries underwent a rapid redefinition of their national and territorial identity, but their long-awaited sovereignty came at a time when the *modern* concept of the independent nation-state was no longer perceived as a viable or even justifiable entity. Thus, the weakness and vulnerability of the new states cannot be meaningfully addressed within the new framework of an open-ended and ambivalent process of globalization / regionalization (Łoś, 1997). As Staniszkis has pointed out:

The societies of the former communist bloc, attempting to safeguard the economic security of their newly regained nation-states, run up against an international system that is already at a stage of supranational institutions, of dismantling national borders, and also of promoting the benefits of microregionalization (1995:45).

Forty-five years of resistance against Sovietism in Poland were sustained by a twin yearning for national independence and systemic change. Yet, in the fast-changing world, supra-state blocs and agencies and transnational companies increasingly play a preponderant role, diluting the meaning of sovereignty and leaving the former resistance activists with a diminished case. Only in this new climate could the former Party/secret services élite, who were perceived in Poland as servants of a foreign power, have become the 'new' leading force, embraced by the West as guarantors of the new order. By establishing themselves as proponents of internationalism and openness, and stigmatizing those who stressed sovereignty and the national interest as backward, parochial and xenophobic, they showed that they were the 'enlightened' élite with whom supra-national organizations and corporations could do business.

The *postmodern* state of mind, with its suspiciousness of both idealistic programmes and rational projects, placed the former anti-Communist opposition on shaky ground and offered the former Communist élite a unique chance to escape their past. By steadfastly denying that they had ever believed in the communist ideology (or *metanarrative*) or had had anything to do with it, the Party successors – the SdRP leaders – disconnected themselves discursively from totalitarianism, thereby removing the main stumbling-block to their aspirations to join postmodernity. They seized some elements of the postmodern vocabulary to denigrate their opponents by branding them as yesterday's ideologues.

On a more profound level, postmodern anxiety confounded and disarmed those who presumed that the breakdown of the old regime would allow for rational implementation of an unambiguous political project based on 'normal', liberal-democratic principles. Philosophically, this was a particularly difficult moment to try to build a new institutional framework with the confidence and enthusiasm that such an endeavour requires. Before long, the victorious democrats had become caught in the quandaries and contradictions of the political offer of modernity as they turned to Western experience, trying to reconcile the rule of law with the rule of market; democracy with technocracy; justice with competition; and reason with desire. Just as they were trying to make

up for the delay in erecting a truly *modern* society, a sense of postmodern scepticism was catching up with them.

Simultaneously, the postmodern ethos of consumerism offered an easy way out of the troubling moral and political dilemmas. Essentially amoral (although engaged in a dialogue about new morality), market/ desire-based consumerism was fast obliterating the old moral and ideological divisions, tempting with its novel offer of multiple choices, versatility, irrationality, role-playing, self-creation, spontaneity and fleeting connections.

Fantasy started to replace reality. Security services, secret files and mafia-networks became media stories consumed in the same way as Dallas, Dynasty and Western spy and crime series. Large segments of society, tired of the grand designs of communism, Solidarity, Church and democracy, found this new offer refreshingly free of exalted theorizing, big words, historical visions, martyrdoms and quibbling about truth and falsehood or good and evil. The tide of emotional support for the Solidarity leaders turned away.

Western media, consumer goods and communications technology displaced earlier preoccupations with domestic politics and the quality of political élites. The worldwide disenchantment with politics as a moral project was exploited by the refurbished *nomenklatura*, who sought to lower the value of moral capital in political competition (see Chapter 6). Society, tired with years of intensive political struggle and disheartened by the messy beginnings of multi-party politics, was losing interest in the political side of the transformation. This new indifference towards formal politics and amazement at the malleability and swift makeover of former *apparatchiks* into smart mannequins for the latest fashions, defined the psychological landscape. By 1993 the refurbished Communists had come to symbolize, at least to a part of the population, the consumption- and choice-oriented future, while their former opponents were identified with a past dominated by martyrdom and difficult moral dilemmas (see also Chapter 6).

Society's whole attitude towards history and biography was influenced by the postmodern questioning of any fixed truths. Yet, instead of opening the past to the probing confrontation of a genuine debate, various groups recreated, rewrote and reinvented the past, legitimating their self-serving manipulation, which involved the secret services' archival material, covert action, fraud, and political and financial control of the media. Despite their prominent status, a peculiar version of Western 'political correctness' defined former Communists

as a threatened minority and paralyzed attempts to discredit their profoundly cynical efforts at re-monopolization of 'the truth'.

The globalization of the governance and economy

Globalization processes in the contemporary world are not only salient but also equivocal. They should neither be equated with modernist patterns of homogenization, uniformization or unification (de Sousa Santos, 1994:253, 270) nor be seen as leading necessarily towards total anarchy or radically decentralized, market-based decision-making. Rather, globalization is an undetermined, uneasy process that combines 'worldwide sourcing and boundlessness with local diversity, national and ethnic identity, popular embeddedness and community grounding' (de Sousa Santos, 1994:253). Globalization opens new possibilities, but it also hides the reality of power, because power becomes radically transformed and redefined in terms of the global free market and the new approach to time, space and material wealth.[4]

Two inseparable aspects of globalization are the global economy and global governance. The global economy is virtually borderless and is epitomized by transnational and multinational companies[5] and global capital markets. It is not easily adaptable to national laws and rules and is marked by speed, mobility, flexible customization of production and services, the 'virtualization' of financial transactions (see the last section of this chapter), a worldwide division of labour, the integration of production processes and a devaluation of traditional factors of production, including natural resources and labour. Globalization of the economy also encompasses globalization of the media and information industries and the marketization and transnationalization of many formerly strictly state-based functions.

Globalization has challenged the traditional state-based forms of regulation and has blurred the line between the legal and illegal economic activity and between the private and public sectors. Multi- and transnational corporations have greatly influenced public policy, undercutting domestic governments. 'Today, global corporations interact with many processes that are essential for the well-being and even the survival of entire societies and populations. This means that the new democracies of Eastern Europe need to adapt not only to emerging global markets, but also to global actors' (Laszlo, 1992:167).

Poland, with its nearly 40 million people, its underdeveloped economy and relatively low wages, represents a large and attractive market and a potential labour pool. Post-1989 Poland was not easily accessible

to foreign companies, however, because of its legacy of bureaucracy, shifting laws, corruption, a large informal economy, the lack of a business culture and militant unions. Former secret service operatives were in a unique position to become intermediaries between the global economy and the new Polish economy. The communist obsession with secrecy meant that the secret services were probably the only agencies with comprehensive knowledge of the Polish economy and its individual units. They were in a position to offer strategic information and services sought by foreign actors, and they had powerful networks ready to engage in complex economic operations, arrange deals or peddle influence. One of the reasons they actively promoted legal anarchy and insecurity in the economic sphere was probably their desire to increase the value of the unique capital they could offer to foreign corporations and other players – powerful social networks, intelligence and security services and political influence.

In their efforts to shape the local business environment, global economic actors need efficient, well-connected and ruthless local partners, middlemen, brokers and informers. Alvin Toffler observed:

> As corporations integrate their production and distribution across national boundaries, acquire foreign firms, and draw on brain power from around the entire world, they inevitably need fresh sources of capital in many countries. They also need it fast. Thus we see a race to 'liberalize' capital markets so that investments can flow more or less freely across national frontiers. . . . As finance is globalizing, nations risk losing control over one of the keys to their power. (Toffler, 1991:418)

As the centre of power moves to the private sector and most important decisions are increasingly made or shaped by global economic forces, national governments are under pressure to reshape themselves. Increasingly, they have no choice but to yield to the pressures and decisions made by powerful international agencies such as the United Nations, the International Monetary Fund and the World Bank, and the supra-national bodies that actually take over certain functions of state governments, like the European Commission or the World Trade Organization.[6]

While these entities constitute an extensive and growing system of world governance, there is also another global tendency rapidly gaining ground that relies on the principle of transgovernmentalism rather than supra-state government. Harvard Law Professor Anne-Marie Slaughter

argues that, unlike the world government idea that 'poses the prospect of a supranational bureaucracy answerable to no one', transgovernmentalism 'leaves the control of government institutions in the hands of national citizens, who must hold their governments as accountable for their transnational activities as for their domestic duties' (1997:186). Slaughter explains the process:

> The state is not disappearing, it is disaggregating into its separate, functionally distinct parts. These parts – courts, regulatory agencies, executives, and even legislatures – are networking with their counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order.... Meetings between securities regulators, antitrust or environmental officials, judges, or legislators lack the drama of high politics. But for the internationalists of the 1990s – bankers, lawyers, businesspeople, public-interest activists, and criminals – transnational government networks are a reality. (1997:184–5)

One of the outcomes of this development is the redefinition of sovereignty, because the disaggregation of the state 'permits the disaggregation of sovereignty as well, ensuring that specific state institutions derive strength and status from participation in a transgovernmental order' (Slaughter, 1997:196). Transgovernmental co-operation develops in response to the problems national regulators experience when faced with global forces that erode national boundaries and trigger the internationalization of social problems and crime. These problems include 'terrorism, organized crime, environmental degradation, money laundering, bank failure, and securities fraud' (Slaughter, 1997:184; see also Marx, 1997, for discussion of social control across borders).

In Poland the international experience and network connections of some former secret services and Party functionaries, as well as secret collaborators, helped to catapult them into both those international bodies that include Polish representation[7] and the transgovernmental structures that deal with matters of vital importance to the ramified interests and business prospects of the former élite and the various 'mafias' connected with them. These roles offered their holders a powerful vehicle to integrate themselves into the new web of global power networks, legitimate themselves as *bona fide* politicians and act as gatekeepers who shaped Poland's agenda in international fora.

Although globalization is powered by the new technology, it also relies on powerful, semi-institutional business/governance networks that are its vanguard, overseers and powerful élite. *Poland's ingress into*

this new world appears to have been mediated and structured by the interests, legacy and loyalties produced by former police-state structures.

The globalization of organized crime

The process of globalization of capital accumulation can be witnessed not only in the increasingly dominant role of multinational corporations but also in their illicit counterparts, which are moving rapidly into the world of 'legitimate' business.[8] There is a growing tendency for hierarchical criminal organizations specializing in certain illicit markets (drugs, arms, the sex trade, gambling, and so on), to diversify and form business links among themselves. This allows them to increase their ability to efficiently raise and launder huge amounts of capital for strategic investment in foreign and transnational markets. The size of this readily deployable international capital may easily exceed the annual budget of a country like Poland.

