

Chapter 8: Vetting and Lustrations
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Roman David and Cynthia M. Horne

How can a state deal with inherited personnel after a change of political regimes? How can trust in state institutions be revived after it has been eroded by political biases, discrimination, and abuses of power? How can officials be held accountable for non-criminal acts committed in the past? This chapter examines one of the most daunting and controversial measures of transitional justice: personnel reforms of the state, which in different contexts and different eras have been conducted by means of lustration, vetting, purges, disbanding, de-Nazification, de-Communization and other forms of personnel reforms. This chapter starts by delineating the challenges of inherited personnel and its problematic solutions. It proceeds with a clarification of the terminology used to describe these solutions. The third section classifies a variety of related measures in order to better understand their different origins, problems, and effects. The origin of personnel reforms is addressed in section four, focusing on the role of past and present factors. The political, social and legal problems of personnel reform are described in section five, which situates these problems within the context of a democracy capable of defending itself. The effects of personnel reforms are presented in the last two sections: section six delineates the effects of personnel reform on trust in the state and interpersonal trust; and section seven examines the effects of personnel reform on democratization.

1. The problem of inherited personnel and its problematic solutions

One of the most daunting challenges in the process of democratic consolidation is

dealing with the personnel inherited from the previous undemocratic regimes. It includes not only personnel holding positions at various levels of the state administration, the army, the police, and the intelligence services but also their secret collaborators, informants, paramilitaries and other volunteer groups. Those working in the state were often appointed to their posts based on their loyalty to the previous regime rather than merit. Those secretly collaborating with the previous regime breached the trust of their fellow citizens. Both groups may have participated in systematic discrimination, violations of human rights and other injustices in the past, as well as corruption. Their presence in the state administration and armed services may undermine trust in the state and raise popular demands for their dismissal. Some may sabotage democratic reforms in the transition era, such as the remnants of the National Party in the Ministry of Defence that instigated civil war in South Africa prior to the 1994 elections. Others, such as those in the former communist states, may lack skills, efficiency and the commitment to carry out political and economic reforms a.¹ Owing to their past record and performance they may be seen as untrustworthy and incapable in the eyes of both citizens and newly elected elites.

The problem of inherited personnel is often augmented by the fact that they do not operate as individuals but are linked to organizations, structures and networks. Some adopt survival strategies to operate under the new conditions, while others preserve their privileges constitutionally. For instance, a massive capital conversion process in Poland allowed a communist-era elite and their networks to exchange political capital

¹ David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press.

for economic influence and subsequently regain political power in the mid-1990s.² Myanmar's military junta, on the other hand, preserved its control over the armed forces constitutionally and fortified it through the impossibility of changing the constitution (David and Holliday 2018).³ Nascent democracies, seek solutions to address these problems.

When a political transition is negotiated, a compromise arrangement may be put in place. The negotiations between the African National Congress and National Party in South Africa resulted in the so-called 'sunset clause', which allowed most Apartheid-era administrative personnel to remain in their post until the second democratic elections in 1999. When the former regime is overthrown or defeated, the new elite or the occupying authorities may have no such limitations on its power to institute personnel changes.⁴

However, extensive personnel changes may have catastrophic consequences. For instance, the declaration of independence of Croatia from Yugoslavia in 1991 led to the dismissals of Croats from Yugoslavian federal institutions and the intervention of the Yugoslav army in Croatia. This led to the dismissals of Serbs from the Croatian administration as well. Feeling excluded, Croatian Serbs in Croatia established a Serbian

² Łoś, Maria and Andrzej Zybertowicz (2001) *Privatizing the Police-State: The Case of Poland*. New York: Palgrave.

³ David, Roman and Ian Holliday (2018) *Democracy and Liberalism in Myanmar*. Oxford: Oxford University Press.

⁴ Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press.

separatist enclave; Krajina in 1991-95. Another example is the De-Ba'athification of Iraq pursued by the Coalition Provisional Authority (CPA) following the invasion of Iraq in 2003. In order to eliminate the loyalists of Saddam Hussein in the predominantly Sunni Baath Party in 2003, the CPA launched widespread dismissals at all levels of the state. This, however, led to inserting political identities on existing ethnic identities and resulted in a bloody civil war in the following decade.⁵ Likewise, the Political Isolation Law that sought to rid remnants of the Qaddafi regime in Libya led to the total collapse of the state, whereby authorities were unable to establish order and preserve the country's territorial integrity (David and Mzioudet 2014).⁶

The resolution of the personnel problem may thus create new problems for nascent democracies, many of which may be more serious than those sought to be resolved. Countries undergoing transitions from undemocratic regimes need to balance their demands for justice, accountability and political reform with elementary needs for the state to perform its functions, guarantee order and protect territorial integrity.

