

Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989–2001)

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Lustration laws, which discharge the influence of old power structures upon entering democracies, are considered the most controversial measure of transitional justice. This article suggests that initial examinations of lustrations have often overlooked the tremendous challenges faced by new democracies. It identifies the motives behind the approval of two distinctive lustration laws in the Czech Republic and Poland, examines their capacity to meet their objectives, and determines the factors that influence their performance. The comparison of the Czech semi-retributive model with the Polish semi-reconciliatory model suggests the relative success of the former within a few years following its approval. It concludes that a certain lustration model might be significant for democratic consolidation in other transitional countries.

The Czech word *lustrace* and the Polish *lustracja* have enlivened the forgotten English term *lustration*,¹ which is derived from the Latin term *lus-*

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1. *Lustration* has become a common term in Central and Eastern Europe and a scholarly terminology elsewhere. For example, a search for *lustracja* brought about 2,790 results, *lustrace* 2,190 results, and *lustration* 4,010 results using the Google search engine (<http://www.google.com>, 3 December 2001). *Law & Social Inquiry* devoted a special volume to the subject (1995).

tro. *Lustratio* means “to review, survey, observe, examine” (Lewis and Short 1879).² In pre-1989 Czechoslovakia, its application usually referred to the examination, conducted by the police for their own purposes, to determine whether a person was registered in the secret police records.³ After 1989, *lustration* has come to mean the examination of certain groups of people, especially politicians, public officials, and judges, to determine whether they had been members or collaborators of the secret police,⁴ or held any other positions in the repressive apparatus of the totalitarian regime.

Lustration law is a special public employment law that regulates the process of examining whether a person holding certain higher public positions worked or collaborated with the repressive apparatus of the communist regime. The law defines who can/must be subjected to the examination, who is in charge of the examination, how the lustration procedure works, and the consequences of an eventual positive lustration. A finding of positive lustration means the examination uncovers evidence that a person worked for the repressive apparatus of the previous regime.

A remarkable number of studies and reports have been published since the first lustration law was enacted in Czechoslovakia in 1991,⁵ followed by Lithuania in the same year, Bulgaria in 1992, Hungary in 1994, Albania in 1995, and Poland in 1997 (Kritz 1995; Constitution Watch 1992–2000). Most of them evaluate the lustration laws from the perspective of human rights standards and reach very critical conclusions. For example, the Czech lustration law was criticized by the International Labor Organization (ILO) (Report of the Committee 1992), the Parliamentary Assembly of the Council of Europe (Resolution 1096, 1996), and human rights organizations (e.g., Memorandum on the Applicability of International Agreements to the

2. The term has also another relevant meaning—to *purify by means of a propitiatory offering or purification by sacrifice*. When introducing lustration, some authors emphasize this meaning, suggesting, e.g., “the purification of state organizations from their ‘sins’ under the communist regimes” (Boed 1999, 358). Some authors recognize the coincidence of both meanings (Cepl 1992, 24–26).

3. The police term *lustration* referred to the process of inquiry directed to the statistic-evidence department to determine whether any data existed about a particular person. Such inquiries were initiated by an operative or a leading member of the Corps of the National Security (Zacek 2000, 41). The data were gathered on individuals or groups considered inimical to the socialist order by members or collaborators with the secret police. The files on collaborators usually included their real as well as cover names, and a description of the way the collaboration was launched, the information gathered, the assessment of their reliability (which could lead to their promotion), and the reward they received. The information was stored in files, microfiches and later in computer databases, and listed in a register of files. Although in Czechoslovakia (and similarly in Poland) many files were destroyed, the register of files remained untouched (Zacek 2000, 41–42).

4. In socialist Czechoslovakia, the name of the secret police was *Státní bezpečnost* (State Security), or StB. In Poland, its name was *Sluzba bezpieczenstwa* (Security Service), or SB. Other secret services existed in both countries (see part 2 of this article).

5. In 1990, the Czechoslovak Socialist Republic was renamed the Czech and Slovak Federative Republic (CSFR). Since 1993, it split into two independent states, the Czech Republic (CR) and the Slovak Republic (SR).

Screening Law 1992). Nevertheless, these reviews were often abstract and their authors did not pay adequate attention to the motives of lustration laws, which stemmed from the complicated political and societal situation in transitional countries. Recent research on the transition of totalitarian power structures (Los and Zybortowicz 1999, 2000; Tucker 1999) indicates that many of the criticisms against lustrations might be unwarranted, and many critics underestimated or overlooked its legitimate aims, which can justify a proportional encroachment of certain rights allowed by international conventions.⁶

This paper evaluates the lustration laws from the perspective of their aims. It consists of three major parts. The first part determines the motivation for enacting lustration laws in Central and East European countries. The identified lustration aims provide a normative framework for the evaluation of lustration laws and policies. The second part examines the lustration laws, their scopes and procedures. The third part assesses how the identified aims were incorporated into the laws and evaluates their impact. The final part summarizes the lessons other emerging democracies can learn from the experiences of Central Europe.

This paper is based on analysis of the following documents: the laws in question, their constitutional reviews and related legal norms; parliamentary debates, reports, and political statements; country reports, newspapers, and magazines; and previously conducted opinion polls. Together they illustrate the complexity of the problem, its eventual urgency, and the sociopolitical contexts within which lustration laws were embedded. A systematic empirical study of the working of lustration laws would be very difficult because of the sensitivity and secrecy surrounding these processes. The presented review of information, from various sources, points to certain plausible mechanisms, tendencies, problems, and opinions without any claim to their systematic, empirical verification.⁷

This article compares lustration policies in the Czech Republic and Poland because a comparative perspective enables us to better evaluate them and determine the lustration law that has better fulfilled its expectations. The Czech Republic and Poland are chosen because both countries deal with the similar legacy of the communist regimes, but are influenced by

6. For example, art. 10 (2) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950, 213 U.N.T.S. 221) allows a proportional limitation of the freedom of expression. Cf. arts. 8, 9, and 11. The European Court of Human Rights usually determines whether an interference was prescribed by law, pursued one or more defined legitimate aims, and was necessary in a democratic society to attain them. See also *supra* note 16. Cf. *supra* note 90.

7. The author thanks one of the reviewers for this comment. In the following text, several abbreviations, which originate in Czech and Polish languages, are used to describe these resources: CTK—Czech Press Agency, PAP—Polish Press Agency; CBOS—(Polish) Center for Public Opinion Research; IVVM—(Czech) Institute for Public Opinion Research; Dz.u.—(Polish) gazette of laws; Sb.—(Czech) collection of laws; Pl. ÚS—Judgment of the Plenum of the Czech/Czechoslovak Constitutional Court.

quite contrary political circumstances in their transition to democracy. As a result, they have developed distinctive models of lustration laws.

Poland was the first country in the region to overthrow communism, but the last to approve a lustration law.⁸ The Polish transition was negotiated through round table talks in February, March, and April 1989. At that time, still-confident communists conceded only semi-democratic elections, making 35% of the seats in the *Sejm* (the Lower Chamber; the power of the then-established Senate was marginal) available. Although Tadeusz Mazowiecki was appointed the first noncommunist prime minister after the sweeping "victory" of Solidarity in the election held in June 1989, General Czesław Kiszczak remained the minister of the interior until July 1990, and General Wojciech Jaruzelski occupied the Polish presidency until December 1990. The cleavages among noncommunist political parties elected in 1991 did not provide majority conditions for the approval of the lustration law. In fact, the lustration debate in 1992 led to the fall of the government of Jan Olszewski. The Democratic Left Alliance (SLD), which was dominated by former communists, won the 1993 elections and was against lustrations.⁹ The Polish lustration law was passed after the victory of the center-right parties in 1997. However, it was not implemented until 1999.¹⁰

Czechoslovakia was one of the last countries in the region to overthrow communism, but the first one to enact a lustration law. Faced with unexpectedly massive demonstrations and the collapse of communism in neighboring countries, the Communist Party gave up its power in November 1989. The Velvet Revolution led to the establishment of the government of the national understanding. Members of this political coalition were mostly nominated by the then-formed opposition political movement, Civic Forum (OF), although a few of them, including Prime Minister Marian Calfa, were initially communists. The center-right factions of the Forum, which gradually established political parties, were able to gather majority support for the lustration bill. These parties have maintained their control over the Parliament since then.¹¹ These conditions explain why, in contrast with

8. The following discussion does not aim to provide readers with a detailed account of the transition processes, which are discussed in other materials (e.g., Pehe 1991; Kritz 1995, 2:533–68; Los 1995; Misztal 1999; Kauba 2002; Constitution Watch 1992–2002).

9. The left coalition approved an anti-lustration public employment law (act from 5 July 1996 on Civil Service, Dz.U.96.89.402). Art. 28 (1) 1 required seven years of relevant working experience for senior public posts, making them available solely for old communist cadres.

10. The coalition dominated by the former communist SLD won the 2001 elections in Poland. This led to the 2002 amendment of the lustration law, which narrowed its scope and modified its procedure. After the Constitutional Tribunal abrogated this amendment, the coalition pushed through the Parliament another amendment in September of the same year, which is also expected to be challenged at the Tribunal (see note 55). This article only evaluates the lustration policies in both countries to the end of 2001.

11. In the 1996 elections, the center-right parties initially won merely 99 of 200 seats but they were "tolerated" by the social democrats and soon "gained" one of its deputies. They had majority in the Parliament even during the minority government of the social democracy (1998–2002).

Poland, Czechoslovakia was able to approve a lustration law shortly after the breakdown of communism.

The lengthy, unregulated, wild lustration stage in Poland (1989–99) had a significant impact on the character of the law and the needs that it attempted to meet. On the one hand, the period offered Poland time to learn from the experiences of other countries and from international criticisms against them. On the other hand, the time gap may have given the power networks, which the law was supposed to neutralize, an opportunity to influence the preparation of the bill. As a result of these contrary tendencies, the Polish lustration law has a complex procedure, narrow scope, and minimal sanctions. This contrasts with the broader and more simplistic Czech lustration law, which is based on the disqualification of former political elite and security networks from leading public posts.

This brief summary highlights how the power distribution at the time of regime changes (Zalaquett 1992), the political ideology of the ruling majority (Los 1995, 156–61), and the situation in neighboring countries (Pion-Berlin 1994, 123)¹² influenced the policy of dealing with the past.

I. THE AIMS OF LUSTRATIONS

The evaluation of the lustration policies is pursued via the outcome model that determines the extent to which the policies have achieved their formal as well as informal ends.¹³ This model presupposes the identification of the aims as criteria for the evaluation and requires an analysis of the relationships between aims, which may overlap, condition, or contradict one another. It also considers changes in the intensity of these aims over time, the processes of their achievement, and various external factors that determine the outcomes. In addition to the formal aims that are articulated in legal and political materials, such as preambles to the laws, parliamentary debates, political resolutions, and other official statements, which express the views of political majority, the model takes into account unofficial goals, which may be highlighted by the critics of the process.¹⁴

12. Based on the comparison of transition in Argentina, Chile, and Uruguay, Pion-Berlin (1994, 126) concludes that this “contagion effect” has a weak to moderate influence.

13. This model expands the classic evaluation goal model (Rutman 1977) by paying attention to the unofficial aims and to dynamic relationships among aims (Chen 1990, 167–90). A notable attempt to adopt the classic model to evaluate Czech lustrations was pursued by Williams (1999).

14. One reviewer pointed to the perils of the evaluation: “One might imagine a weak lustration that is shaped by powerful forces from the Communist-era regime who succeed in largely muzzling the inquiry into the past. Such a lustration would then ‘succeed’ wonderfully if it lives up to its artificially and endogenously limited goals.” I do not share this view. The aims, which are derived from the arguments of a political minority and, in this case, are congruent with other research, sufficiently complement official/endogenous goals. Generating these aims from the opinions of individual deputies among both supporters and opponents also minimizes the chance of limiting the aims to those desired by powerful communist-era forces. Although the reviewer does not suggest any alternative framework, a model that is

TABLE 1
Lustration Motives Raised in Parliamentary Debates

Aim of Lustrations	Czechoslovakia* (% of the 72 deputies who approved the motives in their speech)	Poland** (% of 100 pro-lustra- tion arguments that included the motives)
Personnel discontinuity and minimal justice	50	16
National security and public safety	21	52
Protection of rights and regulation by law	14	not available
Truth revelation	14	20
Protection of territorial integrity	3	not available
Trust	3	not available

SOURCES: * Federal Assembly of CSFR 1991, 17th sess.; ** Los 1995, 144, 146, and 148.

Analyzing the lustration debate in the Polish Senate, Maria Los (1995, 143–54) identified three affirmative lustration discourses that reflected the three main pro-lustration themes: historical truth, minimal justice, and state security.¹⁵ The analysis of the lustration debate in the Czechoslovak Federal Assembly (17th sess. 1991) has confirmed the relevance of these goals. It also identified another three aims: “the protection of rights and the need to regulate the process by law,” “territorial integrity,” and “trust.”¹⁶ Table 1 summarizes the frequencies of these arguments in the Czech and Polish lustration debates.

Historical experience may explain the different priorities of Czechoslovak and Polish parliamentarians. After the breakdown of communism in Czechoslovakia, personnel changes were demanded partly in response to the massive purges conducted by the regime after 1948 and 1968. These changes symbolized the element of minimal justice (see note 15 and part 1A). In

independent of the endogenous political process would face the risk that it tests the law against aims that are irrelevant. A pure theory-based framework could perpetuate shared presumptions, which have been, in the case of lustration, rather distorted.