Canadian economist Michael Chossudovsky quotes the UN estimate: 'the worldwide revenues of the ''transnational criminal organizations'' (now known as TCOs) [are] $1 trillion – about the same as the combined GDP of the group of low-income countries (with a population of three billion people)' (1996:24–5).[9] Powerful organized crime groups realized that if they wanted to keep up with the changing world they had to abandon their turf wars and local folklore and become full-blown players in the global economy. Chossudovsky comments:

> The shift from the blood-drenched fringe to [the] polished wood boardroom has been facilitated by the global trend toward 'economic liberalization', which has seen the downsizing of the state, the deregulation of international banking and trade, the privatization of state assets, etc. These conditions not only benefit transnational corporations which vigorously promote them, but favour the growth of illicit activities and the 'internationalization' of the criminal economy as well.... [Moreover] 'respectable' banks routinely blur the line between organized crime and organized capital by accepting dirty, covert, and black money and turning it all a clean, neutral green. (1996:24)

This blurring of lines is also evident in the commercial banks' interest in lending great sums of money to criminal syndicates. This not only helps the criminal economy to expand, but enhances 'the penetration of the legal economy by organized crime' (Chossudovsky, 1996:27).[10]

The post-communist economies have a special appeal for international organized crime and 'mafia capitalism'[11] for many reasons: their normative chaos; a well-established culture of corruption and clientelism; poorly defined property rights;[12] currency and foreign exchange fluctuations; preferential tax treatment for foreign investors; abundant opportunities for safe money laundering;[13] the absence of extradition treaties; easy access to cheap military equipment (including nuclear material); and cheap natural resources (at least in some of these countries).[14]

In her ground-breaking book about international organized crime, Claire Sterling (1994) documents how the leading crime syndicates, including the Sicilian and American mafias and Columbian cartels, descended on Russia to launder dirty money, plunder Russia's natural resources, secure their interests in the drugs and arms economy and gain control over the Russian government's craving for the hard currency which criminal traffic brings. All serious studies of the operation of international organized crime in Russia and the internationalization of Russian organized crime point to the crucial role played by the KGB and former *nomenklatura* officials. Always closely linked with the criminal underworld, they have now merged with it: 'The two criminal societies made a natural fit. Already strikingly similar in organization, they presided over the two major streams of capital available to post-communist Russia: black-market profits and the wealth of the Communist party' (Handelman, 1994:98). Russian sociologist Oleg I. Gubin (1995) concludes his research on the transition process in Russia with an assertion that 'the control over capital resources in the former communist countries fell to the former communist *nomenklatura* and the criminals' (p.14) and that 'mafia groups have penetrated every section of the Russian economy and socio-political life and their activities have become global' (Gubin, 1995:22; Coulloudon, 1997; Shelley, 1994, 1995, 1996; Sterling, 1994).

In February 1997, Minister of the Interior and Administration Leszek Miller stated in an interview that various gangs from the East were competing for influence in Poland:

> They are directed by former Soviet intelligence and counterintelligence functionaries who failed verification checks in the 1990s. Due to their excellent skills, they have found 'work' at the top of mafia hierarchies. They strive to influence Polish political and economic circles [and] to get journalists on their side. This problem afflicts all postcommunist countries, not just Poland. (Miller, 1997:5)

In face of the criminalization of power in Russia, it is difficult to know when attempts to infiltrate other countries are undertaken by the state that utilizes criminal channels and when by organized crime syndicates that are led by former functionaries and utilize their informal connections with the state. Perhaps these distinctions are no longer meaningful in contemporary Russia.

While the Russian mafia(s) spilled over into Poland, Polish operators ventured into the countries of the former Soviet empire, attempting to take advantage of new business opportunities. Poland soon became a natural transit for trafficking drugs and people from the East to the West; drugs and stolen cars from the West to the East and post-Soviet armaments to anywhere in the world (Ruggiero, 1996:11; Sterling, 194:136; Witoszek, 1995; Pływaczewski, 1995). It also became an eminent centre for laundering dirty money, activity not explicitly prohibited until January 1995[15] (Kapuściński, 1994; Wróbel, 1995).

Many of the former Polish Communist officials and secret services operatives have skilfully meshed into the broader process of simultaneous transnationalization of organized crime and the world economy. This broader process has been facilitated by the deregulation of financial markets; offshore banking; the liberalization of international commerce; increased mobility of capital, information and people and regional supra-state bureaucratization (for the latter, see Passas and Nelken, 1993 and Fiorentini and Peltzman, 1995; see also Shelley, 1995; Sinuraja, 1995 and Taylor, 1992 on internationalization of criminal activities).

The global tendency to blur the line between criminal and legitimate economies has a particular appeal for the people whose earlier experience within the secretive political structures of the monopolistic party/police-state equipped them with operational skills and intelligence, a network organization and mentality, as well as a profound normative nihilism. The actors who are shaping the post-communist economy from within (mostly the ruling élite/economic underworld of the past regime[16]) have had no direct experience of the democratic nation state, industrial capitalism or the ethos of modernity.[17] These are empty concepts, of little value in the pursuit of their goals. What they have witnessed through their frequent travels and international contacts, especially in the final, decadent years of their former political lives, was the world of international business seemingly unconstrained by any fixed rules, dominated by transnational corporations and organizations skilled in passing costs to taxpayers or less developed countries, hospitable to international criminal consortia because of their huge financial power, discreet in its provision of banking services, rapidly

embracing new technologies and open to new markets, opportunities and new 'friends' from the East. They saw the world at the brink of the twenty-first century and they decided to join it.

The globalization and marketization of spying

In his perceptive vision of the world at the edge of the twenty-first century, Alvin Toffler predicts that 'among the boom businesses of the decades ahead, espionage will be one of the biggest' (1991:288): 'As the entire society shifts toward a new system of wealth creation based on knowledge, informational functions of governments mushroom, and certain types of stolen knowledge, secret knowledge, are worth more, not less, to those who need them' (288).

There is a large market for such customized secret knowledge, and the globalization of this market also prompts internationalization of the espionage industry:

> Much like today's global corporations, spy agencies are linked in consortia and alliances. (Toffler, 1991:294)
> If the secret history of world intelligence were ever opened, all sorts of odd cross-linkages would turn up.... Such secret criss-cross arrangements make it possible for one nation to hide behind another and to do things that its own laws might declare illegal or questionable. (1991:296)

Strategic and timely intelligence may influence financial and commercial markets on a global scale, leading to 'the intelligence equivalent of the arms race' (Toffler, 1991:300). With the Cold War over, the economic intelligence war may become the central force in the new world order. Toffler explains: 'As the new wealth-creation system forces more industries to globalize, more and more companies have overseas interests to nurture and protect. These firms step up the pressure on governments for political backup and economic intelligence that may be beyond the reach of an individual firm' (1991:299).

When governmental intelligence agencies become involved in many areas unrelated to the traditionally conceived security of the state, their ability to ensure full secrecy and the loyalty of their staff is reduced. The globalized mass media's ability to pay exorbitant fees for confidential information, organized crime's generous bribes, and private business's tempting rewards for the provision or suppression of strategic

information subject even the most reputable intelligence agencies to globalizing market forces that are hard to resist.

Given the increasing interest of the private sector in international intelligence, there is also a tendency towards globalization of private intelligence agencies and a fusion of state and private intelligence (Toffler, 1991:305). Many multinational corporations develop their own private intelligence networks whose links with governments grow very close. On the one hand, these private networks hire former spies and intelligence analysts; on the other, state intelligence agencies contract more work out to keep up with the accelerated pace of global change, the diversity of relevant information and revolutionary changes in technologies of information gathering and processing (Toffler, 1991:306; see also the analysis of the blurring the line between private and public policing by Marx, 1987 and 1997).

There is also a well-established connection between some government intelligence agencies and organized crime. Those agencies' need for 'covert money' to finance more adventurous international covert operations is matched by organized criminal groups' abundance of 'dirty' capital and the need for protection. Chossudovsky comments on this mutually advantageous conversion of 'dirty money' into 'covert money':

> [A]s revealed in the Iran-Contra and Bank of Commerce and Credit International (BCCI) scandals, there is strong evidence that covert operations were funded through the laundering of drug money. 'Dirty money' recycled through the banking system – often an anonymous shell company – became 'covert money', used to finance various rebel groups and guerrilla movements including the Nicaraguan Contras and Afghan Mujahadeen (1996:27).

In his detailed study of the convoluted criminal career of the BCCI, considered by some to be the biggest bank fraud in history, Nicos Passas found that 'BCCI was instrumental in covert operations and foreign policy objectives of several countries' (1993:304). This, in turn, contributed to the reluctance to open the case and created 'a shared interest in not pushing too hard for transparency and stricter regulation' (1993:305; Passas, 1994). In another study, Vincenzo Ruggiero (1996) shows how a 'grey' market in arms is gradually forcing 'black'-market traffickers into marginal, second-hand and light armaments trading. The main actors in this grey market are army officials, intelligence services[18] and arms manufacturers, and their grey deals involve

corruption, the subversion of embargoes and other international restrictions, linking financial aid to arms contracts, and so forth. Claire Sterling (1994:210–25) documents the extraordinary scale of involvement of the post-Soviet-bloc establishment, and especially secret services, in the illegal international trade in arms and nuclear material.

For their part, powerful organized crime groups develop their own intelligence networks to ensure their security, gather information needed for their ambitious ventures and also monitor their own members. And this is not only true for Western and Columbian syndicates. For instance, Chechen mafia groups in Moscow 'have their own systems of counter-intelligence and security' (Serio, 1992); criminal *nomenklatura* syndicates in Bulgaria 'sometimes bear an uncanny resemblance to the state itself: they maintain giant security, intelligence and data processing departments' (Nikolov, 1997) and the Russian mafia has a 'security group' that provides 'intelligence information, legal aid, social prestige and political cover' (Sterling, 1994:97).

Given that the information age rewards skills related to surreptitious information gathering and processing and that the global market needs locally based professional informers, it is not surprising that former communist police-state operatives have been sought by various international players, from intelligence services to business corporations and criminal organizations. The post-police-state networks have facilitated the integration of Poland into the global process of merging legal and criminal economies and state and private intelligence. The post-communist actors are exploiting these processes for their own ends and are also legitimated by them as they become regular players recognized only for the various forms of capital they bring to the world market.

The virtualization of capital

With the post-industrial economy's primary focus on service, information and control industries, rather than on the production of standardized, sturdy, material goods, comes a profound change in the concept of capital and the meaning of the value and role of money. Capital is no longer appraised primarily in terms of finite material assets, but rather in relation to such infinite resources as information, innovation, marketing skills, social capital, flexibility, diversity, technological potential and ability to generate new knowledge. Capital becomes de-materialized – 'it consists largely of symbols that represent nothing more than other symbols inside the memories and thoughtware of people and computers' (Toffler, 1991:59).

As new financial instruments and new types of market are introduced, including markets in currencies, debts and future commodities, capital relocates into cyberspace and becomes anonymous. 'Ever liquid, flowing from one merger to another acquisition, the capital that fuels the global circulation of goods, services, and people is faceless and rootless' (Silbey, 1997:214).