2. What is in the name? Terminology of Personnel Reform

Personnel reforms have been conducted under various names. This section seeks to clarify the terminology by defining the umbrella concept of personnel reform and its offshoots. **Personnel reforms**, or **personnel systems**, comprise the methods a transitional state uses to regulate the access that members of the former regime have to public positions in the aftermath of a regime change. It is a conceptual tool developed to

⁵ David, Roman (2006) From Prague to Baghdad: Lustration systems and their political effects. *Government and Opposition* 41(3): 347-372.

⁶ David, Roman, and Houda Mzioudet (2014) Personnel Change or Personal Change? The Political Isolation Law and Its Alternatives in Libya. *Brookings-Doha-Stanford Paper* No. 4 (March 2014).

classify various methods of dealing with inherited personnel in the state apparatus, to explain their origins, and to assess their various effects. It is an abstraction of various personnel measures in a similar way as ‘constitutional systems’ is an abstraction of constitutions and ‘electoral system’ is an abstraction of election laws.⁷ Personnel reform measures come in various forms, from legally prescribed and delimited lustration laws and vetting procedures, to extralegal variants like purges. This section highlights what is similar and what is different within this family of transitional justice mechanisms with attention to the structure, scope, legality and intention of the measures.

Vetting is often used as the umbrella term to capture a range of “processes for assessing an individual’s integrity as a means of determining his or her suitability for public employment”.⁸ Vetting processes are types of employment screening procedures, normally codified through parliamentary or legislative acts, and grounded in administrative law.⁹ There is a potential employment exclusion component to vetting, either removing individuals from positions they hold or preventing them from taking new positions in the event of integrity or capacity deficits.¹⁰ Criteria are established in advance, both specifying the scope of positions to be screened and setting up evidence-based individual integrity criteria upon which removal or reappointment

⁷ David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press;

⁸ Duthie Roger (2007) ‘Introduction’, in Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council, 16-39, 17.

⁹ Teitel, Ruti G. (2000) *Transitional Justice*. Oxford: Oxford University Press;. United Nations (2006) *Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework* . Office of the UN High Commission on Human Rights, New York, United Nations HR/PUB/06/5.

¹⁰ Duthie n.7.

decisions would be determined.

Vetting is a standard personnel procedure in stable democracies. Transitional countries, on the other hand, do not have the benefit of legal and political stability, which is critical for the political neutrality of the process, its oversight, and judicial review. As a result, transitional vetting can be relatively narrow, targeting a few key public institutions.¹¹ Vetting does not result in the wholesale replacement of the public sector, as can be seen in many purges. The United Nations' guidelines elaborate the intention of vetting in transitional countries: "Vetting processes aim at excluding from public service persons with serious integrity deficits in order to reestablish civic trust and re-legitimize public institutions and to disable structures within which individuals carried out serious abuses".¹² There is an explicit forward-looking component to transitional vetting measures as their structure and intention is designed to support state (re)building and reconciliation. Typical examples include: the vetting of the police force in post-conflict Bosnia and Herzegovina¹³, the vetting of the police and judiciary in Liberia 2003¹⁴, and Burundi's selective vetting of the security sector.

¹¹ Wilke, Christiane (2007) 'The Shield, the Sword, and the Party: Vetting the East German Public Sector', in Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention*. New York: ICTJ and Social Science Research Council: 348-400, 348.

¹² United Nations Development Programme (2006) *Vetting Public Employees in Post-conflict settings: Operational Guidelines*. UNDP Bureau of Crisis Prevention and Recovery Justice and Security Sector Reform, 9.

¹³ Mayer-Rieckh, Alexander. 2007b. "Vetting to Prevent Future Abuses: Reforming the Police, Courts, and Prosecutor's Offices in Bosnia and Herzegovina," in Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention*. New York: ICTJ and Social Science Research Council: :180-220.

¹⁴ Fithen, Caspar (2009) *The Legacy of Four Vetting Programs: An Empirical Review*. New York: International Center for Transitional Justice: February.