15. Historical truth concerns the “need to reconstruct what really happened, the prevention of a ‘fabrication of history,’ and the moral conceptualization of responsibility” (Los 1995, 143). According to minimal justice discourse, “[l]ustration is rarely seen as capable of achieving full-scale ‘historical’ justice . . . it simply makes places at the top inaccessible to those who contributed to the former apparatus of coercion” (1995, 146). State security concerned the perils of not carrying lustration out. “The perils are connected with having undisclosed (former) collaborators in positions of authority, when their past may still hold power over them” (1995, 148).

16. These aims fall within the legitimate aims as recognized by the European jurisprudence (*Glaserapp v. Germany* 1986; *Leander v. Sweden* 1987; *Vogt v. Germany* 1995; *Ahmed v. United Kingdom* 1998; cf. note 6).

contrast, the emphasis on security motives of Polish senators reflects the experience of the country, whose geopolitical position between Russian and German empires exposed her to numerous devastating invasions. Another concern of Polish senators was related to the increase of crime during transition, some of which was perpetrated by former security operatives, and the dramatic increase of its media coverage, which created feelings of threat in society.¹⁷

Naturally, many deputies did not sign up for any of these aims brought by lustration supporters. They had different personal experiences in the past, with competing political interests in the processes of transition, and thus, followed conflicting ideologies, which mobilized or served various segments of the electorate. They also had different perspectives on new human rights violations and considered the attitude of the international community toward the process differently.

It seems that the vital political interest of advocates of the lustration law was to gain control over the state apparatus, whereas many of its opponents sought to preserve the old networks and maximize their social capital. Some lustration supporters tried to cover their *realpolitik* intentions under the veil of morality, whereas lustration opponents considered the law immoral. The central ideological battle was to gain control over the perception of the past: Opponents wanted to preserve a good picture of the past, conceding a few unfortunate aberrations, whereas advocates sought value discontinuity with the communist system. The dispute over human rights was whether the law protected or violated human rights. For example, proponents argued for the right of the previously disadvantaged to just remedy, whereas opponents alleged that lustration laws violated the right to association of former communist leaders. According to them, the law would cause the international isolation of the country because of its encroachment of human rights standards. On the other hand, advocates argued that the international community would not isolate the new democracy because the law actually protected human rights.

The analysis of the Czechoslovak lustration debate shows that human rights violations were the most frequently used argument against lustrations, followed by vengeance and political rivalry. This confirms fairly common reservations against the process among scholars.¹⁸

This paper evaluates the lustration laws according to the five identified aims: “personnel discontinuity and minimal justice,” “national security and

17. “Poland’s private security sector seems to have played two decisive roles: first by producing and increasing risks, and then by creating a new demand for market-based means to govern those same risks” (Los 2001).

18. For example, Schwartz states that “Revenge seems to be a primary goal of much of the lustration legislation” (quoted in Kritz 1995, 1:474; cf. 464, 469). Los describes a dystopian discourse that claims that “the whole process of lustration [is] being used against political opponents in ugly power struggles” (1995, 129; cf. 154–55).

TABLE 2
Major Arguments Against Lustration During Czechoslovak Parliamentary Debate

Anti-lustration Argument	Deputies Making this Argument (%)	Deputies Denying this Charge (%)
Human rights violations	15	5.5
Vengeance	12.5	11
Political rivalry	4	0

SOURCE: Federal Assembly of CSFR 1991, 17th sess.

public safety," "the protection of rights and the need for legal regulation of the process," and "truth revelation." Moreover, it examines whether and to what extent the law constitutes vengeance as alleged by its opponents. This paper does not review the lustration laws from the perspective of human rights. The allegations of human rights violations are evaluated in a separate paper (David 2002a).

A. Minimal Justice: Personnel Discontinuity with the Totalitarian Apparatus

Although a legitimate parliament was established and a new government appointed after the first free elections, the state apparatus remained to a large extent unchanged. Ten months after the Velvet Revolution, Czechoslovak President Vaclav Havel made this announcement:

We had free elections, . . . we elected a free parliament, we have a free press, we have a democratic government. Yet . . . [t]here still exist and work the powerful structures of the former regime. . . . Many places are governed by the same people as before. They are connected to managers of industrial enterprises. There exist immense bureaucratic colossuses that preclude rational economic behavior of individual enterprises and firms. The old bureaucracy persists at all levels. (1990b)

According to a poll conducted in 1991, 50% of Czechoslovak respondents considered the lustration act would be beneficial to personnel situations in enterprises and state offices (IVVM 2000).

Similarly in Poland, former communist *nomenklatura*¹⁹ remained in con-

19. According to Los, *nomenklatura* is "a secret list of these important positions at all levels of the economic and state administrations, and all other areas of institutional life, which are formally reserved for loyal party members" (1988, 147). In its common use, this term refers to the elite stratum formed on this basis.

trol in both formal and informal ways. Approximately one-quarter of them occupied senior public posts in the mid-1990s (Wasilewski 1995, quoted in Los and Zybertowicz 1999, 285), while the majority of cadres capitalized on their positions during the privatization process (Los and Zybertowicz 2000, 111–13). Another survey, conducted among Polish business, political, and administrative elite in 1998, one year after the electoral defeat of the post-communist SLD and one year before the Polish lustration law came into effect, confirmed that no single group could be characterized as being dominated by former anticommunist opposition and that the thesis about the origin of the business elite in the communist world is well founded (Wasilewski 2000, 206–7). In view of the continuing dominance of the old networks, it was not surprising that in 1996, 57% of Poles considered lustrations as necessary, while 24% opposed it (CBOS 1997).

The inherited apparatus was perceived as an inimical element in the new democracy because its positions were filled on the basis of the unfair ideological criteria of the previous regime, such as “political maturity, a creative Marxist-Leninist approach to the solution of problems, and the determination to consistently bring the party’s policies to life” (Cadre Orders 1984). Thus, one of the legislature’s post-1989 objectives was to accomplish a form of redress, to provide opportunities for those who were previously excluded from offices because of political reasons.²⁰ This embodied an element of minimal justice. It was not a full-scale or criminal justice that would bring all of those who were responsible for communist crimes to the court. Yet it did not perpetuate and legitimize past injustices because it denounced the selection criteria of the past. In addition, the urgent task was to remove *nomenklatura* officials and secret police officers because of their characteristics and networks.

A totalitarian society organized as a military unit demanded submissiveness and obedience. On the other hand, liberal democracy requires efficient management and responsibility.²¹ Sound political and economic reforms can only be accomplished through the transition of peoples’ value systems. The largely incompetent and corrupted totalitarian bureaucracy could obstruct the implementation of governmental policies of societal transformation. Indeed, technical incompetence led to the removal of many cadres from the former East German public administration (Teitel 2000, 165).

More important, lawmakers were aware of the gross human rights violations perpetrated by the old repressive apparatus. Therefore, they assert, key democratic positions should not be held by “citizens previously involved

20. According to Deputy J. Schneider (1991), it was necessary “to fulfill positive prerequisites. . . because those who are not affected by the act have a handicap from the past—they did not have access to the [positions].”

21. According to Cepl and Gillis (1996, 123), “What Eastern Europe needs now is not disciplined, obedient *apparatchiki*, but innovators, entrepreneurs, stubborn, free-minded, even unmanageable people.”

in activities of the organs and organizations, which consciously suppressed democracy and human rights" (Kopriva 1991). The deputies wanted to prevent the abuse of power that was typical of the communist system in Czechoslovakia²² as well as in Poland.²³

The criminal activities of the former communist *nomenklatura* and the secret police members did not cease with the fall of communism. On the contrary, their networks spanning administrative and business sector were at the center of various illegal activities during the reform period.

[W]henever there is an extremely rapid multiplication of capital . . . , we find, in the background, people from the former *nomenklatura*, including Special Services. Their connections; access to difficult-to-obtain information (for instance, in cases of tender bidding); expertise in acting both on the margins of law and outside of it; the ability to infiltrate the agencies that constitute the infrastructure for economic activity—these are real assets. (Zybertowicz 1993, 121, quoted in Los 1995, 151)

Breaking the old networks was an urgent task if economic reforms were to be implemented in many Central and East European countries (e.g., Huml 1991). The economic issues were the significant motivation for lustration in Czechoslovakia, Hungary, Lithuania, and Poland "after the *nomenklatura* took advantage of the absence of the rule of law and its preferred position to steal massively and moved its gains to western banks" (Tucker 1999, 70).

The enactment of a special public employment law was necessary because people holding important public positions usually did not want to leave, and their dismissals were almost impossible under the inherited communist employment law. Unlike in Poland, where initial personnel changes were subjected to round table negotiations, Czechoslovak "revolutionaries" expected former members of the old regime to leave voluntarily. However, they were soon disappointed, realizing that their policy of unconditional forgiveness was unrealistic and that members of the former repressive apparatus did not want to depart their posts.

22. During the communist rule, about 250 people were judicially executed because of political reasons and about 6–8,000 people died under unclear circumstances (e.g., shot during attempts to escape, shot at the state border, died probably as a consequence of torture) (Stehlik 2000). The communist judiciary condemned at least a quarter million people for political reasons (Koudelka et al. 1993).

23. Between 1945 and 1956, about 200,000 people were imprisoned for political reasons; 26,000 people died in prisons, many of them political prisoners. At least 3,000 people were judicially executed for political reasons; thousands were executed extrajudicially; between 1945 and 1948, 8,700 people were killed. Many people were shot during demonstrations, hundreds were injured. During martial law, between 1981 and 1983 about 200 people were killed (Kobos 1999).

It is still officially impossible to dismiss someone because of being an agent of StB. They know it and although in the beginning [some of them] left, being happy that they had got a more than gentle chance to disappear quietly, they have started to make obstructions. [The state] cannot publicize who was lustrated positively because it would otherwise violate a law on confidential information. . . . According to [a high State official], "in some cases people would be sick if they knew [the content of their files]." (Janyska 1991)²⁴

Thus, two contradictory interpretations of the "Velvet Revolution" co-existed: The new elite sought a peaceful change, and the old elite wanted to preserve its status. Deputy Mlynarik, a Slovak historian, aptly pointed out:

It was certainly right that we implemented the principle "we are not like them," that we refrained from witch-hunt, from vengeance, but we underestimated our rival. He interpreted the generosity and decency in his own term and he used his unbroken and partly kept positions to the destruction and destabilization of our democratic efforts. (Mlynarik 1991)²⁵

As a result, the pressure for changes and the effort to preserve the status quo were combined: former *nomenklatura* cadres mutually switched their positions at different levels of society. This was called "the rotation of cadres" (Kriz 1991). Therefore, for some deputies the lustration act was essentially a second revolution, which President Havel mentioned on 21 August 1990 (Kvasnicka 1991). Hence, the law reflected the congested political situation following the fall of communism and the concrete activities of the former networks in both countries. It was a response to certain defective features of the transition rather than to the totalitarian regime; it was a response to the present activities of the past networks. It reflected frustration of the new elite by its naïve belief in the improvement of human nature and in the *methanoia* of former oppressors once confining external factors of the regime had disappeared.

24. Similarly, a deputy complained: "[W]e could not get rid of the head of the international department [of the Federal Assembly], who was proved to be a [former] member of [the communist] intelligence and . . . [the speaker] Mr. Dubcek took him for international visits. For example, our American counterpart alerted us that it did not contribute to the honor of our State when such a person accompanied the speaker of the highest legislative assembly" (Kulan 1991a).

25. Similar disappointment was expressed in the speeches of 10 deputies. For example, according to deputy Benda, "We are on the very complicated way from the totalitarian regime to democracy. . . . The way is not irreversible and it is far from its accomplishment. In this situation we cannot afford that representatives who without any doubt participated in crimes of the communist party . . . will continue their conspiracy against the democratic regime. . . . We gave them the opportunity [to leave], there was more or less a silence about these things within the first year after November [1989] and the results are catastrophic and we can see them everywhere around us" (1991a).

B. The Protection of Rights and the Need for Legal Regulation of the Process

While some parts of the transitional societies remained untouched, arbitrary lustrations were carried out almost without any rules in other parts. In Poland, "specialized lists [of secret collaborators] for different professional groups have been prepared in a totally uncontrolled fashion" (Los 1995, 131). In Czechoslovakia, people working in different state bodies were lustrated arbitrarily and often without their consent. For example, the Minister of Foreign Affairs Jiri Dienstbier ordered "all the [ministry] employees, from car drivers up to the Minister to be lustrated in September [1990]" (Janyska 1991).²⁶ In 1990, Petr Uhl, the then head of the Czechoslovak Press Agency, forced 23 positively lustrated secret police agents to leave their posts: "I sharpened the situation, I literally blackmailed them. Either they leave voluntarily and nobody will know anything, or we will call a meeting in their departments and I will confront them [about their past]" (Necas 1990).²⁷ Such arbitrariness violates the principle of the rule of law that prohibits the discretion of power (Dicey 1959, 188) and would not be possible under the Czech lustration act. In order to avoid such a witch-hunt, a law would have to prescribe what parts of the repressive apparatus and which democratic positions are subjected to lustrations. It was considered necessary to authorize a body responsible for lustrations, to set the lustration procedure, and to ensure its judicial review in order to protect lustrated persons (statement of eight opposition groups 1991, quoted in Zacek 2000, 48–49).