Taking advantage of floating exchange rates and the new ease of electronic and off-shore banking, global currency traders create 'an enormous mass of "world money"...[that] has no existence outside the global economy and its main money markets' (Drucker, 1997:162). This money, divorced from any real economic activity, loses its traditional functions as 'standard of measurement, storage of value, or medium of exchange.... It is virtual rather than real money' (Drucker, 1997:162). But it has a real power – it can destabilize national, regional or global economies; keep governments hostage, or push them to relinquish control over their currencies to transnational bodies such as the European Central Bank.

The phenomenal volume and mobility of virtual world money has a much greater impact on the contemporary world than more tangible and material economic exchanges. Drucker portrays graphically the nature and menacing potential of this new generation of money flooding financial markets:

> In one day, as much of this virtual money may be traded as the entire world needs to finance trade and investment for a year. This virtual money has total mobility because it serves no economic function. Billions of it can be switched from one currency to another by a trader pushing a few buttons on a keyboard. And because it serves no economic function and finances nothing, this money also does not follow economic logic or rationality. It is volatile and easily panicked by a rumour or unexpected event (Drucker, 1997:162).

These mechanisms of virtualization of money and capital have both been exploited and adapted to the specific conditions of transition from the command economy to market in Poland.[19] Łoś argued in an earlier paper that 'our understanding of the economic transformation in post-communist countries can be enhanced by recognizing the "virtuality" of their newly-emerging property rights' (1996a:25; 1998). The 'virtual property' has become the choice vehicle for enrichment for the most dynamic segments of the former Party and secret services élite, both in Poland and internationally. It is a type of property/capital that is fluid,

ephemeral, easily disposable, flexible, network-based, neither state nor private, neither local nor foreign, invisible or hidden behind false names or short-lived fronts. Whereas tangible property is well entrenched in space and time, virtual property is freed from both these dimensions. It is here, there, and nowhere, one moment it exists, in another it is no more or it has become something else. (Examples of these types of property transactions can be found in Chapters 7 and 8). Property of this sort escapes the law by virtue of the speed with which it transforms itself, its cross-jurisdictional reach, its web-like, network-based nature and a fundamental disconnectedness that renders modern, rational law powerless.

The global process of virtualization of money and capital has been embraced by the self-designated heirs of the Communist party-state's wealth. Virtual property opens the door to gleaning the gains involved in laying claim to something (for example, state property or credits) while avoiding corresponding costs and liabilities (by shifting them to the state).[20] The latter are somehow left behind as the space in which virtual property thrives (new-technology-based, information-driven, borderless, network-based) is characterized by speed, extra-territoriality and frailty of regulation. The property, capital or credit to which the claim is made may be transformed into something else or used, for example, as a security against a new or preferential credit or as a proof of business credibility. While it may not in fact exist (for example, state assets falsely represented as private assets), it may be 'virtually' there in terms of its desired effects. Alternatively, it may exist but only ephemerally (destined for immediate bankruptcy or dissolution) as a means of legitimating, transmitting or laundering something else which, in turn, may be but a stage in the virtual property chain (Łoś, 1996a; 1998). Virtual property holders use elements of the positive law in a way that both places this property ahead of the law and de-centres the state law as a viable tool of regulation (Łoś, 1999). A wide range of versatile, virtual property/capital transactions have been facilitated by the unclear and shifting ownership status of much of the national wealth of post-communist countries and the fuzziness of international property and finance rules. These complex webs of virtual transactions constitute a vital aspect of the *globalization of privatization of the police-state*. They both influence and are supported by the prevailing processes of globalization and merger of governance, the economy, organized crime and spying.

11
Epilogue

Preamble

In this book we have tried to correct the distortions caused by the retrospective myopia of myriad social scientists who have either wilfully or foolishly neglected to recognize the importance of the police-state structures in the process of historic change in East/Central Europe. This collective amnesia, promoted in Poland by powerful political élites and incorporated – through noisy media campaigns – into the obligatory code of political correctness (see Łoś, 1995; Zybertowicz, 1998), has imposed strict limits on the freedom of social inquiry. In our research we do not assume that there is one pure, objective truth waiting to be discovered, yet we strongly believe that careful research, rather than politically policed discourse, leads to a more realistic understanding of a complex process.

We started with a simple question: if the essence of the systemic change in Poland lies in the processes of democratization, privatization and marketization, how have these processes been affected by, and how have they affected, the party/police-state framework in which they occurred? Our inquiry was organized around a hypothetical process which we labelled 'Privatizing the Police-State'. We were sceptical about the tacit assumption, common in the literature on the post-communist transformation, that the police state simply vanished into the thin air. Given the secret nature of the workings of the police and internal security apparatus, we assumed that while this vast apparatus was not easily transplantable into democracy, it could profitably be marketized and privatized under the new capitalist (and global) order.

In the second chapter of our book, we briefly reviewed the key metaphorical images of the post-communist transformation in order

to clarify our own path to this research and explore the role of popular metaphors in validating certain aspects of a historical process, while rendering other aspects invisible.

As we discovered, those aspects of the transformation process we were particularly interested in were *doubly invisible*, due both to their covert nature and the dominant politico-academic discourse. And yet, the construction of the *visible* was likely conditioned by what was being suppressed. According to our central hypothesis, *a process of privatizing the police-state – structured and to a large extent executed through covert actions – has provided an invisible structure to other, more apparent processes constituting the East/Central European transformation.*

Recapitulation of findings

Our inquiry into the secret services' structures, roles and inter-relations in the 1980s confirms and substantiates our categorization of Poland of that decade as a post-totalitarian party/police state (Chapter 3). A particular situation in Poland, with its mass opposition movement Solidarity, called for a shift in the dominant political control strategy, from more routine Party-based containment/mobilization tactics to an extraordinary escalation of overt and covert military/police action. A scrutiny of the unique power position of General Wojciech Jaruzelski, who secured direct control over the government and Party apparatus as well as the civil and military secret services, shows that he had full dictatorial powers, rare even in communist regimes. His unique power status, fortified by protracted Martial Law measures, made possible – in the favourable geopolitical climate of Gorbachev's reforms – a series of intricate stratagems that both targeted and engaged the opposition (Chapter 5). A well-orchestrated party/army/police strategy allowed the most powerful *nomenklatura* networks to maintain a relatively high degree of informal control over the multiple, unexpected processes of change that turned an attempted reform into a systemic transformation.

We have documented a pronounced shift in the Communist authorities' treatment of the opposition. While in the early 1980s they tried to destroy, contain or incapacitate the opposition, in the second half of the decade a new trend emerged that aimed at the recognition and inclusion of some segments of the opposition into the ruling élite's strategies. Through complex and to a large extent covert operations, the Solidarity movement was moulded and harnessed to follow the path of a negotiated revolution compatible with the interests of the Communist élite. The vast resources of the police-state and a whole range of its well-tested

tactics – repression, manipulation, infiltration, division, vilification, co-option – were skilfully deployed to secure the trust and co-operation of the suitably remodelled former enemy (Chapter 5).

In face of the bankruptcy of both the communist ideology and economy, the top Party élite relied on the pervasive police-state infrastructure to fashion and control their own future. Some of the covert actions of the late 1980s were clearly aimed at boosting the moral image of the ruling élite and, eventually, absorbing through partnership the opposition's moral capital. This strategy effectively shielded the old-regime power networks from a public denunciation of their past and the confiscation of the national assets they had appropriated.

As we demonstrated in Chapter 5, the police-state resources were crucial in bringing the two sides to the Round Table and apparent reconciliation. Moreover, as the post-1989 transformation unfolded, the hidden, post-communist police-state networks/resources continued to be instrumental in shaping its dynamics and winning axioms. We have traced the complicated manoeuvres through which new rules of the game were established that allowed for a rapid accumulation of economic capital by *nomenklatura* networks and a redefinition of the relative value of various other relevant types of capital (Chapters 3 and 6). The multiple aspects of these enabling machinations included:

1. Rendering ineffective any attempts at prosecuting or demanding accountability from former police-state functionaries implicated in serious crimes (Chapters 4 and 9);
2. Facilitating the manifold processes of capital conversion (Chapter 6);
3. Ensuring that the mode of remodelling of inherited police-state structures be neither rapid nor deep (Chapter 7);
4. Fostering a myriad of intertwined processes, defined here as privatization of the police-state (Chapter 8).

In Chapter 7 we showed how a significant proportion of the former police-state resources – personnel, skills, specific culture and collective mentality, knowledge, archives, intelligence, surveillance systems and material assets – survived various legislative reforms and became a vital constitutive foundation for the new control apparatus. What is more, the consecutive Solidarity-based governments that ruled between 1989 and 1993 did nothing to thwart the process of redefining these resources in a way that preserved their special value under the new conditions.

The lack of formal lustration or any legal procedures for screening candidates for important state positions encouraged unregulated,

spontaneous lustrations that drove up the market value of secret files and made them invaluable instruments of dirty political ploys, blackmail and corruption. The failure to implement any review of the inherited judiciary below the Supreme Court level directly contributed to the perpetuation of old party/police loyalties, strengthening the social capital and invulnerability of the old power networks. The deployment of political police intelligence in partisan politics – although inevitable in a state still wrestling with its totalitarian shadow – redeemed the old police apparatus and confirmed it as a vital player in the political realm. The Solidarity government's indulgent attitude towards the Social-Democratic Party's (SdRP) takeover of the assets of its predecessor, the Communist Party, allowed for a tacit redefinition of state resources as private resources and sanctioned the uniquely privileged status and material superiority of the party-state's political heir.

The methods and networks through which the SdRP intercepted its predecessor's economic capital (but not its debts and political liabilities) revealed an impressive level of co-ordination, expertise in surreptitious operations and the implementation of farsighted investment strategies designed to foil any future investigation or attempted confiscation of stolen assets (Chapters 6 and 8). The level of organization and co-ordination of this process of privatization (and exportation) of the wealth amassed by the Communist Party points to the existence of a core steering group. Despite many detailed press reports, based mostly on leaks from the secret police, which implicated a group of people associated with the SdRP leadership, there has been no official investigation into the actions of that group and into its possible links to various other ramified financial schemes involving old Party and police apparatus networks.

Solidarity-based élites underestimated the strength and intricacy of the internal bonds linking the former *nomenklatura* and the degree to which this class had mobilized its social capital in face of the imminent collapse of its systemic habitat. The former opposition was deceived by the weakness of the formal Party structures in the final years of the old regime; the defeat of the Party was equated with the defeat of the party-class it represented.

The informal secret networks that constituted the human grid of the police state could not be neutralized by structural changes, and the new politicians chose to deny both their prevalence and their hidden presence in the new élite's own ranks. Consequently, the state has been torn by unremitting fighting among groups that seem to be mutually bound by their common interest in hiding the true nature of their relations.

Often built on a complicated web of secret knowledge and mutual blackmail, these relations have contributed to a calculated anarchization of the state as a way to avert the risk of exposure and possibility of institutionalization of accountability.