Lustration has been described as “a cousin of vetting” ¹⁵ or a regional variation of personnel reform, which originates in Central and Eastern Europe. Lustration is not an instance of vetting; vetting and lustration differ in defining the factors that bear implications for public employment. Vetting centers on the broad issue of personal integrity and capacity, taking into account a range of factors and behaviors related to both the present and the past, such as performance records, tax avoidance, infidelity, associations, corruption, etc. In contrast, the central criteria for lustration focuses only on the past. While both vetting and lustration are prospective in their focus, aspiring to reform personnel situation in the state, lustration only regulates the employment or appointment of persons who were involved in the past regime in certain prescribed positions in the state. Lustration seeks to establish discontinuity of the present regime with the past. This underscores the transitional role of lustration. While vetting is predominantly an operational feature of democracy, though occasionally applied in transitional settings, lustration is exclusively a feature of democratization.

Indeed, *lustration* in its original meaning is a police term that means screening against the archives of the communist-era secret police. *Lustration laws* are transitional public employment laws that, among other methods, use lustration procedures to regulate the access of members of the former repressive apparatus to public positions in the new democracy.¹⁶ It usually concerns appointed positions in the public administration and

¹⁵ Oskar N.T. Thoms, James Ron and Roland Paris ‘The Effects of Transitional Justice’: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners’ *CIPS Working Paper* 2008, 37.

¹⁶ David, Roman (2003) Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001). *Law and Social Inquiry* 28(2): 387-439; David, Roman (2006) From Prague to Baghdad: Lustration systems and their political effects. *Government and*

armed forces, although it may also reach senior positions in the public media, the management of state-owned companies, and some private-sphere posts with public concerns, such as the regulation of security-sensitive trade etc.; and it does not necessarily result in dismissal. Its public employment character distinguishes lustration laws from other measures taken against the members of the former repressive apparatus, such as criminal prosecutions and retributive laws.

Transitional personnel reforms are sometimes pursued by a variety of ‘de-personnelization’ strategies, directly targeting particular political segments of the previous regime. Post-war Germany and Italy, post-communist Eastern Europe and occupied Iraq conducted, or sought to conduct, **de-Nazification, de-fascification, de-communization, and de-Ba’athification**.¹⁷ In addition to removing personnel associated with the previous regime, these methods often seek to use criminal measures to punish people responsible for various crimes, as well as destroy the ideological clout of the previous regime. They are thus primarily backward-looking, underscoring the operation of law as a political tool.

In contrast to legally prescribed personnel reform measures, **purges** can be defined as “a method that involves the removal of individuals from employment positions through dismissal, job transfer, or forced retirement, bans of individuals from future

Opposition 41(3): 347-372; David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press.

¹⁷ Herz, John H. (1982) *From dictatorship to democracy: coping with the legacies of authoritarianism and totalitarianism*. Westport, Conn.: Greenwood Press; David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania

employment or restrictions on civil and political rights”.¹⁸ Important in this definition is what is missing, namely individual accountability criteria, rule of law constraints, and limitations on the scope and implementation of the measures.¹⁹ There is little attention, if any, to individual culpability or even consistent vetting criteria, and purges “rarely emanate from legislative or parliamentary laws”.²⁰ There is a normative aspect to the term purge as well, as it is associated with a type of victor’s justice, capturing the punitive personnel changes made by the winners of a transition against the losers.²¹

Although some scholars and policymakers have used purges as an umbrella term for all personnel reform measures, this would ignore their salient legal differences, scope conditions, and intentions. Purges are generally backward-looking and indiscriminate; they constitute collective punishment and are not subject to legal scrutiny. Purges are typically conducted in undemocratic regimes to strengthen their grip on power; they may be a result of factional struggle, a coup d’état, or a leadership succession. Traditional examples of purges include the frequent communist era purges of enemies, the purges in Second Restoration France, Stalin’s purges of political elites²² and anti-corruption campaigns in China.

¹⁸ Lynch, Moira (2013) Purges, in Lavinia Stan and Nadya Nedelsky, eds. *Encyclopedia of Transitional Justice*. Cambridge: Cambridge University Press: 61-64, 61.

¹⁹ Mayer-Rieckh, Alexander and Pablo De Greiff, eds. (2007) *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council.