The law was also supposed to calm down the tempestuous political situation (Fisera 1991) caused by mutual denunciation of competing politicians. A number of lustration scandals were reported in each of the Central European countries before the law was enacted. In Slovakia, one "political leader, Jan Carnogursky, has accused another, Vladimir Meciar, of cooperating with the secret police, and [. . .] Meciar has accused Carnogursky of the same thing" (Michnik and Havel 1993). In Czechoslovakia, the Czech Prime Minister Petr Pithart forced a member of his government, Minister of Environment Bedrich Moldan, to resign since he was registered in the secret police records as a candidate of secret collaboration (Blazek 1991).

Unregulated lustrations virtually destabilized the government in Poland. On 28 May 1992, *Sejm* passed a resolution that obliged the minister of the interior to reveal the names of members of Parliament and high state officials who collaborated with secret services during the period of 1944–90 (Kauba 2002). Pursuant to the resolution, the then Minister of the Inte-

26. "Among all diplomats, it was found 50 [secret] agents, among them six ambassadors" (Janyska 1991).

27. P. Uhl later led a group of 99 deputies to challenge the lustration act at the Constitutional Court (Pl. US 1/92) and became one of the strongest opponents of lustrations.

rior Antoni Macierewicz delivered a list of 64 names of collaborators, mostly from the former democratic opposition, to the *Sejm* (Bachmann 1996). After several hours of heated debate, the chamber passed a vote of no confidence against the government of Jan Olszewski. In 1996, in another grand-scale scandal in Poland, President Lech Walesa accused the then Prime Minister Jozef Oleksy of collaboration with the Soviet KGB and the Russian intelligence, and his allegations subsequently led to Oleksy's resignation (Misztal 1999, 42; Kublik, Poppek, and Szulc 1996).

If Meciar, Moldan, and Oleksy had contact with the secret services, some questions remained unanswered. What was the nature of the contacts? Were they personally involved in secret activities? Were they only considered suitable candidates to be recruited for secret collaboration? The term *collaboration* can be ambiguous. Intellectuals often mention V. Havel's attitude on this point: "[w]e are all—though naturally to differing extents—responsible for the operation of the totalitarian machinery. None of us is just its victim. We are all also its co-creators" (Havel 1990a). Although there might be a continuum on the scale of responsibility between victims and perpetrators, it does not mean that value judgments cannot be made. Every continuum has its extremes. This implies, for instance, that victims should be compensated and perpetrators punished.²⁸ It is certainly possible, although not easy, to distinguish systematic collaboration from passive non-resistance (Gebethner 2000).²⁹ Since the question is essential to the process of transformation, it was needed to reach consensus on the legal definition of collaboration, guilt, and responsibility.

The experience of the studied countries shows that addressing these problems can hardly be avoided. The prohibition of lustrations³⁰ could eliminate the discretion of power, but this prohibition could also deepen unsubstantiated gossip and false accusations, leaving people without a chance to defend themselves. As the former Polish President Lech Walesa (1997) stated a "human being is defenseless against defamation. . . . The defamed person does not have any chance to clear himself from suspicions." Unfortunately, such denunciations gradually spread into local politics. In his open letter to the prime minister, one man described his experience this way:

28. Relativization, as in "we are all guilty," is close to the infamous statement that Jews were responsible for the holocaust (Ross, quoted in Los 1995, 143).

29. For example, Czechoslovaks had difficulty judging the "gray" category of "candidates of secret collaboration," which included Minister Moldan. The category was later included in the lustration law but it was subsequently invalidated by the Constitutional Court (Pl. ÚS 1/92; see also note 44). The definition of collaboration was also a problem in Poland, where it was substantially narrowed in both 2002 amendments (see notes 10 and 55).

30. In Czechoslovakia, lustrations were repeatedly prohibited, then permitted, required by one state branch and refused by another (Cf. Jicin 1990; Janyška 1990). In Poland, the government of Waldemar Pawlak responded to the instability following the publication of the "Macierewicz's blacklist" in the same way as the Czechoslovak one. After the appointment of Andrzej Milczanowski as minister of the interior, access to secret files was forbidden (Bachmann 1996).

I was a cofounder of [the local branch of] the Civil Forum and I became its spokesman. It was perhaps the reason why the chairperson of a cooperative [where I worked] . . . and other . . . [members of the Communist Party] started to gossip that I was an agent and a confidant of the StB. I launched a suit. . . . I was asked to prove that I was not a collaborator of the StB. . . . [However] I cannot be lustrated because lustrations were prohibited by the [Federal] Government. (Jelinek 1991, 7)

The new political elite faced the dilemma: Not carrying lustrations out may solve some problems but deepen others. The continuing scandals in Poland indicated that the problem of collaboration would not disappear. In total, at least three Polish prime ministers, including Oleksy, Cimoszewicz, and Buzek, and two presidents, Lech Walesa and Aleksander Kwasniewski, were publicly denounced. The issue will come back, until it is resolved, said Vice-Premier Janusz Tomaszewski (Olszewski 1996), one of those who was later accused of collaboration. As a German commentator pointed out, East Germany “chose a horror ending—lustrations, opening files. . . . Poland chose a horror without an end and therefore the secret police files will create fear for many years” (Bachmann 2000).

C. The Protection of National Security and Public Safety

Concerns about the protection of newly gained democracy and the irreversibility of transition had domestic and international dimensions. At the domestic level, the danger was related to the subversive activities of the former power elite. On 28 November 1989, one day after the general strike, which was the peak of the Velvet Revolution, the head of the then Czechoslovak StB, General Alojz Lorenz, issued instructions for a conspiracy in the new situation, titled “on the activities of counter-intelligence to solve the social crisis by the use of political means,” which included tasks such as the following:

To target actively the misinformation of the enemy, to discredit the most radical representatives of these structures in the eyes of the public, to make deeper ideological, personal, and action cleavages among these groups. To gain immediately a quality agency power in the mass media . . . for the benefit of the Communist Party of Czechoslovakia. (Directive no. CB 002040/003-89, 1989, quoted in Bacinsky 1991)

It seems that the activities of many former secret policemen complied with the instructions. The old security staff remained in control of the Czechoslovak Ministry of the Interior (Hromadko 1990, 3), and they had unlimited access to the secret files for a few weeks after the Velvet Revolution (J.S. 1990, 2; Report of the Parliamentary Commission 1991). Subse-

quently, ignored by new government members, they destroyed some files (Spurny 1990, 3). It was also suspected that they copied some files for their future use, carried out wild lustrations of democratic politicians (Zacek 2000, 43–46), and utilized their positions at the Ministry of the Interior to influence key security appointments. The rotation of the *nomenklatura* cadres had also its parallel in the security sphere:

In March 1990 . . . new personnel changes were launched in Slovakia. . . . Unfortunately, in some cases [offices were staffed] with former StB employees. . . . A former head of the Central Control and Revision Commission [of the Slovak Communist Party] was appointed the chief of the Kosice's [police branch]. . . . A regional deputy of the StB in Kosice . . . was appointed the chief of a district [police branch] in Michalovce by [the Slovak] Minister [of the Interior] Meciár. (Kulan 1991b)

Although one can only speculate about their objectives, the activities of former networks posed a threat to democratic transition in both countries. They did not confine themselves to the security sector but spanned public administration, public media and state enterprises. About 262 secret agents kept or gained positions in the Czechoslovak media (Mlynar 1992, 3). For instance, in 1990 “the newspaper *Narodna obroda* was founded, which was subsidized by the Slovak government. Its dominant person was Igor Cibula, previously an officer of the StB with a special training for misinformation, [later] the head of the [public] Slovak Press Agency” (Kulan 1991b).

Thus, Stefan Bacinsky (1991), the then director of the Czechoslovak new security service, summarized: “networks that destabilize all the spheres of our public life are everywhere. On the television, on the radio, in printed media, in the public administration and the self-government, in enterprises and also trade unions.” While debating a disqualification of these people from senior public offices, Mr. Bacinsky added that they “certainly have the right to go with us to build the democratic society. But I am convinced that they should not lead us.”

The situation in Poland was very similar to that in Czechoslovakia, however, with one remarkable difference: It lasted almost 10 years. Former members of the security services who were trained in covert activities, infiltration, bribing, misinformation, blackmail, threats, and so on remained connected to all levels of power within the postcommunist state; they operated on an informal basis as networks or, formally, as private security agencies (Los and Zybertowicz 1999, 284). Many of them found employment in the police and in the Office for the Protection of State (UOP) (Los 1995, 122–23). They were associated with many unfortunate decisions of the state organs (see, e.g., Los and Zybertowicz 2000, 179–84). The experience of both countries suggested that mere structural changes that were not accom-

panied by a special personnel policy were inefficient and allowed the old networks to permeate new democratic institutions (see Los and Zybertowicz 2000, 219).

The old networks may not have necessarily been the active element of subversion. The legislatures of both countries also sought to avoid blackmail against public officials that could spread during the transition. Those who, as members or collaborators of the secret police, had informed on their fellow citizens were very vulnerable in this respect. Also vulnerable to blackmailing were those who may have been involved in as yet unreported criminal activities of the secret police and communist *nomenklatura* that were typical in regimes lacking the rule of law. According to the Czechoslovak Parliamentary Commission of 17 November (1991), the “only way to prevent blackmail, the continued activity of StB collaborators, and a series of political scandals that could surface at crucial moments is to clear the government and legislative bodies of these collaborators.” Similarly, the then Federal Vice-Minister of the Interior, Jan Ruml (1990), suggestively asked:

[I]f the KGB has the [copies of Czechoslovak secret police] files, it can blackmail whenever it wants. Can anyone who can be blackmailed be a representative at any level? There is a parallel here with the situation in Czechoslovakia after the war. Lists of Gestapo collaborators were given to the communist police. Hence, it was the beginning of its enormous power, which depended also on blackmail.

The probability that the KGB possessed copies of the files from East Bloc countries was quite high. Soviet “advisors” were traditionally present at the Czechoslovak as well as Polish Ministry of the Interior (Kaplan 1999, 25–26; Groblewski 1999; Andrew and Mitrokhin 2000).³¹ However, secret materials could be in possession of various people because many documents went missing.³² For example, a few days after the semi-democratic elections in Poland in 1989, General Henryk Dankowski issued an order to locate the files of those members of Parliament who had previously been secret collaborators in a new catalogue called “Zbior 560”; since January 1990, the catalogue has been “missing” (Woyciechowski 1997).

The affiliation with the repressive apparatus was used as a means to blackmail, for example, by the Slovak leader Vladimir Meciar. He several times publicly mentioned that he had just found the secret police’s files of

31. “[Soviet advisors] worked in all of the Soviet bloc countries. . . . In Czechoslovakia, all of the important findings and investigation protocols were translated into Russian and sent to Moscow. The Moscow center sent instructions, recommendations and . . . questions to the main advisor at the Ministry in Prague” (Kaplan 1999, 25–26).

32. For example, there was a “cleaning” of secret archives at the Polish Ministry of the Interior, which took place until 1991 (Grocki 1992, 23, quoted in Los 1995, 136).

various people on his table (Mlynarik 1991; Kulan 1991b).³³ He then used the materials in a successful bid to become the head of the ruling movement in Slovakia, Public Against Violence (VPN), and eventually the prime minister of Czechoslovakia's Slovak Republic in June 1990 (Naegele 1999).

Internationally, the experience of the Soviet imperialist politics in Central Europe was still alive. Soviets invaded Hungary in 1956 and Czechoslovakia in 1968, and they threatened to intervene in Poland at the beginning of the 1980s. The Czechoslovak lustration act was passed six weeks after the attempted 1991 *coup d'état* in the USSR that resurrected the activities of former collaborators in Czechoslovakia (Kulan 1991b).³⁴ At that time, also, 300,000 Soviet troops were still deployed in the territory of former East Germany (Spurny 1991).³⁵

Today Russia still perceives Central Europe as a sphere of its power interests, and the potential threat of Russia has not vanished, although there is no actual danger of another invasion. Russia repeatedly made verbal threats to Central European countries that sought to join NATO (see, e.g., Czech Republic in NATO 1999). According to the Czech Security and Information Service (BIS), Russian information services were always considered an important tool of Russian foreign policy. "The policy was characterized by its effort for preserving Russian influence in most countries of the former USSR and the Warsaw Pact. . . . They have sought to gain or to keep economic influence" (Cinnost zpravodajskych sluzeb SNS 1998–99). Central European countries were conscious of the election of the former East-Germany-based KGB officer Vladimir Putin as Russian President in March 2000 (Vladimir Putin Bio 2002).

Nevertheless, former Soviet satellites were not merely passive victims in the international arena. They, especially Czechoslovakia, provided military support to many terrorist regimes and organizations in the past.³⁶ The international contacts of the old networks may provide terrorists with relatively easy access to weapons, technology of their production, intelligence, money laundering, and hence, constitute security risk at the international level.

These security concerns reveal that lustration laws may not be merely

33. A possible explanation of these mysterious findings might be the fact that after his appointment as the first non-communist Slovak Minister of Interior in January 1990, Meciar led a night-time police raid of the secret police archives, allegedly taking his own file and the files of his political rivals (Naegele 1999).

34. This concern was expressed in the speeches of four deputies.

35. According to the then Czechoslovak Vice-Minister of the Interior, Jan Ruml, "We knew that Soviet troops explored [Czechoslovak] border with the former East Germany. There was [also] a concentration of the Soviet border forces at [Czechoslovak] border with the USSR, which can mean whatever" (Spurny 1991).

36. Communist "Czechoslovakia was one of the largest arms producers and dealers in the world . . . [and] a principal arms supplier to areas of Cold War conflict, including Iraq, Ethiopia, Syria, Sudan, Algeria, India, and Vietnam. The Czechs were also a favored supplier to numerous terrorist organizations" (Jordan 2002, citation omitted).

short-term transitional provisions designed to stabilize new democracy. Although domestic security risks have been declining, they have not entirely vanished. Internationally, NATO membership has changed the security concerns in Central European countries. The present problem is preventing the old networks from having access to classified NATO materials and to continuing arms trade.