Numerous public denunciations of important political figures made by high-ranking state officials have never been properly investigated or brought to any resolution or closure. Many of the thus-accused politicians continued to serve in their official capacity, while their 'files' remained in limbo. Well-known cases of extremely serious allegations include: the public denunciation of top post-Communist officials, including the present leader of the SdRP, Leszek Miller, for using KGB money to launch their party (SdRP); a long list of former secret collaborators among parliamentarians and other political incumbents (including the President and Minister of Justice), submitted to parliament by the Interior Minister Macierewicz in 1992; the accusation that Prime Minister Oleksy was a KGB agent, submitted to parliament in 1995 by Interior Minister Milczanowski; Interior Minister Siemiątkowski's allegations, made in 1997, that former Interior Minister Milczanowski used his office to organize a dirty tricks and disorganization campaign against political rivals; and many official revelations about the involvement of various high-ranking politicians in corrupt dealings, notorious financial scams, fraud, conflicts of interest, forgery and other major crimes.

Some of these cases seem to be quite well-documented; others may be based on deliberate fabrications or misrepresentations; but it is hard to accept that none of them are solvable. The problem is that a serious inquiry into such cases could well trigger retaliatory accusations targeting those who are pushing for investigation. The post-Solidarity élites' political inexperience, coupled with their unwillingness to use tough screening procedures for their own political candidates in order to eliminate agents and collaborators planted in their ranks by the secret services, made them vulnerable to manipulation. They faced a formidable foe – proficient in covert actions, ruthless and pragmatic – for whom they were no match. Moreover, the 1993–7 period of the ex-communist coalition government witnessed a systematic regeneration and further cultivation of the multifarious ties linking former and current secret services circles with other post-*nomenklatura* networks.

When we decided to study a hypothetical process of the *privatization of the police-state*, we set forth a number of empirical indicators. They included such actions as: converting certain police-state functions into private operations; the private appropriation and selective destruction of information contained in secret services archives; the participation of the

secret services and their agents in large-scale privatization schemes designed to channel state resources to the former *nomenklatura* networks; and the infiltration and the manipulation of various agendas of the state (Chapter 2). Our research has confirmed the existence of the *privatization of the police-state process* and has pointed to its various consequences (Chapter 8). We present below a brief synopsis of our main findings.

1. A massive covert privatization and selective destruction of Ministry of the Interior archives took place between August 1989 and March 1990. This major transfer of extremely sensitive information to informal secret service networks, which continued on a smaller scale into the late 1990s, had a number of far-reaching repercussions. Among other consequences, it (1) enhanced the role of blackmail in politics and business; (2) established secret information as a sought-after form of bribe; (3) led to the expansion of both national and cross-national black markets in personal files and other forms of intelligence; (4) provided unique and extremely effective political capital to post-police-state networks, including the possibility of utilizing files of the former and present collaborators to control and manipulate them, especially if they occupied or could be intentionally promoted to prominent political and business positions; (5) fostered manipulation, extortion and the destruction of evidence in relation to the criminal justice system and other control agencies, contributing to their near-paralysis, especially with respect to prosecution of numerous violent and economic crimes in which former party/police-state *nomenklatura* members were implicated; (6) fuelled smear campaigns against political and business adversaries, often through sales of sensitive files to journalists; (7) manipulated public opinion.

2. A significant proportion of the former police-state apparatus – personnel, skills, intelligence, equipment and informer networks – has been turned into a vast private security industry. Unregulated and implicated in many criminal ventures, this industry – with more people and often better equipment than the state police – has from its inception been interlinked by common interests with powerful post-communist *nomenklatura* networks, as well as various international networks involved in organized crime, intelligence gathering and dubious banking and business operations. One of the hidden functions of the private security industry has been to provide the means of violence needed for the prevention or control of competition in the interests of selected businesses or financial groups.

Moreover, the private security industry has contributed to corruption within the ranks of the state police by blurring the line between these organizations and creating various illegal enrichment opportunities for the regular police, many of them former secret-police operatives with ties to the security industry founders.

3. Former secret-services functionaries were prominently involved in providing protection and intelligence for large-scale economic scams designed to turn state funds and resources into *nomenklatura* capital. Indeed, these ramified international operations would not have been possible without former agents' unique expertise, resources, contacts, secret networks and ability to influence or compromise various strategically placed politicians. Many former agents had connections and familiarity with both the East, through their former subordination to the Soviet secret services, and the West, through their specialization in economic and technological espionage, involvement in Polish foreign trade agencies and operation of various bogus agencies abroad. They were well-equipped to play key roles in planning the logistics of huge transfers of public wealth to private networks in Poland and abroad.

4. The new secret service (UOP), comprised in great part by former secret-services operatives, has played a very active role in Poland's political life. Different political forces seem to have links to different factions in the UOP and try to use them to promote their interests and political/private agendas. The unregulated vetting of political candidates gives the UOP a free hand to use archival documents to make and break political careers. Moreover, the UOP's control of communist civilian services archives gives it access to enormous amounts of often very personal information about people who were the targets of these services' surveillance. This has increased the vulnerability of Solidarity-based élites to secret manipulation and pressure. Finally, the UOP has been incapable of addressing the problems related to organized economic crime and the illegal privatization of national resources, which is not surprising given the high level of participation of former operatives in these activities.

Our study has confirmed that the police-state infrastructure was too attractive as a source of various types of vital capital to be left out of the avaricious process of *nomenklatura*-driven privatization. The inability of the majority of social scientists to recognize this process may be explained by their reluctance to acknowledge that one of the main pillars of the communist regime, the Party's 'sword and shield', or secret

police, might be a leading actor in the process of converting the old system into a capitalist one.

Yet the evidence gathered bears out our thesis that this was a rational reaction to concrete historical conditions based on a sound calculation of the communist ruling élite's private interests. The hidden privatization of the state was already well advanced under communism – under the formal exterior of official structures there reigned networks of privatized client-based bureaucratic relationships. When the possibility of private usurpation of elements of the state structures themselves became viable, the strongest and best-positioned networks were presented with a unique chance to exploit and mould the process to their advantage. Their success depended in large measure on their access to the secret services' knowledge, skills and connections. Therefore, even the dissolution or radical reform of these services were unlikely to reduce the demand for their services or prevent their institutional power/ knowledge from being informally reproduced in the new context. The *nomenklatura* networks were best positioned to harness this power/ knowledge in order to expedite and institutionalize the most profitable forms of capital accumulation, based on the safe transfer of public resources or revenues to themselves, and to put in place mechanisms capable of blocking any attempts to reverse this process (see Chapters 6, 8 and 9).

A degree of police-state privatization seems inevitable in any peacefully negotiated transformation of a police state into a democratic state. The creation of democratic institutions does not in any way prevent the continuation of co-operation, or even consolidation, of the informal power networks of the previous regime. On the contrary, *an early proclamation of the transforming state as a fully democratic state, based on the rule of law, practically guarantees the undisturbed operation of those informal, secret forces within the new state and economy. Being trained and conditioned to act in secrecy and to engage in conspiratorial practices, they could only be detected and restrained through massive surveillance and repression.*

If the privatization of the police state is an unavoidable price to be paid for the peaceful breakdown of a totalitarian or authoritarian regime, it may be useful to balance our account by looking at the possible advantages of the process under investigation. It appears that in most cases of 'democratic transition', from Latin America to Southern Europe to South Africa (Waldmeir, 1997), the secret services have figured among the key actors instrumental in the dismantling of the old regime. They have tended to play two essential functions. First, through their

covert actions and network of collaborators they have been able to establish links between the opposition and the authorities, helpful in overcoming the symbolic barriers dividing them and in facilitating negotiated partnerships. Second, the various forms of capital engendered by police-state practices (Chapters 3 and 6) have assisted in ensuring a 'soft landing' for the old-system élites, thereby reducing their resistance to change. Usually, this has meant that they were relatively safe from possible prosecution or retaliation for past abuses and could retain their privileged economic status.

Moreover, in the transformations of the East/Central European communist countries, where systemic change was not limited to the political regime but extended to the economy as well, the process of the police-state privatization produced some effects that may be considered economically beneficial, at least in the short term. The forces involved needed a relatively orderly process of economic transition to ensure the smooth transfer of resources to the new capitalist class and to establish the necessary conditions for the privatization and marketization of the inefficient and devastated state economy. The relatively well co-ordinated activities of the post-party/police-state networks have precipitated and structured the crystallization of a new economic formation through wide-ranging privatization, capital consolidation and the stimulation of consumption.

There is no doubt that, at least at the early stages, former *nomenklatura* forces, emboldened by their successful capital conversion manoeuvres, were the strongest and most decisive actors pushing for radical economic changes. Yet one of the mistakes of both liberal politicians and influential economists was that they assumed that 'economic reforms create winners who gain stakes in defending and extending those reforms' (Hellman, 1998: 218). In reality – as both our and Joel Hellman's research shows – 'the winners from an earlier stage of reform have incentives to block further advances in reform that would correct the very distortions on which their initial gains were based' (Hellman, 1998: 233). Blocking or slowing various aspects of economic reforms was evident in Poland in the 1993–7 tenure of the ex-communist coalition government. What is more, former *nomenklatura* circles both within and outside the government helped to mould and institutionalize a partially reformed, hybrid state–private economy. This offered them the most promising opportunities to exploit the state and perpetuate their profit-making transition-era schemes.

The ex-communist élite's 'support' for systemic change was therefore predicated on a vision and practice of change imprinted with their

heritage of corruption, clientelism, political control of the economy and an extortionist rather than competitive approach to profit-making. The endurance of this legacy became even more evident when former post-communist networks in Poland combined their economic power with newly regained political power to recreate some of the old technologies of ruling.

Despite its disrepute, the concept of *conspiracy* should never be discarded *a priori* when the secret services are mobilized to serve interests construed as private. Given the centralized and secretive nature of both the Communist Party and its security services, any agreement between them to implement a program of major socio-economic changes, whose real aims would be kept secret, could be legitimately considered as conspiracy. Conspiracy at the top does not automatically imply a comprehensive conspiratorial mechanism that co-ordinates and permeates all relevant actions, however. In our study we have tried to assess the level and degree of central co-ordination in the conversion of the *nomenklatura* into the new capitalist class. In this type of research, empirical evidence has to be supplemented by some educated guesswork about the degree to which what appears as a concerted effort could have been caused by a simple convergence of interests and intentions on the part of loosely connected individuals and groups.

It would be difficult at this stage to substantiate a claim that there was a detailed central plan that predetermined and controlled the process of dynamic transformation. Nevertheless, there is strong evidence that powerful circles existed and defined priorities, main strategies and contingency plans both for the broader class of communist *nomenklatura* and for its new, dynamic élite, associated later with the successor party, SdRP.