D. Disclosure of the Truth about the Past

Learning the truth about the past seems to be a powerful idea in many transitional democracies.³⁷ People desire to know the information that was not accessible to them under the regime, which kept a monopoly on truth and used censorship, misinformation and the secret police. Immediately after the fall of communism, people could learn a good deal about human rights violations, border killings, torture, and concentration camps. Many victims shared their personal stories in newspapers, on television and radio. However, materials that were collected about them and their relatives by former cadres and security organs remained secret. The interest in learning the truth led to the requirement to open the archives and publicize the list of those who had gathered information and reported about them.

However, new Czechoslovak and Polish governments prohibited access to the secret police archives, and meetings of relevant inquiry commissions were also closed (Jelinek 1991; Bachmann 1996). On the perpetuation of the secrecy, a journalist who then became the Czechoslovak vice-minister of the interior wrote: "The silence regarding the [secret] archives points at one unclear suspicion: somebody is hiding somebody. . . . But it's better to know and to forgive than to live in doubts. . . . [I]f we want to start again in a different way, we must know above all the truth about us" (Ruml 1990).

Unveiling the truth was one of the most important motivations of many politicians since the beginning of the transition in both countries. A group of the Czechoslovak federal deputies proposed to open the secret police files and publicize the list of the secret police collaborators in "a civilized way" (Necas 1990; Leko 1991). Even the Polish President Aleksander Kwasniewski, a former communist, wanted the lustration law to provide for free access for all citizens to their secret files (Misztal 1999, 44; see generally Los 1995, 143).

Seeking the truth was closely related to the right to information

37. This quest for truth in other transitional countries often includes a search for truth about human rights violations—for instance, knowing the truth about disappearances, torture, border killings, and so on, which is often pursued through some form of truth commission. Although the goals here overlap, lustration laws serve to narrow the search for truth. Truth commissions often include victim-centered approaches to the truth, while lustration is clearly a perpetrator-centered approach (C. Roederer's comment to the original version of the paper; cf. David 2002b).

(Romaszewski 1991, quoted in Los 1995, 127). It included not only the information about oneself but also about the candidates in elections. Some supporters of the lustration process in both countries held a liberal view on that matter:

[I]f a candidate runs for public office, his eventual voter has the full right to know all relevant facts about the candidate, and I also consider a relevant fact the information whether he was, or was not a collaborator of StB, whether he has a criminal record, or whether he suffers from unrecoverable diseases. On the other hand, it is the free will of voters whether they will elect such a candidate. (Zeman 1991)

Anybody who runs for a high office has to be prepared for the lustration process and for the questions about his own past. There are no legal limitations that a [secret police] agent cannot become a president. I think, though, it will not happen. (Olszewski 1995)

To a certain extent, revealing the truth was a precondition of establishing democracy in the transitional countries. It could help people gain confidence in political candidates, regain trust in public institutions, disclaim rumors and gossip, and ease the tight atmosphere in society.

E. Retaliation

Certain retaliatory tendencies are perhaps natural and emotionally driven responses to the representatives of any collapsed totalitarian regime. However, in comparison with the postwar waves of street justice, retributive laws, wild trials, and ethnic cleansing in some European countries, revenge took more subtle forms after the fall of communism in Czechoslovakia and Poland (Huysse 1995; cf. Novick 1968; Deak, Gross, and Judt 2000). People desired the former oppressors to leave public life, and the new political elite discovered the potential of lustrations to pursue this objective. Dismissals of representatives of the former regime raised concerns among journalists, who warned against new human rights violation based on the postwar experience and McCarthyism (Battiata 1991; Laber 1992; Rosenberg 1995).

Popular justice may not have been pursued for several reasons: the long duration of the communist system, its domestic character (Huysse 1995, 71), the wide continuum between perpetrators and victims, and the fact that many of its executors themselves became its victims, all of which precluded easy identification of the adversaries. Another reason might be the declining, although still omnipresent, brutality of communist regimes in Central Europe,³⁸ which contrasted with an extremely violent end of the World War

38. The case of Poland, which experienced a brutal martial law in the beginning of the 1980s, only partially fits this profile.

II. The political wisdom of the first leaders was another factor: The Czech Velvet revolutionaries, aware of the postwar waves of retribution in Czechoslovakia, sought to neutralize popular desires for revenge with the slogan "we are not like them." Likewise, the Polish Solidarity leaders, faced with the then-still-powerful communist clique, drew "a thick line after the past."³⁹ Although a large part of the population might have initially embraced the desire for vengeance, vengeance has gradually become an exclusive agenda of political radicalism. The decline of this tendency over time indicates that the Czech lustration law, approved less than two years after the fall of communism, might have stronger retributive motives than the Polish one, which was passed in 1997.

Indeed, the allegations of institutionalized retaliation and its denial were brought by 17 deputies in the Czechoslovak lustration debate. Deputy Rynda (1991), for instance, called it "legal violence," Deputy Ransdorf (1991) labeled it "inquisition and McCarthyism," and Deputy J. Cerny (1991) saw it as "a proxy for the inability to prosecute communist crimes." Some deputies argued that the bill constituted a collective guilt and caused unjust punishment (Samalik 1991). Advocates of lustrations dismissed these concerns. According to Deputy Farkas (1991), a reporter on the lustration law for the Chamber of the People (one of the houses of Parliament), "during the debate of the bill in the [parliamentary] committees, deputies of some political groups deliberately brought in an impression of the criminal character of the proposed norm." Another deputy, Jana Petrova (1991), argued that the bill's sole concern was employment law relationships. This tension was highlighted by Deputy Kroupa (1991): "[O]n the one hand, many of us are motivated by the spirit of vengeance against representatives of the old regime, and on the other hand, there is hysterical fear of the spirit of vengeance."

F. The Dynamic of Lustration Aims

A few general conclusions concerning changes in the intensity of the aims, their backward- and forward-looking character, and their relationships can be traced from the above elaboration. The urgency of the lustration motives are largely affected by the length of the unregulated period, particularly in Poland; some motives declined in intensity, while others changed their character or intensified. Demands for personnel changes gradually de-

39. The attitude of many leaders was also bound by their previous political agenda. Many of them, at least nominally, fought for human rights instead of against communism. This also reflected the presence of international human rights standards after the fall of communism, which were still in a prenatal stage after the war. The agenda of the postwar leadership was de-Nazification and retribution in many countries, although many of the then leaders also wanted to prevent spontaneous vengeance (Novick 1968, 61).

creased, with few exceptions, when they were connected with other issues brought by media or competing politicians. The focus shifted from general demands for the disqualification of members of the repressive apparatus as a group toward the dismissal of specific individuals. Also, security concerns have changed from the “defense of democracy” to the “fulfillment of the obligations toward new allies” in NATO. Societal demands for truth remained unchanged. Even in 2001, people were still demanding that the government dismantle the secrecy of the totalitarian police (CTK 2001e). Popular retributive desires faded over time, although they were still embraced by certain segments of society. These findings indicate that the need for lustrations does not merely occur during the transitional period, on which they may have a substantial impact.⁴⁰ They are also a response to the long-term needs of societies with totalitarian experience that have to transform their political culture, come to terms with their past, and secure a reliable state apparatus in the pursuit of democracy.

The analysis of the relationship of the lustration motives to the past provides insights that may change the perception of the laws as backward-looking instruments of transitional justice. With the exception of the retaliation motive, forward-looking motives prevail in the processes of transition. The need for personnel discontinuity, for example, is not merely a response to the past; rather, it is a response to the continuing activities of the old networks during transition. Similarly, the demand for truth revelation is not self-serving but has an important forward-looking dimension of helping to establish trust in society. The need to protect people from the arbitrariness of unregulated stage is clearly a response to the defective features of transition. These findings contrast with international commentators’ perception of the process as backward-looking and retroactive (e.g., Report of the ILO Committee 1992, ¶ 79).

To analyze lustration outcomes, one must examine the complex relationships between the aims of lustration. “Personnel discontinuity” and “truth revelation” are not only aims in themselves, which are connected to the right to remedy and the right to information. They are also parallel means that facilitate the pursuit of other legitimate and illegitimate aims. Personnel changes enable an actual discontinuity with the past, while truth revelation facilitates value discontinuity. The deeper the discontinuity implemented either by dismissals or truth revelations, the more security needs are satisfied, the more institutionalized retaliation is pursued, and the less space is left for defamation and the arbitrariness of power. These relationships are not absolute; they are inherently limited. For instance, the widening of personnel changes and truth revelation may reduce security risks only

40. The approval of the lustration law and other laws that dealt with the past was used as an indicator of the relative success of reforms in the Czech Republic during the initial years of transition (Cepl and Gillis 1996).

when there are professional replacements for the vacant positions, and when the information about the activities of the intelligence does not endanger the safety of its agents.

II. LUSTRATION LAWS

Every lustration law contains substantive and procedural parts. The substantive part determines what positions in the new democratic system cannot be automatically filled by the members of the totalitarian repressive apparatus. Every lustration law, therefore, contains two lists of positions: One is backward-looking and one is forward-looking; the first concerns posts in the past power hierarchy and the latter defines democratic posts.

The Czech Lustration Act is based on the principle of personnel discontinuity with the past, while the Polish one emphasizes value discontinuity through truth revelation. The Polish Lustration Act reflects the changing characters of the aims over time. Adopted eight years after the breakdown of communism, it was almost impossible to justify personnel discontinuity with the past.

A. The Czech Lustration Act

The first lustration law was approved in Czechoslovakia on 4 October 1991 as Act no. 451/1991 Sb.,⁴¹ which "prescribes certain prerequisites for the exercise of certain positions filled by election, appointment, or assignment in State organs and organizations of CSFR, CR and SR" for the period of five years.⁴² Among the 300 federal deputies, 148 voted for the act, 31 against it, and 22 abstained.⁴³ President Havel signed the act despite his reservations (Report of the ILO Committee 1992, ¶¶ 32–42). Pursuant to the petition of 99 deputies, the Constitutional Court of CSFR abrogated

41. The original version is available in English (cf. Kritz 1995, 3:312).

42. In addition to that, the Czech National Council enacted a minor lustration law on 28 April 1992. It is Act no. 279/1992 Sb., which concerns members of the police and members of the prison guard of the Czech Republic. This supplementary act is not examined in this paper. Its forward-looking provisions widen the scope of the law in a very minor way and its backward-looking provisions are almost identical to Act 451/1991 Sb.

43. The bill was approved by the deputies of the Civic Democratic Party (ODS), the Christian Democratic Movement (KDH), the Christian Democratic Union (KDU-CSL), the Public Against Violence (VPN), the Civic Democratic Alliance (ODA), the Movement for Self-government Democracy I (HSD I), the Christian Democratic Party and the Liberal Democratic Party (KDS and LDS), the Hungarian Christian Democratic Movement (MKDH), some deputies of the Slovak National Party (SNS), the Association of Social Democrats (ASD), and the club of independent deputies. The clubs of the Civil Movement (OH), HSD II, the Movement for Democratic Slovakia (HZDS), the Social Democratic Party (CSSD), some deputies of the SNS, two members of the KDU-CSL, and the CP did not vote for the bill (abstained, voted against, did not vote, or refused to be present during voting) (Federal Assembly of CSFR 1991).

several provisions but upheld the act in its substance on 26 November 1992 (Pl. ÚS 1/92).⁴⁴

The act has not been applied in Slovakia since the split of the federation (Explanatory Memorandum 1996, n.11), and it formally lost its effect there by the end of 1996 (Fisher 1997). Nevertheless, it was twice extended in the Czech Republic: on 27 September 1995 as Act 254/1995 Sb. and on 25 October 2000 as Act 422/2000 Sb. The second extension is not limited. In both cases, President Havel tried to veto the extension,⁴⁵ but both vetoes were overruled by the Chamber. In 2000, more than 36% of Czechs supported the extension of the act, and 33% were against it (IVVM 2000). On 5 December 2001, pursuant to the petition of a group of deputies, the Constitutional Court of the Czech Republic upheld the act and its extension (Pl. ÚS 9/01).⁴⁶

The lustration act procedure can be broken down into the following steps: An individual, who holds, applies, or stands for a position specified by the act, is required to submit both a certificate issued by the Ministry of the Interior about her work for, or collaboration with, the secret police, and an affidavit that she did not belong to other groups specified in the act (§§ 4 [1] and 4 [3]). If an individual belongs to any group specified in the act, the organization is required to terminate her employment contract or transfer her to a position that is not specified by the act (§ 18 (2); cf. §§ 15, 16). The publication of the certificate is impermissible without the written consent of the citizen (§ 19).⁴⁷

The act applies to elected, appointed, and assigned positions⁴⁸ in the state administration, and high-ranking officers in the army and the Ministry of Defense, the Security and Information Service, the police, and the Corps

44. In addition to other provisions, the court also annulled § 2 (1) (c) of the lustration act (the candidates for secret collaboration). Unlike other categories, the records kept on this category were unreliable for the purposes of the act. For example, the collaboration with people in this category may have been in initial stages, and they may not have been fully aware of that fact.

45. According to presidential spokesperson L. Spacek, "Mr. President explained his step saying that he did not sign the laws in 1995 either because he did not want to justify the five-year period of waiting for the bills on civil service." Spacek said, adding that for this reason President "Havel would not allow another five-year waiting period" (CTK 2000b).

46. The court abrogated some provisions of the minor lustration law that had not been previously reviewed.

47. Any person can object to the termination of her employment at a second-level regional court instead of the first-level district court (§ 18 [2]) and appeal the decision at the High Court (Act no. 99/1963 Sb., § 10 [2]). According to the Supreme Court (Decision no. 6:273, 1992), the truthfulness of the certificate issued by the Ministry can be challenged on the basis of civil procedures (Act no. 99/1963 Sb., § 247). Other legal protection in this area is guaranteed by the civil code's protection of the personhood clauses (Act no. 40/1964 Sb., §§ 11–16). Thereafter a person can submit a constitutional complaint, if her rights are encroached (Act no. 182/1993 Sb., § 72 [1] [a]).

48. The act concerns only senior positions in the listed organizations, and it does not affect employees therein. Some deputies originally proposed widening the scope of the law—e.g., by replacing the word *positions* with the word *employment* (Farkas 1991).

of the Castle Police. It includes senior positions in the offices of the constitutional organs (the offices that support the presidency, the Chambers, the government, the Constitutional Court, and the Supreme Court), the public media, and the management of enterprises where the majority shareholder is the state. The requirements also concern academic officials in management positions; the posts of judges, assessors, prosecutors, investigators, state notaries, and some security-sensitive concession-based trades.⁴⁹ Every individual older than 18 years of age is entitled to apply to the Ministry of the Interior for the issue of a lustration certificate (§ 8 [1]). The certificate and affidavit are not required for citizens born after 1 December 1971 (Act no. 422/2000 Sb., § 1).

Backward looking provisions concern those parts of the repressive apparatus that are proclaimed incompatible with the above-specified positions in state organs and organizations.⁵⁰ It includes members of the State Security (StB), its collaborators at the specified levels, some higher Communist Party officials,⁵¹ the political management of the Corps of National Security, members of the People's Militias,⁵² members of the purge committees,⁵³ and students, scholars, or visitors at the specified Soviet KGB and other political-security universities between 1948 and 1989.

B. The Polish Lustration Act

The Polish *Sejm* adopted the lustration bill in April 1997. Among its 460 members, 214 voted in its favor, 162 against, and 16 abstained (Misztal 1999, 44). The Polish senate approved the bill in May 1997. Among 100 senators, 47 voted for it while 33 voted against it.⁵⁴ President Kwasniewski

49. It concerns trades in the area of development, production, repair, and trade with firearms, weapons, and ammunitions, etc. (see Act no. 455/1991 Sb., § 27 [2] and app. no. 3).

50. Two sections of the lustration act that concern the repressive apparatus: §§ 2 and 3. The latter is only a modification of the former. The following discussion focuses on the more important section 2 of the act.

51. It includes the top echelons of the Communist Party with the exemption of those who held these positions during the period between 1 January 1968 and 1 May 1969. The reason for this exception is that since the selection of Alexander Dubcek as the secretary general, the CP tried to launch social and political reforms of the totalitarian system, which might have led to the abandonment of authoritarian ways of governance and to the building of "socialism with a human face." This attempt was halted by the military intervention of the Warsaw Pact armies on 21 August 1968.

52. The People's Militias were paramilitary units of the Communist Party, which helped to facilitate the communist takeover in 1948 and conducted various repressive tasks during the communist regime (Bilek and Pilat 1995).

53. These purge committees were established ad hoc after the communist takeover in 1948 and after the Soviet invasion into Czechoslovakia in 1968 in order to facilitate broad arbitrary exclusions of hundreds of thousands of people from their posts for political reasons (see Pl. US 1/92).

54. The bill was supported mainly by the Solidarity Election Action (AWS), the Freedom Union (UW), and the Polish Peasant Party (PSL). Opposition to the bill came mainly

(former member of the ex-communist SLD) signed the bill in June 1997, although he later requested the Constitutional Tribunal to abrogate some of its provisions (Constitutional Watch: Poland 1997a). The act “on the revealing of work or service in State security organs or of collaboration with them between 1944 and 1990 by persons holding public positions” (Polish Lustration Act) came into force on 3 August 1997 (Constitutional Watch: Poland 1997b) and was several times amended.⁵⁵ On 21 October 1998, the Constitutional Tribunal upheld the act (Sygn. K. 24/98). However, in a subsequent decision of 10 November 1998, it found two of its provisions unconstitutional (Sygn. K. 39/97). In 1999, 56% of Poles supported lustrations, while 31% were against them (CBOS 1999).

The main feature of the Polish lustration act is verification of affidavits submitted by persons who apply for positions specified by the act as to whether they worked or collaborated with security services of the communist regime (arts. 2, 3, 4, and 7). The substance of these affidavits, if they reveal collaboration, is officially published in “Monitor Polski” (the Polish Monitor), the government gazette (art. 11).

The act establishes a special lustration prosecutor, the spokesperson of the public interest (RIP) (art. 17), and authorizes the Warsaw Court of Appeal as the lustration court (art. 1). It sets a special judicial procedure that is directly connected to the regular criminal law (art. 19).⁵⁶ The process can be initiated by the RIP at the court, and a member of Parliament can propose its initiation (art. 18).⁵⁷

The court decides whether the affidavit is true or false, or orders a suspension of the case. The lustrated person is in the position of an accused according to criminal law (art. 20) and she can appeal the judgment (art. 23 [2]). The results of the lustration are published in the Polish Monitor (art. 22 [4]). A false affidavit is sanctioned by the loss of moral qualification for 10 years, which implies the loss of the right of access to any public positions for that duration (art. 30).

Public positions affected by the act’s forward-looking provisions include the highest constitutional officials, namely the president of the republic; deputies and senators; and persons assigned, elected, or appointed by the

from the Democratic Left Alliance (SLD), which is led by the ex-communist Social Democratic Party (SDRP) (Constitution Watch: Poland 1997a).

55. See Dz.u.99.42.428, Dz.u.99.57.618, Dz.u.99.62.681, Dz.u.99.63.701, Dz.u.00.43.488, Dz.u.00.50.600. In 2002, the coalition dominated by former communists narrowed the lustration law (see Dz.u.02.14.128). This change is not examined in this paper (see also *supra* note 10). Center-right deputies asked the Constitutional Tribunal for their review (PAP 2002a).

56. If a procedure is not regulated by the act, it is regulated by the Code of Criminal Procedures.

57. The procedure can also be launched at the request of a publicly active person who was publicly denounced of working or collaborating with security organs (arts. 8 and 18a [3]). It can also be launched at the request of a person who demands a decision that she was forced to such collaboration (art. 18a [4]).

president and other constitutional organs. The provisions also include senior public officials, judges, prosecutors, and advocates and those who occupy leading positions in public media (art. 3).

The backward-looking provisions of the Polish lustration act concern positions held in the several security organs between 1944 and 1990, such as the Ministry of Public Security, the Committee for Public Security Affairs, and their subordinated units; and the Security Service (secret police), army intelligence, army counterintelligence, and other services of the military forces. The lustration act also covers civil and military organs and the institutions of foreign states that engage in tasks similar to the aforementioned organs (art. 2).⁵⁸

III. THE EVALUATION OF THE LUSTRATION POLICIES

This part evaluates the extent to which the application of the laws has fulfilled the expectations and compares the impact of the laws in both societies. It analyzes the legal lustration stage in the Czech Republic (1991–2001) and in Poland (1999–2001),⁵⁹ and it also examines the post-lustration situation in Slovakia, where several negative features of the unregulated stage had been reestablished during the rule of Vladimir Meciar (1994–98).

A. Minimal Justice: Personnel Discontinuity with the Totalitarian Apparatus

The Polish lustration act substantially differs from the Czech one with respect to discontinuity. In the Czech Republic, a positive lustration means that a person is not eligible for a position in the new democratic regime, which leads directly to her disqualification. In Poland, lustration serves as a means of verifying the truthfulness of an affidavit submitted by a candidate for a specified office declaring whether she worked for the repressive apparatus of the former regime. This process can lead to the conviction that a person is dishonest, and as a consequence, she can be barred from a position in the democratic government for 10 years. The Polish lustration law actually divides high public officials into three groups: those who did not work or collaborate with the past security organs, those who did so but revealed the fact, and those who failed to confess their past. Only the third group could be dismissed. Thus, in Poland, the requirement of discontinuity with

58. The Polish police state of the 1980s is analyzed in Los and Zybertowicz (1999, 263–68).

59. Although the Polish lustration act was approved in 1997, the process only started 1 January 1999 because of the lack of political will to establish lustration institutions.

the past regime is met only conditionally, whereas in the Czech Republic, it is satisfied directly.

In reality, however, both acts partially converge in respect to this aim. In the Czech Republic, the Act is sometimes avoided by an informal "authorization." It means that a person who is not eligible for a specified position because she does not meet the lustration criteria is authorized temporarily to hold a position. A few such cases were related to key privatization institutions.⁶⁰ According to lawyer Petr Toman, the former spokesman of the Parliamentary Committee of 17 November, "entrusting people with exercising some leading [positions] was the way of circumventing the screening law" (2000c).

In Poland, after submitting an affidavit revealing collaboration with the communist repressive apparatus, those involved are in some cases dismissed, or there is pressure for their dismissal (PAP 2002b). For example, on 2 March 1999, after publication of the first list of affidavits revealing collaboration with security forces, Hanna Suchocka (UW), then minister of justice, "reacted swiftly, demoting two district procurators who had acknowledged their collaboration. At the same time, she recommended that the presidents of courts dismiss those judges whose names had been published [as secret collaborators]" (Constitutional Watch: Poland 1999). Some anti-lustration-oriented Polish media interpreted it as a "punishment for truth" (Paradowska 1999a), whereas some pro-lustration media considered the lack of discontinuity as the main shortcoming of the process (Woyciechowski 1997).

The Czech lustration act would meet the criterion of discontinuity in leading positions if it were properly enforced. The Polish lustration act does not formally preclude such discontinuity because the disclosure of the truth about one's past can be a reason for dismissal. However, these dismissals seem to occur only rarely, highlighted and criticized by the media. Consequently, discontinuity with the past in Poland, attributable to the lustration law, cannot be substantiated.

In the Czech Republic, the scale of discontinuity, represented by the number of people who left their posts after the law was enacted, is difficult to estimate. There are no comprehensive statistics concerning the application of the lustration act. By November 1992, 168,928 lustration certificates had

60. For instance, the section of the National Property Fund (FNM) that was responsible for exacting claims was led by the alleged former secret police officer Milan Plevka. The FNM spokeswoman said that Plevka was only entrusted with leading the section and was not appointed as its director (CTK 2000c). This was not the first scandal in the FNM, one of the key institutions in the privatization process. In 1999, journalists found that its chairperson, Jan Stiess, had been using a false lustration certificate (Navara and Baroch 2001). In another case related to privatization, D. Triska, allegedly a secret collaborator, "held" a position of federal vice-minister of finance under Vaclav Klaus (ODS). Triska was considered a founding father of the voucher privatization, which largely favored high communist cadres; he was later dismissed (Hejl 2002).

been issued, among which 11,363 were positive (Pl. ÚS 1/92).⁶¹ According to information provided by the Ministry of the Interior in March 2001, approximately 345,000 lustration certificates, among them around 3% positive, had been issued since the law took effect (Sulc 2001). According to a poll conducted in the Czech Republic in 2000, 32% of respondents thought that the lustration law was beneficial to democracy, while 27% held the opposite view; 29% thought that it was beneficial to the personnel situation in enterprises and offices, while 30% held the opposite opinion (IVVM 2000).⁶²

Besides their different means of pursuing discontinuity with the past, the scope of the laws determine their capacity to reach this aim. Both lustration laws are quite narrowly drawn. In the vertical dimension, they do not concern the entire public service. They only apply to leading positions in the administration, although they concern all members of the justice system. At the horizontal level, neither of these acts regulates the economic sector. This means that members of the former repressive apparatus can run "their" businesses in many areas.⁶³ Unfortunately, their enterprises were often associated with word tunneling, which reflected mismanagement, nontransparency, fraud, and bankruptcy. For example, in the Czech Republic, former secret police agent Vaclav Junek, who was allegedly involved in an industrial espionage in the French chemical industry, became the general manager of the Chemapol Group; and former *nomenklatura* cadre, Lubomir Soudek, became the general manager of Skoda Plzen. The enterprises managed by them were almost bankrupted (Spurny and Kontra 1998; cf. Sykorova 2000). Moreover, Soudek tried to supply weapons to the regimes under the U.N. embargo (Spurny and Kontra 1998).

In Poland, even if the lustration law concerned the business sphere, it

61. This number did not include the abrogated category (c). However, it did include many election candidates, those who applied for the certificate because of their own interest, and members of organizations that conditioned their membership on negative lustrations, such as the Confederation of Political Prisoners (Drobny 2000). Since "legal" lustrations were launched in 1991, the number also covered certificates issued for the Slovak part of the CSFR. On the other hand, many of those who had "certain contacts" with the secret police might have been deterred from applying for a listed position and, therefore, be also affected by the law.

62. The question of whether the law was beneficial to the personnel situation in enterprises and offices is disputable, since the act does not concern enterprises and the public may not be aware of that fact. The Czech lustration act only concerns the management of state enterprises and some security-sensitive concession-based trades. Public demand for lustration in the private sphere would be very hard to defend. See below.