Various elements of conspiratorial activities include:

1. Legislative and economic reforms of the 1980s that enabled the *nomenklatura* to appropriate various parts and functions of the state economy by promoting hybrid property and authorizing the Party and secret services to become involved in private enterprise;
2. The intricate secret operations that prepared the stage for a *rapprochement* between selected circles of the Party and the opposition, to legitimize these reforms in the eyes of society and Western economic organizations;
3. Deliberate and successful efforts by the SdRP to preserve the top-down structure and organizational base inherited from the Communist Party, and to appropriate its wealth;

4. A swift move by the *nomenklatura* to secure control over strategic areas: the transformation and development of the financial sector, foreign trade, the justice system and the media;
5. The development of alternative, non-state security/coercion arrangements and their domination by former secret-services operatives;
6. The steering role played by the SdRP circles in the transformation of the symbolic order and reinterpretation of the communist past.

The level of organization and synchronization of these activities and various other components of the transformation process would be hard to achieve without some measure of planning. As we concluded in Chapter 8, the massive privatization of the police state was the result of a combination of pre-planned and carefully executed strategies, a relative unity of interests among the post-communist power networks and the superiority of their resources and information.

The privatized police-state: concepts and context

Most social science publications about social control and the state do not even attempt to account for the secret police apparatus as a specific mode of control. We suggested earlier that this can be partially explained by the fact that the main classical sociological concepts originated in the nineteenth century, before the outbreak of European totalitarianism. Further, the positivist paradigm that was prevalent during most of the twentieth century was inherently inhospitable to hidden processes that could not be studied and measured by standardized, scientifically testable research tools. Not surprisingly, in those countries where the secret services are most active and constitute an essential part of the day-to-day control of society, academic recognition of this fact is out of the question. Sociologists become used to describing their society as if these services were not even there. When the oppressive system collapses, the defunct regime and its legacy become an object of political deals and interpretations that often deter potential researchers.

Yet to understand what follows the police-state, we have to appreciate what it was and what was happening to it during the so-called transition. The concept of *path dependency* (Chapter 2) reminds us how societies are conditioned by their past even in times of radical change. While our focus in this book has been on the legacy of the communist secret services, the end of the Cold War also necessitated significant shifts in Western intelligence and counter-intelligence services that, in our view, call for systematic scholarly research and theoretical elaboration.

It is often asserted that the East/Central European communist states experienced an initial period of totalitarianism, but that they eventually became merely authoritarian in nature. This claim should not be taken at face value, however. We agree that the Communist Party in Poland eventually had to acknowledge that it was unable to control people's thoughts, and that the integrity of its ideology – necessary for continued justification of the political system – was better served by a less funda-mentalist approach. By that time, most people had developed a form of 'double-think' or a 'socio-ideological mannequin' (Piekalkiewicz and Penn, 1995: 53) that allowed them to exhibit superficial routine con-formity to the system's requirements. Ideological terror, mass mobiliza-tion and the omnipresence of political penetration gradually gave way to system maintenance mechanisms dominated by a corrupt bureau-cratic clientelism, the fragmentation of interests and an oligarchic form of party-government. It is important to recognize, however, that an authoritarian state that evolves from a totalitarian state is very different from one that has no totalitarian foundation. Therefore we have delib-erately described the Poland of the 1980s as a *post-totalitarian party/police-state* (Chapter 2) in order to emphasize the continual presence of the totalitarian political, social, cultural and psychological legacy.

Any analysis of the context in which the negotiated transformation of 1989 took place must include massive covert operations. At this stage these were no longer conducted in the name of communist ideology and were not part of any ideocratic project. Instead, the police-state apparatus engineered pro-capitalist reforms to further the interests of the communist oligarchy.

The concept of *covert action*, which we found crucial to deciphering the process of privatization of the police state, should be understood as encompassing the whole spectrum of deliberate and co-ordinated actions that require operational methods typical for secret services. These are undertaken by either formal agencies or informal networks, or a combination of the two. The underlying logic of covert actions includes concealment of the strategic actors and the interests involved.

Covert actions undertaken by the communist and post-communist power networks were related to both material and symbolic aspects of the transformation. We recapitulated in the previous section the key aspects of covert actions related to the politico-economic transforma-tion of the *nomenklatura* class. Important *covert mechanisms pertaining to the symbolic sphere* involved acting upon the social/institutional envir-onment in a way that was likely to produce criteria, norms and cultural symbols conducive to the formation of a social hierarchy propitious to

these networks. By moulding and conditioning the socio-cultural context to reward the kinds of skill, experience, style and mentality they themselves possessed, these networks created favourable mechanisms for the future reproduction of this hierarchy. (Sub)cultural assets derived from these individuals' élite status and years of service in the Party/security apparatus were relabelled in terms of such generally accepted meritocratic values as skills, experience, effectiveness, achievement, teamwork, management and leadership. This helped to define and institutionalize the criteria vital to the legitimation of the order/hierarchy which they created and 'pre-programmed' to reinforce their advantage.[1] To achieve this, they used covert methods to manipulate information and the media, manufacture images and biographies and selectively exploit secret-service archives.

By the same token, the previously shunned *apparatchiki* (sub)culture was recreated as the master culture, and access to it was conditioned by prior apprenticeship in that milieu. Thus, by skilfully deploying their political, economic and social capital in the cultural field, these post-communist new-bourgeoisie networks were able to acquire – to use Pierre Bourdieu's phrase – 'a capital of honourability and respectability' (1973:93) necessary for the further accumulation of the former types of capital. They successfully subverted the old, informal cultural hierarchy that was partial to the former political opposition and traditional *intelligentsia*. The opposition groups suddenly started to look like a 'bunch of amateurs', with no management and administration experience, no tangible industrial, military or security skills, no political acumen and no inside knowledge. Based on the new criteria, their place in the *hierarchy of the governing knowledge and culture* was marginalized and their symbolic capital depleted.

In the changing global universe, power over information, consumption and image-formation is essential to success in the world of business and politics. The successful appropriation of the mechanism of definition and reproduction of the cultural hierarchy by the (post)communist *nomenklatura* shows their ability to capitalize on the global advent of the homogenized, 'depthless' *parvenu* mentality. The consumer-society ethos, basically apolitical and amoral, met these networks' need for a broader (European, Western, post-industrial, post-modern) legitimating frame and rendered the past irrelevant. The 'symbolic imperialism' of the West has thus found in Poland an enthusiastic *compradorial* class ready to embrace the new culture in order to obliterate the moral and cultural inferiority assigned to the communist *nomenklatura* by that country's traditional value system. The (post)communist élite's

problems in acquiring moral capital have been solved through the well-engineered devaluation of this type of capital itself. This was but one of multiple processes of *capital reorganization, re-evaluation and conversion* (Chapters 5, 6 and 10).

The police-state that was privatized was not autonomous, but was what some authors call a *penetrated state*, one not only dominated by another country, but also penetrated by it from inside. As the Polish author Ziemowit J. Pietraś indicates:

> There are various methods of penetration: political, when alien control strives for the maintenance of exercise of power; military, when the penetrated state cannot itself defend its rule because its armed forces are subject to an alien command; cultural, when an alien system of values and style of life is imposed upon the nation of the penetrated country; economic, when financial or technological dependence makes it impossible for a state to pursue its own economic policy. (1992:45)

The Soviet Union employed all these methods in Poland. In the context of this book it is particularly important to note, however, that in the *penetrated police-state* not only are the secret services subject to foreign penetration, but they serve as one of its chief vehicles. In Soviet-bloc countries anything, from information to strategy to covert actions, had to be known, steered and harmonized by the bloc's central power, whose involvement was very direct and intense.

Given the deep-seated Soviet penetration of the Polish police-state, the privatization of that state was bound to be affected by the foreign power's designs, interests and agents. For many members of the Communist party/secret-services apparatus, close links to Soviet advisors and envoys in Poland, including the sizeable KGB/military intelligence contingent, were part of their career strategy. Many of them also cultivated useful contacts with the power centre in Moscow. While we have been unable to study in detail the impact of these long-standing, asymmetrical ties on the privatization process, it is evident that the Soviet/Russian secret services possessed the bulk of the secret information generated by the Polish services, had compromising information on various influential individuals and had a good understanding of potentially very profitable, if not necessarily legitimate, ventures that could be undertaken in conjuncture with their Polish associates. Moreover, being increasingly active in large-scale transnational organized crime, they needed to rely on an efficient support system in Poland. There are

many indicators that various former actors of Soviet penetration have continued to be active in Poland in their new roles as Russian intelligence operatives, businessmen and *mafiosi*, and that they did not pass over the chance to participate in the privatization of the Polish police-state.

This participation extended beyond individuals and included various Soviet agencies involved in the penetration of Poland. For instance, the Soviet troops stationed in Poland privatized a good part of their military equipment through the Polish black market, providing various groups and networks with a ready supply of arms. Numerous trade and technology agencies, set up in Poland in the 1970s and 1980s and controlled mainly by the Soviet secret services, actively engaged in chain transactions surrounding the privatization process in Poland and tied them to similar processes under way in Russia and other successor states. Given the ramified implications of this involvement, the concept of the *transnational privatization of the (penetrated) police-state* appears useful and deserving of further attention and research.

Finally, the nature of the privatization process has been affected by global trends, including post-industrial, post-national and postmodern transitions. The global techno-cultural revolution displaced the industrial working class – the backbone of the Solidarity movement – and moved the centre of economic activity to areas where former secret-service operatives and younger, cosmopolitan *apparatchiks* could capitalize on their experience, skills and contacts. In the changing world, marked by *economic globalization*, the *'virtualization' of financial and property transactions* and the *surge of knowledge/information/control industries*, former Communist secret-services operatives were ideally positioned to act as intermediaries between the global and domestic economies. Poland's integration into the new order, on both global and regional levels, has thus been influenced and mediated by interests, networks and loyalties begotten by police-state structures.

The combined pressures of globalization and regionalization have challenged the guiding vision of the Solidarity revolution, which was that of an autonomous, sovereign state. This has facilitated the swift transformation of the dynamic elements of the old Party/security/military apparatus into new emissaries of Poland who present themselves as a forward-looking vanguard, unburdened by Poland's traditional values, flexible, and open to international wheeling and dealing. Their past collaboration with the forces of foreign penetration has lost its stigmatizing power in the new world, where inter-state penetration is perceived as a natural and welcome process.

The global tendency to blur the line between criminal and legitimate economies has exposed the privatizing police-state to new opportunities as it has found itself at the crossroads between Eastern and Western mafia and business interests. Considerable profits were to be made by those who could provide specialized secure services and protection in relation to money laundering, the transit of drugs, arms and stolen cars, as well as legitimate foreign investments. In the process, however, the new state, its politics, financial institutions and control apparatus, have become dependent on illegal money supplies and the services of corrupt intermediaries.

Finally, the globalization, marketization and progressive privatization of spying services in the new post-Cold-War world market, and their concentration on competitive economic intelligence, have *blurred the lines between the secret services, business and organized crime*. Accordingly, the processes surrounding the privatization of the police-state in Poland have merged into and have been legitimated by a broader promotion of espionage and policing as global industries.

Notes

1 Introduction

1 For the pioneering treatment of this concept, see Aubert, 1965. See also Marx, 1984, for the first systematic elaboration of what he calls the 'hidden and dirty data problem'. He defines 'dirty data' as 'information which is kept secret and whose revelation would be discrediting or costly in terms of various types of sanctioning' (p. 79).

2 This thesis was first elaborated in a lecture presented by Maria Łoś in the Summer of 1988 at the Wilson Centre for International Scholars, Washington, D.C.

3 The *nomenklatura* principle involved the Communist party's exclusive right to nominate managers and officials at all levels of economic and public administration, education, culture, the military, the criminal justice system and so forth. This gave rise to a large social stratum we call the *nomenklatura* class. The overall number of posts encompassed by secret *nomenklatura* lists has been estimated to be in the range of 100 000 to 200 000. (General Jaruzelski claimed that by 1988 it had reached 270 000; Perzkowski, 1994:43.)

4 The Polish United Workers' Party – hereafter the Party or the Communist party.

5 Apparently, some members of the opposition, especially in Gdańsk, Solidarity's birthplace, were deliberately included in this process by the Communist élite, but their numbers were not great (Kaczyński, J. n.d.:25–6; Kaczyński, L., 1996:44–5).

6 Staniszkis comments on this predicament: 'The clarity of categories used to describe the world and one's place in it – so characteristic of Solidarity – has vanished; gone is the shared fundamentalist dream that nurtured the faith in one miraculous panaceum against all problems (''own, independent trade union''); no more – so prominent in Solidarity – didacticism and hope to construct a value-based world...One is struck by a postmodern attitude towards action as a goal in itself, ... rejection of the fundamentalist distinction between ''good'' and ''evil''..., and silence – so contrary to the Solidarity's infatuation with ''speaking the truth''' (1989:134–5).

2 Conceptual and Methodological Issues

1 The specific focus of our work prevents us from exploring conspiracy theories in terms of a popular discourse that allows people to make sense of threatening or incomprehensive situations and posit human agency rather than an anonymous 'system' as the source of the problem. See e.g. Austin, 1994, for her analysis of anti-black conspiracy theories in the United States as a popular discourse among African-Americans. We believe that this type of approach would be also useful with respect to post-communist societies.

2 We use the term 'secret services' as an umbrella category that encompasses intelligence, counter-intelligence, the political police and special forces.

3 For example, according to Holmes (1993), 'there is no question that on balance in the communist world, the trend during the 1980s was for [the] role [of security police forces] to decline' (277).

4 An excellent example is provided by a special issue of *Social Research* (Summer 1996) devoted to the question of gains and losses/winners and losers of the post-communist transition to democracy. None of the authors has even acknowledged the secret services as possible actors who had something to gain or lose as a result of systemic change.

5 When, a year after the collapse of communism in Poland, the first democratic chief of the new political police (the State Protection Agency – UOP) was installed, one of his first moves was to check the logbook of telephone conversations between the Soviet Embassy and the Ministry of the Interior. Their daily average was between 200 and 300 (Kozłowski interview, in Januszewski and Strękowski, 1996:204).

6 For example, Barron, 1985; Corson and Crowley, 1986; Dziak, 1988; Freemantle, 1982; Knight, 1990; Rositzke, 1982; Waller, 1994; Yost, 1989.

7 Although it was acknowledged by Peter Deriabin and Frank Gibney (1982:109) and Andrew and Gordievski (1990:551), it was done only in passing. Moreover, Amy Knight (1990) briefly mentions the KGB interest in economic crime, while Evgenia Albats (1994) merely notes the existence of the economic branch of the secret services.

8 They are: Bereś and Burnetko, 1991; Bereś and Skoczylas, 1991; Bosak, 1992; Dominiczak, 1994; Dronicz, 1997; Jaruzelski, 1992; Golimont, 1992; Moraczewski, 1996; Ochocki, 1992; Piecuch, 1993, 1996b; Szlachcic and Mac, 1990; Widacki 1992.

9 Conducted for his 1993 book, published in Polish.

10 Including former Minister of the Interior (1992–5) Andrzej Milczanowski, former chief of the civilian Counter-intelligence (1990–5) Konstanty Miodowicz and former chief of the civilian Intelligence (1992–4) Henryk Jasik.

11 Please see an illuminating essay by G. T. Marx (1984) on an emerging 'dirty data' methodology and related conceptual problems.

12 After Jeffrey Ian Ross, we define 'state crime' as activities carried out by the state or on behalf of some state agency that involve 'coverups, corruption, disinformation, unaccountability and violations of domestic and/or international law. [State crime] also includes those practices that, although they fall short of being officially declared illegal, are perceived by the majority of the population as illegal or socially harmful' (Ross, 1995:5–6). For useful discussions of this concept see other articles in Ross, ed., 1995; and also Barak, ed., 1991; Chambliss, 1989; and Clinard and Quinney, 1978.

13 For earlier findings in support of our thesis, see Zybertowicz, 1993:125–9.

3 Anatomy of the Police-State

1 Malinowski, 1992:72.

2 In a few political science lexicons recently published in Poland one cannot find a single trace of the category of the 'police state'; the notions of police, coercion and violence are also absent (for example, Antoszewski and Herbut, eds, 1995). One is tempted to ask if this is one example of the heritage of communism in the social sciences.

3 For example, Bamford, 1982; Donner, 1980; Wise, 1976.

4 Soviet nationals who were made to assume foreign identities and false biographies 'by taking over the papers of either a real person who had died or a fictitious one' (Gordievsky, 1995:135).

5 They included Gen. Michał Janiszewski, who was the minister in charge of the Office of the Ministerial Council (URM) throughout the 1980s, first in General Jaruzelski's cabinet (1981–5), subsequently in Zbigniew Messner's (1981–9) and, finally, in Mieczysław Rakowski's (1988–9).

6 *DU*, 1981, No. 38, pos. 172.

7 In Polish secret-service terminology: *kontrola operacyjna*.

8 Much of the information on the MSW's structure and functions comes from Dominiczak, 1994. The author is a historian and former high-level functionary of that ministry.

9 Another source gives numbers from 600 to 1000 (Snopkiewicz 1992:157).

10 Zybertowicz's personal communication with a former operative.

11 This number includes the MSW's Intelligence and Counter-Intelligence forces.

12 The population of Poland was around 38 million.

13 Zybertowicz's personal communication with a former operative.

14 The SB had several distinctive categories of collaborators. The fully registered, regular agents were called 'secret collaborators' or 'agents;' less formalized cooperation was provided by 'operational contacts' or 'confidential contacts' (they included many Party members); yet another group was comprised of persons who had a duty to provide confidential information to the SB because of their managerial positions. There were also those who agreed to the SB's use of their apartments, telephone numbers, mail boxes and so forth (Grocki, 1992:20–1).

15 According to a statement made by Interior Minister Mirosław Milewski in 1980–1, at a conference of the MSW leadership (Dominiczak, 1994:506, 667).

16 The statute of the Team is published on pages 482–6.

17 Zybertowicz's personal communication with a former operative.

18 Our assessment, based on the principle that every operative was ordered to have 10 to 12 informers.

19 In Polish *Kolegia do spraw wykroczeń*.

20 The claim by former Communists that Intelligence (Department I) was excluded from this penetration is difficult to verify.

21 A number of memoirs of former high-level MSW functionaries have been published and many documents have been leaked, but as far as the military services are concerned there have been only two books published, one on Intelligence (Moraczewski, 1996) and one on Counter-Intelligence (Kamiński, n.d.; some useful information can be also found in Piecuch, 1993 and Dronicz 1997).

22 Zybertowicz's personal communication with a former operative.

23 Zybertowicz's personal communication with a former operative.

24 In Polish in the services' jargon: *zadaniowanie*, i.e. *wyznaczanie zadań*.

25 Zybertowicz's personal communication with a former member of the Secretariat of the Central Committee.

26 To what extent the principle of task allocation operated smoothly, and under what conditions things were likely to get out of hand of the Centre (i.e. an informal group composed of a few members of CC secretariat and the Politburo) remains to be explored. Another open issue is whether Jaruzelski and his most trusted comrades – General Czesław Kiszczak, General Florian Siwicki (Minister of Defence since 1983 to July 1990) and General Michał Janiszewski – could routinely issue orders for the services omitting both the central and regional party organizations.

27 Zybertowicz's personal communication with a former operative.

28 Throughout the 1970s there were 17 such promotions; Dominiczak, 1994:385.

29 We are indebted to Michael D. Kennedy for his suggestion to use this concept.

30 Bentham's Panopticon was an architectural idea of a circular prison building with a tall tower in the middle. All cells would have windows in both the front and back walls. The guards in the central tower could see through every cell without being seen by prisoners. This was intended as the most economical way of supervising large numbers of inmates (Bentham, 1962/1787). For discussion of the Panopticon principle, see Christie, 1993:118; Foucault, 1979:200–9.

31 In fact, it is very likely that 'the KGB was involved in helping to organize the early demonstrations in Venceslas Square' (Schöpflin, 1993:235).

32 For relevant discussion of Foucault's treatment of state and power, see Dean, 1994, Chapter 8; and Frazer, 1994.

33 The extent to which fear was treated as a norm was expressed by informal labelling of those who spoke their mind publicly as crazy or irrational (see e.g. Łoś, 1988:143).

34 This idea was elaborated by Podgórecki in 1979: 'If behind the given legal system (which is rejected by the population at large as unjust, undemocratic, etc.) there operates a complicated infrastructure of mutually interdependent interests, then this legal system may become accepted, not on the basis of its own merits, but because it creates a convenient cover-system for the flourishing phenomenon of ''dirty togetherness''. Then each institution, factory and organization...serves as a formal network which gives a stable frame of reference for an enormous amount of mutual semi-private services and reciprocal arrangements' (Podgórecki, 1979:203; 1993:21, 99; 1994:115).

35 The First Secretary of the Party from 1970 to 1980.

36 This had far-reaching consequences because, unlike most political offences, this type of economic crime was not covered by the amnesty of 1984.

37 With the exception of the occasional prosecution of political losers who were convenient scapegoats or inconvenient rivals.

38 While in 1979 the Party had nearly 4 million members, by 1986 the membership had fallen by more than 1 million (Sułek, 1990:500).

4 State Crime and Cover-up Operations

1 No. 031/80, dated 16 August 1980.

2   According to the commission, the criminal cover-up involved the highest-ranking leadership of the party-state, including General Jaruzelski (Komisja, 1991:13–119).

3   They also included victims of the 'Wujek' mine 'pacification' and the Lubin killings.

4   The parliamentary Commission's report (the so-called Rokita Report) has been attacked by some critics as completely misguided, but except for some small factual errors (irrelevant for our purposes here) they have not been able to substantiate these charges.

5   For important excerpts from the decisions of the Politburo meeting of 24 May 1984, see *Rzeczpospolita*, 1997:3.

6   See the document of 16 June 1983 issued by Colonel Józef M. of the Militia Headquarters, *Prawo i Życie*, 1995b:34.

7   This information is based on statements made by witnesses during interrogation and the evidence presented at the new trial in the 1990s. Some of the SB officers directing the harassment and intimidation campaigns are still employed by secret services or the regular police (Zalewski, 1997b).