63. According to a survey conducted from 1992 to 1996, membership in the communist elite is the most significant variable for predicting membership in the new business elite (Mateju and Rehakova 1997, quoted in Tucker 1999). These data offer three interpretations. First, the lustration law is unsuccessful in providing discontinuity with the past because it does not affect the business sphere. This was expected by the public but was legally unjustifiable and therefore was omitted from the law. Second, the requirement of discontinuity was met because the former *nomenklatura* left the state administration and entered the private sector. The explanation for their success could be their human capital and management skills, none of which, however, was associated with the profile of communist cadres. Third, the requirement of discontinuity was met only partially. Cadres who left the state administration have nonetheless kept their contacts with those who stayed. Their social capital explains their business success.

was enacted too late to prevent old cadres from taking advantage of their social capital during the massive privatization process.⁶⁴ In the “capital conversion process,” former *nomenklatura* transformed political capital for economic capital, which it later utilized to regain political power; security networks played a vital role in this process, providing intelligence, international contact, skills and protection (Los and Zyberetowicz 2000, 20).

The approval of the lustration law in the Czech Republic and the absences of lustration in Poland might be one of the factors that explains different patterns of the grand-scale corruption, by which many *nomenklatura* cadres legalized their informal ownership of huge enterprises. While the “capital conversion process” took place during all the transformation period in Poland, the “tunneling” of the Czech economy became only apparent in the midst of the 1990s. It seems that the Czech lustration law had been fairly effective in decreasing the influence of old cadres on politics and economic transformation within a few years of its enactment. The law made keeping or deploying their people in crucial decision-making positions in the privatization process difficult. The business class of *nomenklatura* cadres could no longer rely on their connections to the Communist Party (KSCM), whose political influence also diminished due to their repeated electoral defeats and political isolation.⁶⁵ Thus, the old power networks had to find other ways to pursue their objectives: They exercised their influence over parties that were committed to pursuing privatization via liberal provisions on financing of political parties.⁶⁶

Although both lustration laws have been found quite narrow in their scopes, they substantially differ in their backward-looking aspects. Unlike the Czech lustration law, the Polish one does not include high communist echelons as possible initiators of human rights violations. It includes only members of and collaborators with the secret police and other security

64. See, e.g., the FOZZ scandal, the BIG scandal (Los and Zybertowicz 2000, 165, 173).

65. The minimal discontinuity with its Czechoslovak predecessor is probably the main reason why the Czech Communist Party (KSCM) remains in political isolation. Until 2002, none of its members has ever been elected to a leading post of the Czech Parliament. President Havel never invited KSCM to political consultations, as he did the other parties. And at the party congress held 14–16 March 1997 in Bohumin, even its ideologically closest potential ally, the Czech Social Democratic Party, approved a statement of noncooperation with KSCM at the central level.

66. The then version of Act no. 424/1991 Sb., on political parties, enables unlimited sponsorship of parties without any sanction for eventual false sponsorship. The center-right parties of the then-government coalition, especially ODS and ODA, received millions of Czech crowns (CZK) as gifts from official or fake sponsors. However, the “sponsorships” that accompanied the privatization process were not limited to the past cadres. For example, one of the main sponsors of the ODS was former tennis player Milan Srejber, who co-privatized an iron-industry enterprise in Trinec. In another case, a company that belonged to Agroplast, which smuggled jet bombers (MiG-21s) to North Korea, let the ODS use its helicopter in electoral campaigns (Kmenta 2000b). Later, the government of Social Democrats (1998–2002), backed by ODS, deepened special relations with old *nomenklatura* “experts” (Jordan 2002b).

branches.⁶⁷ In Poland, even some lustration opponents criticize the lack of de-communization, which is actually a request for the widening of the law (Paradowska 1999b). Nevertheless, the number of affected communist *apparatshiks* is almost insignificant in the Czech Republic.⁶⁸

Despite the narrow composition of both laws, to my knowledge, in neither country did the old totalitarian networks in the state commit serious human rights violations after the laws were enacted. However, the institutions of the criminal justice system are appallingly inactive in the prosecution of communist crimes. Given the scale of gross human rights violations,⁶⁹ the trials of their perpetrators are rare in both the Czech Republic⁷⁰ and Poland.⁷¹

Abuses of state power were restored in Slovakia after its lustration policy was dropped. The Slovak Information Service (SIS) allegedly employed a large number of former secret police agents, including its first deputy, Jaroslav Svechota (Butora 1999). The SIS was involved in several serious incidents that violated essential democratic principles. It placed under surveillance the then-opposition parties and politicians; monitored churches, trade unions, and journalists critical of Vladimir Meciar's government; organized a kidnapping of the son of the then Slovak President Michal Kovac Jr. (Radio Prague 1999c); sabotaged public meetings; and blew up the cars of journalists. These illegal activities were carried out by a secret 52nd department that was under the direct command of Mr. Svechota (Nemecek 1999).

In this case, the abuses of power are associated with former secret policemen. One cannot claim that these abuses are consequences of their presence. One can merely claim that had the Czechoslovak lustration law remained valid in Slovakia, Mr. Svechota and others might not be allowed to work at the SIS. If the power abuses were politically motivated, and some commentators indeed suggest a link with the PM Meciar, then the political elite would have to find different ways to intimidate its opponents.⁷²

67. This is the reason why *lustration* is distinguished from *de-communization* in Poland, while the term *lustration* also includes partial de-communization in the Czech Republic.

68. For instance, the category of Party secretaries at the district level is one of the widest. The Czech Republic consisted of 72 districts before 1989. The total number of the former Party *apparatchiks* affected might be several hundreds.

69. See *supra* notes 22 and 23.

70. By 1 November 2001, nine people were condemned, among them five received suspended sentences in the Czech Republic (*Prehled pripadu* 2001).

71. In Poland, there has been "only one major trial of persons responsible for Stalinist crimes. . . . [It] resulted in convictions . . . for all twelve defendants, former functionaries of the Ministry of Public Security. . . . [One of them] received a suspended sentence" (Los and Zybortowicz 2000, 186). The reason for these results in Poland might be "[p]olitical manipulation, as well as the intimidation of judges, prosecutors and witnesses, [which] have been well-documented" (2000, 187).

72. Had the law been in force, Meciar himself might not have been eligible to hold the appointed post of the prime minister, depending on the category of his alleged collaboration with the secret police (Naegele 1999).

B. The Protection of Rights and the Need for Legal Regulation of the Process

Both lustration laws provide individuals with the opportunity to defend themselves from defamation and rumors of collaboration with the former secret police. In the Czech Republic, anyone can request a lustration certificate, and in Poland, a defamed person can require the decision of the lustration court. Nobody can be lustrated without previous consent, and in both countries anyone can challenge the decision at the court.

The lustration laws had a different impact on public life in the Czech Republic than that it had in Poland, while the absence of the law to a large extent influenced politics in Slovakia. In Poland, after three years of the process, it is difficult to determine whether it fulfilled the expectation of calming the tense political atmosphere or deepened the political crisis. On the one hand, the law offered a way out of political tensions and mutual mistrust. For example, after the lustration act was passed, Deputy T. Karwowski publicly accused Prime Minister Jerzy Buzek of collaboration. Buzek responded by asking the Spokesperson of the Public Interest, Judge Nizienski, to examine his affidavit first. Nizienski agreed and announced that he had found no grounds for requesting the lustration court to examine the Prime Minister's affidavit (Constitution Watch: Poland 1999).

On the other hand, every single step of the Polish lustration process is interpreted as a political scandal, and much of the criticism seems to be negatively biased. Some journalists reach disavowal conclusions about persons concerned before the lustration process ends or even at its very initiation. The provision that every member of Parliament may propose an initiation of the verification of affidavits submitted by people holding state offices is considered a tool of political struggle (Paradowska 1999b), although without the provision, politicians would continue to denounce their rivals at their press conferences. A proposal to initiate the lustration process is considered a dirty orchestrated accusation (Michnik 1999), and a decision of the lustration court is treated as final although pending an appeal (Paradowska 2001). The lustration of candidates for high state offices, namely the presence of the presidential candidates at the lustration court, was interpreted as their discrediting (Baczynski 2000) despite the fact that both Lech Walesa and Aleksander Kwasniewski had a chance to clear themselves from suspicion. They would not have this chance without the law and the regular lustration process. Moreover, a reprint of the officially published names of those who revealed their collaboration in one newspaper is portrayed as a scandal by other newspapers (Checko 1999). The question is, How could people exercise control over public officials without knowing their pasts? According to the *ratio legis* of the lustration law, the public was supposed to give its compromised leaders a second chance in exchange for truth. Thus, the criticism in fact insists on the second chance without truth revelation.

The contaminated lustration discourse might be a result of the long pre-lustration period when the theme was used quite arbitrarily to discredit political opponents. The situation may settle as time passes. Such optimism was manifested in the first lustration decision of the Polish Constitutional Tribunal:

In the present political life, we can observe . . . allegations of politicians regarding the fact of collaboration of particular persons with security organs as well as questioning the truthfulness of already submitted affidavits. This is a very bad habit. [However] looking from this point of view . . . the carriage of the lustration proceeding . . . will without doubt contribute to the recovery of the situation." (Sygn. K. 24/98, part 3.3)

Obviously, there will always be people, journalists, and "politicians on the right as well as on the left who would never be persuaded even by the decisions of the Lustration Court" (Gottesman 1999). However, this should not surprise anybody. Some people will never be convinced by the decisions taken at any level of any judicial system. Moreover, certain mistrust is logically needed as the precondition of trust. In democracy, people cannot uncritically accept an authority as in a monarchy or a church.

The poisonous atmosphere that surrounds the lustration process also originates in the lack of wide social consensus on the definition and causes of collaboration. Any legal definition has an inherently dichotomous character, dividing a continuum of possibilities according to those that conform with the definition and those that do not. The definition of *collaboration*, for example, transfers the complexity of human nature, with all its weaknesses and ambiguities, and here exposed to the extreme situations of totalitarianism, to binary categories of truth versus lie, and collaboration versus not collaboration. Many intellectuals, including former dissidents such as Adam Michnik in Poland or Petr Uhl in the Czech Republic, recognized these difficulties, stood by former oppressors, and became opponents of the process. However, such approach, which blames the system rather the individual for the act of collaboration, deprives individuals of their humanity, their capacity to be responsible for their acts. If the human agency was absent in former communist regimes, the democratic transformation could never occur. In a way, this inclination to blame the system may arise in response to any legal provisions that regulate social relations, especially those of penal law. However, the fact that a murderer may in fact be a victim of society because she is unemployed and had a difficult childhood does not lead to the abolition of criminal sanctions. Of course, lustration processes do have borderline cases, such as those of Jan Kavan in the Czech Republic and Marian Jurczyk in Poland (Rzeczpospolita, 3 October 2002). But neither do borderline criminal cases lead to the abandonment of penal code.

In Slovakia, mutual accusations have continued even in the post-Meciar era (Radio Prague 1999d), and there has been no mechanism for their resolution since the lustration policy was abandoned. Notwithstanding, lustration does not seem to be an issue on the present Slovak political agenda.⁷³ For the second round of the 1999 presidential elections, Slovaks chose two candidates, Rudolf Schuster⁷⁴ and Vladimir Meciar (Naegele 1999). The two might fall within the scope of the Czechoslovak lustration act if it was applied and, in addition, if it concerned popularly elected offices.⁷⁵

In the Czech Republic, the lustration act has substantially helped reduce political tensions although scandals typical of the pre-lustration stage are still reported. The main problem is that the act has not entirely stopped the leaking of materials, executed often on a selective basis, which has led to other political scandals. For instance, before the 1992 Czechoslovak parliamentary elections, an incomplete list of secret police collaborators was published (Cibulka 1992). The same list was appended and reprinted in 1999 (Cibulka 1999) and is now available online. Leaked materials sometimes directly target certain individuals. For example, unauthorized materials about prominent Czech politician Jan Kavan are often published (e.g., a recent book of the Kavan's secret police file) (Vachalovsky and Bok 2000; cf. Goldsmith 2000; Remias 2000).

The leaked information may not be correct.⁷⁶ President Havel condemned the leakage, pointing out that the materials were not reliable and caused "immeasurable number of human tragedies" (Michnik 1993). Despite the condemnation, Havel himself did not express much of his trust in Kavan when he hesitated to appoint him the minister in the social democratic government after the 1998 parliamentary elections (Pergler and Kubik 1998; cf. CTK 2002).

There are several possible explanations for the leakage. The reason that attracts the media is usually the past of a person who holds a high public office. In the Kavan case, it was his high position as the minister of foreign affairs (1998–2002) and the president of the UN General Assembly (2002–3); the evidence procedure that led a court to a conclusion that he was not

73. While this paper was being revised for print, the Slovak newspaper *Sme* (21 October 2002) identified nine members of the newly elected Parliament, including the minister of foreign affairs, as alleged collaborators with the secret police. The chairman of the Slovak Confederation of Political Prisoners, L. Pittner, expressed hope that the lustration issue would be reopened after Slovakia receives an invitation to join NATO. Nevertheless, the alleged collaborators mostly belonged to the "gray category c," which was abrogated by the Czechoslovak Constitutional Court in 1991 (see Pl. ÚS 1/92).

74. In 1992, Schuster had to leave the post of the Czechoslovak ambassador to Canada as a consequence of the lustration act (Sedlak 2001).

75. Cf. *supra* note 48 and 72.

76. Some politicians and government officials, including Marian Gula, the head of the Slovak Office for the Investigation and Prosecution of Communist Crimes and former head of the same office in the Czech Republic, confirmed that Cibulka's lists are correct. The problem is that the lists include also category c, which was abrogated from the lustration law.

a conscious collaborator despite his allegedly frequent meetings with the secret police members, one of which was broadcast on a Czech private TV; his 1996 Senate campaign, in which two former secret police members participated; and his profile as a "convicted liar" by a court of justice (Spurny 1998; Larsen 1998; Pecina 1998; CTK 1998; Tucker 1999, 85–87).

Information leakage may also reflect the narrow scope of the law. The public and even some state officials still consider that some exponents of the previous regime should be included in the law in order to prevent them from getting influential positions such as in the business sector (Spurny and Kontra 1998) and media⁷⁷ or from being honored by state awards.⁷⁸ The leakage might be a result of the belated enactment of the law. For a few months following the breakdown of communism, many people, including former secret policemen, had access to secret police files, and "conditions at the [Czechoslovak] ministry [of the interior] were such that nearly everyone was able to walk away with StB documents" (Report of Parliamentary Commission of 17 November 1991).

The prevention of information leakage could be supported by other acts, such as the Protection of the Classified Data Act, the Freedom of Information Act, or the protection of personality clauses of the criminal law and the civil code. In any case, both lustration laws authorize certain state organs to keep control over the classified documents. Consequently, senior state officials should be held accountable if the leakage comes from their institution.

C. The Protection of the National Security and Public Safety

Both lustration acts seek to safeguard democracy, though they differ in the means to achieve this aim. In the Czech Republic, the threat to democracy is reduced by removing some members of the totalitarian machinery from leading positions. In Poland, a revelation of past collaboration is officially published that gives the public an opportunity to control the steps

77. Both lustration laws include only leading positions in public media. Although the Czech lustration act enables holders of media licenses to require lustration of certain specified posts therein, this is a mere option that does not preclude, for example, former misinformation specialists from working in the media. Thus, in 1992, the Federal Security and Information Service delivered a list of names of 262 journalists to the Czech Prime Minister Petr Pithart. These individuals allegedly had been agents of StB and were said to have destabilized society after 1989 with biased information. Pithart in turn handed the list to the Czech National Council, and shortly after, it was published (Mlynar 1992).

78. In October 1998, a prestigious Czech award was to be given to the former Mayor of Vienna, Mr. Helmut Zilk. However, after information stating that Mr. Zilk had allegedly collaborated with the Czechoslovak communist intelligence was passed to the office of the Czech president, the invitation to Zilk was canceled. After a few weeks of international scandal, Mr. Zilk received an apology from President Havel (CTK and ZAH 1998; HOP et al. 1998; cf. Plavec 1999).

taken by these officials, while a false affidavit leads to their removal from public office.

However, if they do not hold prescribed leading positions, former members of repressive apparatus are not subjected to the lustration process. Neither of the lustration acts requires the removal of these people from their *employment* in central state institutions. Since both lustration acts only affect high-ranking positions in security departments, and given that the secret services of communist countries were subordinated to the KGB and that Russian security services still perform activities in the territory of Central Europe, the question is whether their narrow scopes are sufficient for the new member states of NATO.⁷⁹ The Polish lustration law is even more lenient than the Czech one in the employment of former agents in the new security organs. As a result, 8% of the Polish police officers and two-thirds of the employees of the Office for the Protection of the State (UOP) were former SB operatives in the late 1990s (Los and Zybertowicz 2000, 132, based on various resources). The rest of them largely worked for private security and detective companies, which employ approximately 100,000 people (Los and Zybertowicz 1999, 284, based on data from 1994).

New democracies also have a common problem with law enforcement. For example, in 2001, the Czech Minister of the Interior, Stanislav Gross, announced that negative lustration certificates were illegally issued to many former members of the army intelligence (CTK 2001a). This resulted in the checking of 150,000 issued lustration certificates. It was found that 117 illegal certificates had been issued mostly in 1992 as a result of “incorrect analysis” of documents (CTK 2001c).⁸⁰ Czech press reported that NATO officials were unsettled by the scandal (CTK 2001b).

The Czech lustration law was unable to stop suspicious arm trade. At the official level, economic slowdown and increasing unemployment at the end of the 1990s forced the social-democratic government to implement a more lenient licensing policy. The Ministry of Foreign Affairs, headed by Jan Kavan, for example, agreed with the arms export to Sri Lanka and Iran. At the unofficial level, some companies had been supplying countries like Algeria, Libya, Iran, and North Korea for a number of years (Jordan 2002a; Kmenta 2000a; Stroehlein 1998).

In a way, it is a tradition. The Czech Republic has very good relations from the past with these countries. [It] has a number of receivables from the communist era there. It is still trying to have them repaid. Czech

79. However, lustration law is not the only law that regulates security screening. Czech NATO officials are subjected to security checks conducted by the National Security Office (NBU) pursuant to Act no. 148/1998 Sb.

80. Eight of their holders worked at the Ministry of Defense; according to the minister, all of them would be dismissed. One of them worked at the Ministry of the Interior, and 23 worked in the state administration.

businessmen have really “special” relations with local politicians and authorities. Because of its risky nature, any deal with such a country, both legal and illegal, increases the value of the bid. The amount of money involved is able to shut the eyes of politicians, officials or businessmen in Prague over problem that may arise. (Kmenta 2000a, quoted in Jordan 2002a).

The lustration law was hardly enforced in Slovakia before 1993, it was entirely inactive after 1993, and it formally expired in 1996. In 1994–98, a semi-democratic regime⁸¹ was established, backed by the Slovak Information Service (Naegele 1997b) and politically supported by Russia (Naegele 1997a). In addition to the abuses of power (see part 3A), former secret policemen working in the SIS performed activities to prevent the Czech Republic and Hungary from joining NATO. Based on the Slovak Mitro’s parliamentary report, Radio Prague reported that “SIS carried out two plans to achieve this aim in the Czech Republic. ‘Operation Neutron’ and ‘Operation Dezo’ sought to activate neo-Nazi groups and provoke racially motivated, mostly anti-Roma incidents in order to discredit Prague” (Radio Prague 1999a). The work of the SIS in Hungary was also oriented to the supply of arms to organized crime and some actions toward the disputed Gabčíkovo-Nagymaros dam (Radio Prague 1999b). These reasons might explain why Slovakia was temporarily suspended from the EU enlargement negotiations, and unlike the Czech Republic, Poland and Hungary, it did not become a member of NATO in 1999,⁸² which is considered a vital national security interest of the Central European countries.

The lustration laws, even if properly enforced, can only solve some of the security problems. The security risks that originated in the past also require additional legislation to regulate private security companies, access to classified materials, export and proliferation of weapons, and so on.

D. The Disclosure of the Truth about the Past

Before the law was enacted, critics of lustrations often relativized the truth that could come from secret police archives and from secret policemen themselves. In 1994, a prominent Polish journalist and a critic of lustrations,

81. For the characteristics of the situation in Slovakia, see U.S. Department of State, County Reports 1996–99.

82. This does not establish a link between the existence of the lustration law and NATO membership. Indeed, Poland would be the first falsifier of this hypothesis. It merely shows that the subversive activities of the former security networks can reach an intensity that may raise international concern. Besides, there were other reasons to exclude Slovakia from the EU/NATO expansion, such as its approval of the language law, which violated the rights of the Hungarian minority; the government’s manipulation of the referendum on NATO accession; the government’s failure to comply with the decisions of the Constitutional Court; and so on.

Adam Michnik, wrote, "The truth must be revealed. But is it always a superior value? Are the archives reliable? Could we uncritically trust reports written by agents of Stasi? Is their testimony sufficient to condemn other people?" (quoted in Bachmann 2000). In 2000, Michnik demanded the right of the public to know who had manipulated and falsified documents in the case of Lech Walesa, who was accused of being a former security service collaborator (Michnik 2000).

The lustration process seems to end many doubts that material about politicians might be manipulated or falsified. Both lustration laws provide citizens with an opportunity to clean their names in the courtroom. It is the judge who, based on the law of evidence, evaluates the reliability of secret materials and given testimonies.⁸³ The value of truth is obviously mutually conditioned by other values, such as the right to privacy. However, it is judicially recognized that those who run or hold high offices should expect a higher interest in their personality than other citizens (*Lingens v. Austria* 1986).

With regard to truth revelation, the two laws differ substantially. This requirement is formally satisfied by the Polish lustration act. A person holding a public office is obliged to submit an affidavit about her past work, service, or collaboration with the security organs. This affidavit is officially published in its relevant parts. According to the Spokesperson of Public Interest (RIP), the obligation concerns about 25,000 public officials. By the end of 2001, 6,689 affidavits had been analyzed; among them, 85 led to the initiation of the lustration process. This means that the RIP has found sufficient evidence that 85 people submitted untrue affidavits, which led to judicial examination by the lustration court. By 2001, the lustration court of appeals decided that 18 people had submitted untrue affidavits, among them, 4 were members of Parliament, 2 were high State officials, and 12 were advocates. Positive affidavits that revealed collaboration with former security services were submitted by 315 people (*Wyciąg z informacji o działalności Rzecznika* 2002).

However, the Polish Monitor publishes only the essence of the affidavits, making the already confined perpetrator-centered truth revelation even narrower. The public can learn whether a state official collaborated with the security organs but not the nature of the collaboration, its motives, or whether it harmed anybody. People are asked to give a second chance to collaborators in exchange for a very limited and partial truth. Consequently, contrary to the expectations, Poles are deprived of an opportunity to utilize the potential of lustration to come to terms with their past.

There is no such potential in the Czech lustration act, which protects a lustrated person from revealing any data concerning her collaboration with

83. Although the Czech lustration process is primarily administrative, those who receive a positive lustration certificate may challenge its truthfulness at the court. See *supra* note 47.

the secret police. The entire lustration process is kept secret; the lustration certificate is delivered to the person concerned and cannot be published without her consent. Thus, a positively lustrated person has to leave her position without any public knowledge of her collaboration. The dilemma of the truth versus the protection of the personality of former informers has been solved for the benefit of the latter.

The reason for this difference originates from the beginning of the lustration process. The Czechoslovak government, which prepared the lustration bill, took a radical stand in protecting those who collaborated with the previous regime, at the expense of truth. It proposed a provision to the bill that prohibits the publication of the names of collaborators. Offenders may have faced up to three years of imprisonment. Several deputies responded critically to the provision.⁸⁴ The provision has not been approved, but the spirit of incriminating any public revelation of collaborators persists. It concerns mainly journalists who are charged with illegal manipulation of personal data.⁸⁵

Despite its truth-centered approach, the superiority of people's privacy is also acknowledged in the application of the Polish lustration act. The Spokesperson first verifies positive affidavits. Among the 315 positive affidavits submitted by the end of 2001, 165 were found to be unwarranted. Thus, only 150 of them were published in the Polish Monitor (*Wyciąg z informacji o działalności Rzecznika 2002*). Besides, the hearing at the lustration court might be closed to the public if a lustrated person requires so. It is quite unusual, however, since the power to decide the closure of the courtroom usually resides with the judge. Still, the processes may remain closed to the public in both countries.

Access to the secret archives also remains limited in both countries. Although in the Czech Republic, the Act on the Access to Files Created by Activity of the Former State Security (Act no. 140/1996 Sb.) allows everyone to gain access to her file, the names of the informers are blackened.⁸⁶ Currently, a Senate legislation initiative is pending that demands unlimited access of the public to the archives (CTK 2001d).⁸⁷ According

84. For example, Deputy Benda (1991a, 1991b) pointed out that if he named a person who oppressed him and his family for ten years, he himself, instead of the secret agent, would go to jail for three years. If, however, Benda's information were untrue, he would be charged by a different act and go to jail for up to one year.

85. "According to the investigator, [a reporter of the magazine *Tyden, Rebeka Krizanova*] committed the crime by publishing in her article 'Lies of a High State Official' a copy of a protocol from the registry of files of former State Security (StB), which listed the former chairperson of the National Property Fund (FNM), Jan Stiess, as a collaborator of the secret police" (CTK 2000a).

86. This might be sufficient to identify the informer from the context of the file, if she is otherwise known. For example, the former East German opposition activist Vera Wallenberger learned that the agent with the cover name "Donald," whose real name was blacked out and who had been informing on her and caused her imprisonment, was her husband Knud (CNN 2002).

87. The bill has been approved in 2002 as Act 107/2002 Sb.

to a poll conducted by TNS Factum in 2001, 52% Czechs supported the bill, while about one-fifth of them were against it (CTK 2001e). About 55% of Poles thought that they should have access to their files, and 22% believed that access should be provided only for those publicly accused, according to the CBOS poll conducted in January 1999 (Karpinski 1999).

The requirement to know the information about political candidates is only incorporated into the Polish lustration act, although the affidavit of a parliamentary candidate regarding her past relationships with the former repressive apparatus is publicized after her eventual election.⁸⁸ The Czech lustration act does not enable the public to know officially whether a candidate or a member of Parliament worked or collaborated with the repressive apparatus. Nevertheless, based on § 21 (2) of the act, political parties may require lustration of their candidates. Some parties use the provision regularly while others do not require lustration. Thus, the act does not preclude voters from being represented by secret policemen, their collaborators, or former totalitarian officials.⁸⁹

E. Retaliation

There is no evidence to support the allegation that the lustration laws institutionalize retaliation. They are not based on the logic of criminal law, which implies certain punishment for all of its trespassers. If the legislators sought to institutionalize retaliation, they would have enacted sanctions against all members of the repressive apparatus. According to Vojtech Cegl, Justice of the Czech Constitutional Court, “if revenge had been our motivation, there are more effective ways of going about it that inflict a far greater sanction than symbolic acts of condemnation, lustration, and restitution” (Cegl 1997).