8   She was fully rehabilitated after the collapse of communism.

9   There is evidence, however, that some of these files had been destroyed (Zalewski, 1997a).

10   Professor Łopatka subsequently became the president of the Supreme Court (1987–90). His prominent positions in many international human rights bodies have included the vice-presidency of the International Human Rights Academy and membership in the Executive Board of the International Human Rights Institute. Łopatka also represented Poland in the Human Rights Commission of the United Nations in 1978–83 (Fredro-Boniecki, 1990:13). He was a member of the Party's Central Committee in 1986–90 (Mołdawa, 1991:389).

11   According to a conservative estimate of the 1984 MSW commission, the total weight of gold was approximately 130 kilograms (Pytlakowski, 1991:92).

12   Characteristically, the commission was more concerned with the disappearance of the precious items than the criminal methods of their acquisition that allegedly included a series of murders (Pytlakowski, 1991:90–4).

13   For documentation and analysis, see Łoś, 1984.

14   For a detailed analysis and bibliographical information see Łoś, 1984, 1988, 1990, ed. 1990; Tarkowski, 1983, 1990.

15   Relevant legal developments include: the gradual rehabilitation of the prewar Code of Commerce of 1934, especially its rules on joint-stock companies; the passing, in December 1988, of the Law on New Economic Activities; and the enactment, in February 1989, of the Law on Selected Conditions of Consolidation of the National Economy, which granted state enterprises the right to sell, let or lease their capital assets and facilities.

5   The Role of the Secret Services in the Solidarity Revolution

1   The Round Table talks between the Communist authorities and opposition delegates were held in Warsaw on 6 February – 5 April 1989. They have since come to represent both the peaceful nature of 'revolutions' in East/Central

Europe and the dawn of decomposition of communism in that region. They involved many smaller 'round tables' at which demands related to various areas, such as the economy, political institutions, the media, law and agriculture, were discussed and negotiated. The talks resulted in a set of Agreements and a new, semi-democratic electoral law (see Chapter 6).

2 For bibliographical details, see Zybertowicz, 1993:76–7.

3 The most thorough documentation is presented by Piecuch, see 1987:373–4; 1993:473–81, 488–98 and 30 unnumbered pages of copies of relevant documents; 1996b:427–41; and 1996c:479–534.

4 On relationships between Gorbachev and the KGB, see Waller, 1994:41–50.

5 This practice continued in the following years. For instance, in 1987 500 warning talks were conducted with activists of Fighting Solidarity and other groups (Dominiczak, 1994:581; Walichnowski, ed., 1989:280).

6 An MSW-owned villa near Warsaw, where confidential talks were conducted by a small group of representatives of both sides, whenever the Round Table negotiations ran into difficulties (see e.g. Dubiński, 1990).

7 First published in London in 1985, it was printed in 1986 by an underground press in Warsaw, under the title, *Takie czasy…Rzecz o kompromisie* (60p).

8 See Note 1 and Chapter 6 for explanation of the role of Round Table talks.

9 For a detailed account of this process see Skórzyński, 1995.

10 We have emphasized these words because at that time the concept of 'systemic transformation' was not yet a part of the public discourse. The emphasis was on improving and democratizing socialism, giving it a kinder face and making it more acceptable to the general population.

11 In a similar vein, at a meeting of the CC Secretariat on 23 January 1989, Jaruzelski states: 'CC Secretaries should initiate creation of organizations, clubs and associations in the social environments they are responsible for' (Perzkowski, 1994:240, also 243).

12 A copy of this document was reprinted in *Spotkania*, no. 19, 22 May 1991. On 7 July 1991, General Dankowski confirmed in a radio interview (Programme III PR) both the authenticity of this document and his authorship of it (*Czas Krakowski*, no. 104, 8 May 1991:3).

13 That is, uncontrolled disclosures or real or concocted information about secret collaboration of individuals. To quote an earlier article by M. Łoś: 'in the absence of law-based lustration in Poland, a considerable and ever-growing number of people have gained access to the archives through their political or professional roles, and some of them have been conducting their own "lustration games". The stakes in these games range from the strictly political to the purely financial, and their favoured grounds span the spectrum from Parliament to the black market' (1995:130). They also reach beyond the Polish borders, since Russian Intelligence possesses the bulk of the SB secret information and the black market is always open to the best offers.

6 The Capital Conversion Process

1 For empirical backing of this thesis, see Rychard, 1992:141.

2 In the 1993 parliamentary elections, the Alliance of the Democratic Left (SLD) (led by the successor of the Communist party, Social Democracy of

Poland-SdRP) and the peasant party (PSL), formed from one of the two former Party's satellites, won 36 per cent of the votes. Due to peculiar election rules, however, they secured 66 per cent of the seats in the Lower House and 73 per cent in the Senate. Approximately 35 per cent of all valid votes did not result in any seats, and several well-established parties ended up with no representation in the Parliament. Only 52.2 per cent of those eligible voted in the elections.

3   In the 1995 presidential elections, the sitting president, Lech Wałęsa, lost by two per cent to the former Communist official, SdRP leader Aleksander Kwaśniewski.

4   See elaboration of this concept by Valverde (1994), albeit in a different context. It was also used by Schöpflin (1991:244) in relation to the Czechoslovak opposition.

5   Most notably at the Warsaw University and the Main School for Planning and Statistics – SGPiS – in Warsaw.

6   This dovetails with the uneasiness in the main Western financial capitals when it became clear that the SLD might lose the 1997 elections (Pepe, 1997:24).

7   For instance, Rosenberg (1996:139), who interviewed Jaruzelski extensively, writes: 'He has reinvented himself. The Jaruzelski I saw is now playing for history, with special attention to the judgement of journalists and authors.'

8   This label is usually applied to the Freedom Alliance (formerly Democratic Union) and the Labour Party.

9   *DU*, 1996, No. 89 pos. 402.

7   Transforming the Police-State

1   For a critical interpretation of this process, see e.g. Skórzyński, 1995; Ziemkiewicz, 1992; Zubek, 1995.

2   Biuletyn No. 221/X kad.:25, 29. For example, in May 1990 the entire cohort graduating from the SB school in Legionowo was hired as regular police officers (Socha, 1991:6; see also Widacki 1992:27).

3   *DU*, 1990, No. 30 pos. 179, 180, 181.

4   The Senate, abolished under communism, was re-established in 1989. It has the right of legislative initiative and it may propose amendments to, or rejection of, the bills passed by the lower house. The latter may reject the Senate's motion by a majority of two-thirds of votes with at least half of the members present.

5   See Łoś, 1996b for her interpretation of the democratic Senate's role in the enactment of bad laws. According to her study, the main types of pressure experienced by senators included: 'the non-democratic lower house in the Parliament; the practical and technical impossibility of replacing a whole legal system at once; political exigency for stability and smooth transition; the enduring influence of the totalitarian legal culture; the new élite's unwillingness to use any censure or exclusion with respect to the old system's functionaries; the hidden resistance of the tightly knit networks of the former *nomenklatura*, and the new vested interests in the continuation of a powerful, centralized state' (317).

6 The procedure was criticized by the Ombudsman, E. Łętowska, for violating human rights of the SB operatives subjected to it (Podemski, 1995d:31).

7 According to statements made by some opposition politicians, the Interior Minister Zbigniew Siemiątkowski consulted lawyers in 1996 about the ways to change the existing law in order 'to end the discrimination against a group of citizens who have been indefinitely banned from employment within the Ministry of the Interior' (Pawlak, 1996a:2). Subsequently, a SLD deputy submitted a motion to the *Sejm* Commission on Administration and Internal Affairs to make an appeal to the Prime Minister and the Interior Minister to end this sort of 'discrimination' (i.e. to annul the legal consequences of the verification of the SB functionaries). The motion was rejected by the margin of one vote only (Nowakowska-Majcher, 1996:3; EM, 1996:1; Niemczyk, 1994:13; Kęsicka, 1994:2; Schulz, 1996:4).

8 With the exception of its political instruction cadres.

9 For example, the bloody pacification of three coal mines under Martial Law was carried out by the regular police. Interestingly, Marian Okrutny, who was in charge of these operations, was promoted in December 1989 (*Senat R.P.*, 23, April 1990:101).

10 In a 1995 interview the chair of the Parliamentary Commission for National Defence admitted that his commission did not have information about the military intelligence services and was unable to oversee it (Szmajdziński, 1995:27). The same applies to the Parliamentary Commission for Secret Services.

11 For elaboration of this idea see, Łoś, 1985, 1996c; Moczydłowski, 1990.

12 *DU*, 1995, No. 104 pos. 515.

13 Admittedly, the existing rules, introduced in 1990, were in some need of revision, as they were unrealistic and might have unnecessarily endangered police officers' lives. The 1995 amendment went too far in the other direction, however.

14 The decision must be made by the Interior Minister and the Prosecutor General (that is, the Justice Minister), two political appointees probably representing the same party. In July 1996 Zbigniew Bujak, the chair of the *Sejm* Commission on Internal Affairs, charged that wiretapping had become the main way in which the secret services secured information, and that this practice had slipped out of the control of the Prosecutor General (Jach, Mach, 1996). In response to growing public anxiety, Prosecutor General Leszek Kubicki stated that during the first seven months of 1996 he authorized 727 wiretapping procedures and was not aware of any illegal activity in this area (Jachowicz, 1996a).

15 If it is not granted, the evidence gathered through these methods must be destroyed. But many critics, including Members of Parliament (see e.g. *Sejm R.P.*, 28, Sept. 1994:128,134), expressed doubts whether in reality such evidence would indeed be destroyed, especially when the new technology offers means for a swift and almost uncontrollable duplication of any information.

16 For early warnings, see an interview with Moczydłowski (1993), director of the Central Prison Administration.

17 See e.g. an overview of a conference on the prevention of economic crime, held near Warsaw in February 1993, (Sklepkowski *et al*., 1993:130–7).

18 *DU*, 1996, No. 89 pos. 402.

19 The Law on Procuracy, *DU*, 1990, No. 20 pos. 121. March 1990.
20 According to 1984 data, 70 per cent of prosecutors were members of the Communist party (Sułek, 1990:505).
21 Law on the National Council for the Judiciary, *DU*, 1989, no. 73 pos 435.
22 According to a prominent lawyer and senator in the 1989–93 period, as of 1994 only one judge had actually 'self-purged' himself (Wende, 1994:3).
23 They actually became unconstitutional under the 7 April 1989 constitutional amendment (*DU*, 1989, No. 19, pos. 101) which was passed immediately after the signing of the Round Table Agreements (see, Sokolewicz, 1992 for more details).
24 *DU*, 1993, No. 47, pos. 213.
25 This was, in fact, the version proposed by the Senate at the time when the law was first debated, but it was rejected by the lower house (Nowakowska, 1994:3).
26 Still higher rates were registered in the early 1970s, when they reached 372 per 100 000 population (Siemaszko, ed. 1994:79).
27 The number of temporary absences of 24 hours to five days' duration granted as a reward for good behaviour increased from 13 126 in 1987 to 28 806 in 1991 and 40 690 in 1993 (Dubiel, 1995).
28 From an interview with a senior employee of the Central Prison Administration headquarters, conducted by Łoś in 1995; see also Moczydłowski, 1993.
29 Preparations for launching a new party started early. At the Party Central Committee plenum on 18 September 1989, Leszek Miller, a Central Committee Secretary, announced that the Politburo favoured the option whereby a new left-wing party would emerge from the existing Party that was disintegrating ('Calendarium', 1989:4).
30 Three of the superiors of the prosecutor who made the 1993 decision in the Rakowski case disagreed with it and were swiftly dismissed or made to resign. The prosecutor who had dropped charges against Miller was promoted (Janecki, 1996a:22).
31 With the exception of the funds generated by the membership dues.
32 The SdRP dissolved itself in 1999 and its leaders transformed the former electoral bloc, the SLD, into a new party. The move was generally perceived as a way of closing the issue of their party's debt to the State Treasury. Prior to its dissolution, the SdRP paid the amount assessed by the earlier, ex-communist government, widely believed to represent only a fraction of the actual debt.
33 SLD stands for the parliamentary Alliance of the Democratic Left, which is composed of SdRP as its leading force as well as representatives of ex-communist trade unions and a few other minor groupings.
34 From a taped interview with a Polish lawyer, Jan Stefanowicz, conducted by Łoś in 1995.
35 The length of this list varies considerably from one proposal to another.
36 Minister Macierewicz explained in his written statement that the list reflected the information contained in the Secret Archives, which was not necessarily decisive proof of collaboration. He postulated that the credibility of the individual files should be assessed by a special commission headed by the president of the Supreme Court.

37 It is unlikely that such documents would be found in the files of collaborators recruited from the higher ranks of the Party.

38 It is also possible that Kwaśniewski saw the law as totally impractical and therefore harmless. His former adviser and SLD deputy Jerzy Dziewulski stated in the *Sejm* in March 1998 that he had advised the president to sign the lustration law and pointed out to him that the law would never work due to procedural deficiencies.

8 Privatizing the Police-State

1 Another well-informed author claims that the massive destruction of files lasted from 1988 to 1991 (Grocki, 1992:25).

2 This is exemplified by the case of Maciej Książkiewicz, the police chief in Płock in the first half of the 1990s. In the early 1990s the local Solidarity leaders pushed for his dismissal because he had been in charge of a Martial Law pacification of the biggest factory in the region. It is believed that Książkiewicz countered this by showing SB files proving that the initiator of the action against him was a former SB informer (Jachowicz and Smoleński, 1994:12).

3 Zybertowicz's private conversation with an SB officer in 1993.

4 *DU*, 1988, No. 41.

5 This in itself is not unusual. Gary T. Marx writes about the private security industry in the United States: 'This industry, particularly at the more professional and leadership levels, is composed of thousands of former military, national security, and domestic police agents. . . . These agents were schooled and experienced in the latest control techniques while working for the government, but are now much less subject to its control' (1987:181). It is important to keep in mind, however, that in post-communist countries these people were part of the totalitarian police-state apparatus, and that many of them failed the vetting procedure designed to screen out those known for the most blatant abuses and criminal violations.

6 For instance, former Communist directors of the SB Department C (Archives) and Department T (Operational Techniques).

7 *DU*, 1997, No. 114 pos. 740.

8 Following Polish legal guidelines, we do not give full family names of people still under criminal investigation. We leave the names in direct quotations from printed sources, however.

9 Individual responsible for auditing the accounts and winding up the affairs of the defunct agency.

10 See, for example, statements made by Judge Góral after the acquittal of the two generals in the Father Popiełuszko case: Case Study 2.

11 Among the politicians associated with FOZZ and later found on the Macierewicz list of secret collaborators was the then Vice-Minister of Finance, Andrzej Podsiadło. He was named by NIK inspector Falzmann as one of the people responsible for the chaos in the records of FOZZ operations (Dakowski and Przystawa, 1992:32). He later became the chairperson of the Supervisory Council of the PKO, one of the biggest state banks in Poland.

12 Kott became an advisor for Prime Minister Cimoszewicz in 1997.

13 The concept of meta-actors is inspired by Jadwiga Staniszkis' work.

14 This observation has been elucidated by Staniszkis in her various works.
15 In a 1998 interview conducted by M. Łoś, Minister Milczanowski categorically denied the UOP's involvement in these actions. We feel that unequivocal interpretation of these developments is not possible at this stage.
16 Instruction no 0015/92; for the full text see *Tajne dokumenty*, n.d.
17 Also in an interview conducted by M.Łoś with K. Miodowicz.

9   The Failure to Prosecute Communist Crimes

1 For example, Ash, 1997, 1998; Borneman, 1997; Central European University, 1993; Cohen, 1993; Fuller, 1969:245–53; Holmes, 1994; *Law and Social Inquiry*, Winter 1995; McAdams, 1997; Meron, 1997; Rosenberg, 1996; *Trans-Odra*, Sept. 1997; Varga, 1995.
2 See Ostrowski and Podemski 1995 for details.
3 Its prosecutors have not been subjected to any independent verification after 1989 and many of them have been known to commit flagrant abuses of the law (Lanckorzyński, 1996:4).
4 One year later, in 1996, the parliament passed a further amendment that made clear that amnesties and absolution acts enacted during the communist period were not applicable to these crimes (Kroner, 1996).
5 For instance, the Freedom Alliance proposed narrowing the scope of the immunity, coupled with a provision that by a two-thirds majority vote the parliament could block the Procuracy's action when it suspected that criminal prosecution was politically motivated.
6 He served in this capacity from July 1989 to December 1990.
7 He held these offices until July 1990.
8 This is exemplified in our Case Studies 1 and 2, and confirmed by Supreme Court President Adam Strzembosz (1995:14).
9 While we are reluctant to advocate any expansion of the existing system of control, we believe that there are certain tasks that need to be performed by specialized 'justice' agencies and that profound economic and social changes call for special regulation and enforcement mechanisms. We contend that the current justice system, unable to cope with these new tasks, allows other forces to take over its functions. For instance, the new economic reality has produced huge demand for legal services, arbitration, adjudication and policing, related to private business, banking, the stock exchange, investment, money laundering, extortion, graft, bureaucratic rackets, organized economic crime, and so forth. When these types of legal services are not provided by the state-run system, private enforcement is bound to take over and either develop into a separate 'mafia justice' or merge with the official justice system, rendering it dependent on dominant covert networks.

10   The Globalization of the Post-Communist Transformation

1 This chapter utilizes many ideas from Łoś, 1997 and Łoś, 1999.

2 Formally, it is symbolized by the dissolution of the Council on Mutual Economic Assistance (CMEA or COMECON), the organization that beginning in 1949 centrally planned and co-ordinated the system of trade (or barter) within the Soviet Bloc.

3 According to 1988 data, 66.6 per cent of the population aged 25 and over achieved at best vocational school level (44.2 per cent had, at most, a primary education, Grade 7, while 22.4 per cent graduated from a basic vocational school after completing primary school). Only 7.8 per cent had college education (GUS, 1991:44).

4 For an interesting discussion of various narratives of globalization, see Silbey, 1997.

5 Peter F. Drucker explains key differences between them: 'The traditional multinational is a national company with foreign subsidiaries. . . . [that] are clones of the parent company. . . . In a transnational company there is only one economic unit, the world. Selling, servicing, public relations, and legal affairs are local. But parts, machines, planning, research, finance, marketing, pricing, and management are conducted in contemplation of the world market. One of America's leading engineering companies, for instance, makes one critical part for all of its 43 plants worldwide in one location outside of Antwerp, Belgium – and nothing else. It has organized product development for the entire world in three places and quality control in four. For this company, national boundaries have largely become irrelevant. . . . Successful transnational companies see themselves as separate, non-national entities' (1997:167–8).

6 Staniszkis (1995) comments on a situation present in many post-communist countries where 'elected bodies of government are more conscious of their responsibility to the international institutions supervising the process of transformation, e.g. the International Monetary Fund, than to their own electors' (p. 41).

7 In many cases they were not replaced after 1989 because their terms with those organizations were not finished or they represented themselves as democrats. Following the 1993 elections, the nomination process was brought again under the control of former communist forces.

8 This process has been precipitated by the vast proceeds from drugs and arms sales, which can only be handled through international channels. These channels assist 'in camouflaging the paper-trail by adding cross-jurisdictional complications' (Beare, 1995:173).

9 Poland's GDP in 1997 was $108 billion U.S. (Fortune, 27 April 1998).

10 On the process of merging of the legal and illegal economies, see also Passas, 1993; Passas and Nelken, 1993; Sinuraja, 1995:49; Sterling, 1994; Taylor, 1992.

11 The term used by Arlacchi, 1986.

12 According to Fiorentini and Peltzman, existing studies indicate that criminal organizations prefer allocating their resources in 'regions where there are problems in the definition of the property rights' (1995:25).

13 For instance, according to a Russian estimate, about $16 billion was brought to Russia for money laundering over a two-year period in the early 1990s (Sinuraja, 1995:46). By 1993 about $30 billion had been exported from Russia (Kaser, 1995:192).

14   For elaboration of some of these aspects, see Shelley, 1996 and Sterling, 1994.
15   *DU*, 1994, No. 126 pos. 615.
16   The line between the two was rather fuzzy.
17   For an interesting discussion of dissimilarities in historical experience of the formation of nation-states in Western and East/Central Europe, see Staniszkis, 1995:42–3.
18   Based on her research, Sterling makes a similar claim: 'Secret agents have always been entangled in the arms traffic.... The power it signifies and the money in it draw them irresistibly, for whatever enigmatic objectives: political, operational, frequently venal' (1994:215).
19   It is noteworthy that the former secret services/Party *nomenklatura* have maintained control over the financial sector and the process of its privatization throughout the period studied.
20   The *nomenklatura* networks were best positioned to restructure the assets and liabilities of the state economy so they could freely exploit the former while leaving the latter to the state (Łoś, 1992:125–8; Staniszkis, 1994–5 and 1995; Stark, 1996).

11   Epilogue

1   This thesis was inspired by Bourdieu's (1973) interpretation of the role of French educational system in cultural and social reproduction.

References

Abbreviations of Journals Titles:

EECR: East European Constitutional Review; *GP*: Gazeta Polska; *GW*: Gazeta Wyborcza; *PiŻ*: Prawo i Życie; *PSR*: Polish Sociological Review; *RP*: Rzeczpospolita; *SS*: Sprawozdanie Stenograficzne; *TP*: Tygodnik Powszechny; *TS*: Tygodnik Solidarność; *ŻW*: Życie Warszawy.

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