The Czech lustration law does not sanction every member of the past repressive apparatus. Instead, it is primarily forward looking since it concerns only access to senior public posts in state institutions (see part 2F, above; cf. Teitel 2000, 150). Thus, the law and those that followed its model can be called “semi-retributive.” They are not retributive because they do not sanction membership in the repressive apparatus, unless these members seek to hold senior public posts in the new democracy. This feature distinguishes them from the retributive postwar legislation in Europe.⁹⁰

88. The lustration process of presidential candidates is launched before elections.

89. Several current members of the Czech Parliament were allegedly secret police employees or collaborators (e.g., Deputy V. Filip, Deputy V. Exner), according to the exhibition of Póde Bal group (2000), named *Malik urvi: Galerie etablovane nomenklatury* (Little as Holes: The Gallery of the Established *Nomenklatura*). The title of the exhibition allows another interpretation: *Mali kurvi* (Little Assholes).

90. For a comparative overview of purge legislation, see Novick 1968, 209–14; Kritz 2: 1–201, 3:291–436. The need for special legislation was the common feature of justice after the war (Novick 1968, 209) as well as after communism. However, these measures differ from

There is no evidence of retribution in the Polish lustration law either (cf. art. 18b). The law does not impose sanctions on members of the past repressive apparatus. It, however, does sanction dishonesty about membership. It can be called “semi-reconciliatory,” then, because it resembles the South African truth and reconciliation process. In Poland, access of collaborators to leading public offices is exchanged for truth, as amnesty for perpetrators has been exchanged for truth in South Africa. Poland’s law is not reconciliatory because it does not provide a wider forum for the country to come to terms with its past (David 2002b).

At the same time, the lack of a viable sanction that prevents former security cadres from leading the country can cause popular doubts about the Polish Lustration Act. To what extent will people trust institutions occupied by those who have revealed their collaboration? This law may paradoxically produce certain countereffects by increasing the level of dissatisfaction in society. However, empirical evidence shows that it does not have these consequences. According to a poll conducted in 2000, 52% of Poles considered lustration of presidential candidates necessary; 72% of them said it was necessary to know the past of candidates, and 10% stated that lustration proves the trustworthiness of a candidate (Autorzy Rzeczypospolitej 2000). One interpretation of these results may suggest that supporters of lustrations are interested in the disclosure of truth generally rather than in the outcome of the lustration process—that is, whether a candidate collaborated with the former security services. These results rehabilitate the image of lustration supporters who may trust a person who worked for the secret service once he or she has revealed this fact, and they therefore can no longer be portrayed as a vengeful mass, hungry for popular justice. The findings show that the majority of lustration supporters might be willing to give their discredited leaders a second chance as assumed by the law.

IV. EXCESSIVE PROVISIONS

Although it seems that lustration laws are quite narrowly drawn, some of their provisions may still be too excessive. In order to determine whether the substantive provisions of both laws follow at least one of the lustration aims, the substantive provisions should be tested against these aims.

The Polish lustration act concerns the highest constitutional officials,

one another in their scopes and purposes. The postwar laws were largely retroactive. They imposed harsh punishments, ranging from the death penalty to civic disqualification for all collaborators, including not only members of Nazi or Fascist groups but also their sympathizers (1968, 209–11). The lustration laws, in contrast, only limit the access of secret policemen and the top echelons of the Communist Party (the CP leaders are not included in the Polish lustration law) to high public posts, a right that is not included in the U.S. Bill of Rights and that was deliberately omitted from the European Convention (*Glaserapp v. Germany* 1986, ¶ 48).

leading public officials, members of the justice system, and the management and supervisory boards of the public media. Inclusion of these positions is needed to establish trust in the impartiality of state organs and organizations, and they have decisive impact on the protection of national security. The Polish lustration law, which is narrower than the Czech one, satisfies this test. The Czech lustration act specifies comparable positions in the state administration, the judiciary, the public media, and the management of state companies, which can be similarly justified by the requirements of trust, impartiality, and national security. High-rank positions in the army, the police, the information service, the castle police, and some security-sensitive concession-based trades are justifiable by security reasons.

The Czech lustration law also covers leading academic posts such as the rectors of universities and the heads of departments. The reason for their inclusion might be the reform of tertiary education, largely contaminated by ideologists of Marxist-Leninist propaganda.⁹¹ These positions can temporarily be covered by the aim of discontinuity with the past, which includes the need for wider societal reforms. However, there is no pressing reason that can justify the incorporation of this category after the reform is accomplished. Ten years of the lustration process offers a chance for reexamination of this provision (§§ 1[3] and 1[1][d]).

V. CONCLUSION

This paper explores the potential of two lustration laws for neutralizing the influence of old power networks in the process of transition from authoritarian rules in the Czech Republic and Poland. Based on an analysis of parliamentary debates, it identifies several lustration goals, which are used as a normative framework for evaluating the lustration policies. The capacity of the laws to achieve the aims, and the extent to which the laws satisfied the aims are summarized in table 3. Table 4 then lists some factors that have influenced the performance of the laws.

The comparison of the unregulated lustration stage (Czechoslovakia 1989–91, Poland 1989–98, and Slovakia since 1993) with the situation when the law was in force (Czechoslovakia/Czech Republic since 1991/1993, and Poland since 1999) indicates that lustration laws may contribute to the consolidation of emerging democracy. Activities of former political and security networks during the absence of the law were associated with illegal activities, such as blackmail, subversive and criminal activities, mutual accusations, political scandals, and the abuse of power. The situation in Slovakia has shown that if the law is only enacted for a short period of time, or improperly enforced, it cannot adequately prevent subversion. After

91. This was the main reason for the approval of the Bulgarian "Panev Law" (1992).

TABLE 3
Evaluation of Czech and Polish Lustration Policies

Aim	Czech Lustration Policy (1991–2001)		Polish Lustration Policy (1999–2001)	
	Abstract Review*	Real Impact	Abstract Review*	Real Impact
Personnel discontinuity with the past	Achieved in a narrow scope.**	Approximately 12,000 positive lustration certificates issued.*** Positively lustrated persons sometimes not dismissed.	Achieved on a very limited scale.‡	18 false affidavits found within three initial years. People who revealed their collaboration sometimes removed.
End of the unregulated stage	Achieved	Number of scandals decreased; occasional leaking of information about collaborators.	Achieved	Positive results of the lustration process overshadowed by its denunciation.
National security and public safety	Achieved in a narrow scope.**	No serious abuses of power or human rights' violations reported.	Achieved in a narrow scope.**	No serious abuses of power or human rights violation reported. Former security services members still employed in the state apparatus.
Disclosure of the truth about the past	Unachieved	Granted by other laws.	Achieved in a narrow scope.**	6,689 lustration affidavits of 25,000 public officials verified by the end of 2001; the essence of 150 positive affidavits published.‡‡
Retaliation	Avoided; semi-retributive character.	No incidents of street justice reported.	Avoided; semi-reconciliatory character.	Public might be willing to give a second chance.

NOTES: *These columns summarize the capacity of the laws to achieve the aims. **The law mainly affects leading positions in the public administration and armed services. ***See part 3A and note 63. ‡The law divides high public officials into three groups: those who did not work or collaborate with the past security organs, those who did so but revealed the fact, and those who fail to confess their past. Only the third group can be removed. ‡‡*Wyciąg z informacji o działalności Rzecznika* 2002.

TABLE 4
Factors Influencing Lustration Policies

Factors	Pattern of Influence	Czech Lustrations	Polish Lustrations
Main features of the laws	A means of discontinuity.	Actual personnel discontinuity	Potential value discontinuity
Relationship among aims (also see part 1F)	The realization of one aim may preclude the fulfillment of other aims.	E.g., positively lustrated person loses her office but keeps her "integrity" because the process is secret.	E.g., a person who reveals her collaboration is exposed to public scrutiny but keeps her office.
Scope of the laws	The scope affects the realization of aims.	It concerns only leading posts.	It concerns only leading posts. It does not concern CP officials and new security organs.
Timing of the launch of the process	The delay of the process changes the intensity and nature of the problems and the chance of their solutions.	Approved in 1991.	Approved in 1997; launched in 1999.
Role of media	Acts as watchdog of the process.	Criticizes the poor law enforcement; engages in unauthorized publication of materials.	Presents a biased criticism of the process (see part 3B).
Role of leaders	Leaders exert both informal influence and formal influence, via exercise of presidential powers.	Ambiguous attitudes of President Havel.	Ambiguous attitudes of Presidents Walesa and Kwasniewski.
Role of political parties	Lustration is generally supported by center-right parties.	Parliament dominated by center-right parties.	After its 2001 electoral victory, the coalition led by the largely ex-communist SLD circumscribed the law in 2002.

NOTE: The performance of the laws may be affected by several other factors besides those listed here, such as law enforcement, which is quite poor in transitional countries (see, e.g., informal authorization, part 3A; incorrect analysis of data, part 3C; and licensing of weapons trade, part 3C), and allocation of resources that may affect the speed of the process, especially in Poland.

Slovakia dropped its lustration policy, former secret police members working in and leading its information service perpetrated several serious political and criminal incidents in its territory as well as in neighboring countries. This was perhaps one reason why Slovakia, unlike other countries in the region, could not join NATO in 1999 and was temporarily suspended from the first wave of the EU enlargement. The example of the long absence of any form of lustration in Poland may lead to a post-communist mafia capitalism, which provides international organized crime with new opportunities for money laundering, tax evasion, easy access to cheap military equipment, and so on (see Los and Zybertowicz 2000, 209). This suggests the importance of lustrations for the transition to democracy and market economy in general, and the reform of the state administration and security in particular.

One may argue that many of these problems are caused by political circumstances and/or may naturally vanish as time passes. "What would have happened in the Czech Republic if lustration *hadn't* passed? Perhaps we would be in the same position, merely as a result of the passage of time. . . . [Al]though it may well be untrue[,] one can imagine that the blackmailers used up all the easily blackmailable targets in the first few years, and that the problem would have fizzled-out of its own accord even in the absence of any legal reform."⁹²

The answer to this counterfactual question can be found in the comparative sections of the paper. The activities of former political and security networks continued to exist in 1990–91, two years within which Czechoslovakia established a liberal democracy; between 1993 and 2001, the Czech Republic was a liberal democracy, and the activities of former political and security networks were scarcely reported. The problem was also found in Poland in 1991–99, a period when it had a liberal government; and Slovakia had a semi-liberal democracy when the criminal activities were reported on a large scale in 1994–98. We can conclude that the problem does not depend on the form of government, since in both semi-liberal and liberal democracies the criminal activities were reported. Yet, they may intensify in a semi-liberal regime. The problems also do not depend on time. They did not vanish within two years of transition in Czechoslovakia and within ten years of transition in Poland. The question of whether they would vanish afterwards/or in other countries is beyond the scope of the paper.⁹³

92. One reviewer's comment on the paper.

93. Hungary, which enacted a fairly gentle version of the lustration law, experienced a political scandal with collaborators at the government level 13 years after the breakdown of communism (*Economist* 2002). In postwar France, "Historical quarrels have been politically important [. . .], but only when they have been the vehicle for contemporary struggles" (Novick 1968, 190).

One may argue that there is a natural time factor—e.g., let's wait until these people die/retire. This, however, reflects a static way of thinking that ignores the fact that these networks may change their nature, expand, or become a core for other types of organized crime or illegal activities.

The lustration law is certainly not sufficient nor an all-mighty law for neutralization of old power networks and for democratic consolidation. However, it may contribute to the pursuit of these aims, especially after the mere structural changes proved to be rather inefficient (Los and Zybertowicz 2000, 219). Many problems cannot be solved by legal means alone, as crime cannot be entirely uprooted by criminal law. There should also be other laws that would remedy the identified mischief, such as conflict-of-interest laws, a freedom of information act, an act on classified materials, a law on the financing of political parties, and the regulation of private security companies, capital markets, privatization, weapons trade, and so on. More important, the public should at least be aware of the past of those who legislate, enforce, and apply these laws.

The comparison of the Czech and Polish lustration policies suggests the relative success of the former within a few years following its approval. This success may be a result of several factors. The Czech policy might be more efficient in removing the old networks from their posts in comparison to the Polish policy, which only facilitated discontinuity with the past conditionally. Moreover, unlike the Polish lustration policy, which concerns only secret policemen and their informers, the Czech policy removed also the old communist *nomenklatura*. Finally, it may have been too late for Poland to start this process, which took place a full 10 years after the breakdown of communism.

Later, however, the significance of the Czech lustration law decreased as *nomenklatura* cadres adapted to its existence and created new networks that enabled them to profit from the privatization process and weapons trade. Nevertheless, the circumvention of the lustration law indicates a good direction. The international community should consider the promotion of fair lustration (without excessive provisions and with proper enforcement) in the same way it requires and encourages free elections.

With respect to recommending a lustration model, the Polish lustration act, regulated by criminal justice procedures, is certainly more developed, and its concept of a second chance may be politically more acceptable in divided countries than the Czech one. The Polish semi-reconciliatory model has the potential to facilitate value discontinuity with the past and can be applied along with a truth commission, which allows the narrow perpetrator-centered character of the lustration truth to be widened. It can also contribute to the unification of a divided country. The model, however, requires the country to have human and material resources to carry it out. On the other hand, the Czech semi-retributive lustration model, which is regulated by administrative procedures, although eventually subjected to judicial review, is more efficient in fulfilling its expectations and less demanding as to its realization—for instance, in countries where a new elite wins the power but inherits an administration that is loyal to the previous undemocratic regime.

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