²⁰ Lynch, Moira (2013) Purges, in Lavinia Stan and Nadya Nedelsky, eds. *Encyclopedia of Transitional Justice*. Cambridge: Cambridge University Press: 61-64, 61.

²¹ Binningsbø, Helga M., Cyanne Loyle, Jon Elster and Scott Gates (2012) Armed Conflict and Post-Conflict Justice, 1946-2006: A Dataset. *Journal of Peace Research* 49(5):731-740.

²² Lynch, Moira (2013) Purges, in Lavinia Stan and Nadya Nedelsky, eds. *Encyclopedia of Transitional Justice*. Cambridge: Cambridge University Press: 61-64.

The final type of personnel 'reform' is **disbanding** or **dissolution** of entities. For instance, after the end of communist regimes all secret services that used to suppress domestic opposition were dissolved. East German *Stasi*, Czechoslovak *StB*, Polish *SB*, Hungary's 3rd Directorate, and Romania's *Securitate* were all dissolved after 1989.²³ In Iraq, the occupying authorities dissolved the ruling Ba'ath Party and disbanded the Army, both of which may have contributed directly and indirectly to civil war by creating enemies among those who may not have been and destroying structures that could have preserved order. Conversely, ignoring the past may have had tragic consequences for Iraq as well.

3. Varieties of Personnel Reforms

Different personnel change measures may have different origins, face different problems, and produce different effects. This begs a question of how to classify personnel measures? Naturally, the differences among different personnel reforms may stem from their magnitude. In this sense, one could classify personnel reforms based on the number of people affected or the number of positions regulated. The numbers undoubtedly affect the effectiveness of reforms. One can distinguish narrow reforms that concerns only leading positions, such as many lustration laws in Central Europe; sweeping reforms, such as the de-Ba'athification of Iraq; and the disbanding of entire institutions. Similarly, since most personnel measures list positions in the past and positions in the new state that are not (automatically) compatible, one can classify personnel reforms based on various pairs of past and present positions: top-top incompatibilities, which regulate incompatibility at the top level; top-down

²³ Williams, Kieran, and Dennis Deletant (2001) *Security Intelligence Services in New Democracies: The Czech Republic, Slovakia and Romania*. New York: Palgrave.

incompatibilities that prevent people from the top echelons from taking position at any level; or bottom up incompatibilities that prevent those who were tainted by relatively low-level links to the old regime from accessing only top posts.

However, while both factors – the extent of personnel reform and incompatibility of positions – are important considerations for assessing utility, personnel reforms produce effects that are not merely tangible. They produce social effects that signal a change in attitude of the new regime, and more important, confer a judgment on people associated with the past.²⁴ Since personnel changes occur in divided societies, the social status of an entire political or ethnic group may be downgraded as a result of dismissals, while another group may take over. From this perspective, a dismissal of an army general may have similar social effects as a purge within the army, possibly triggering the same response among their followers. Indeed, it is routinely assumed in the international criminal law literature that punishments of individual perpetrators have social effects across the entire society, deterring others from similar violations. This social dimension of personnel reform accentuates the need to capture their symbolic meanings, which are derived from the methods upon which the reforms are based.

There are three major methods upon which personnel reform can be based.²⁵ The first one is *dismissal*. This is the most common method, which is based on the exclusion of compromised personnel from institutions of the state and preventing them, and other

²⁴ David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press.

²⁵ David, Roman (2006) From Prague to Baghdad: Lustration systems and their political effects. *Government and Opposition* 41(3): 347-372.

tainted individuals, from reentry. This type of personnel reform can be called an ***exclusive system***. The second method is *truth-telling*. The new regime strives to establish the transparency of the state administration and at the same time retain the expertise of compromised personnel. This system effectively grants the tainted personnel a second chance in exchange for their exposure to the public. It can be called an ***inclusive system***. There are two different methods of exposure. One is exposure administered by the state, and the other emanates from the tainted individual himself or herself. The latter system is based on a *confession* of the person under scrutiny. The confession, however, does not serve as a self-purge of the tainted individual. In fact, exactly the opposite: confessions serve as a means of granting someone a second chance. Only a failure to disclose all relevant facts of the person's past leads to disqualification from office. This system thus resembles the South African truth and reconciliation process, where amnesty has been exchanged for truth.²⁶ Hence, it has been labeled a ***reconciliatory system***. The trio is accompanied by ***mixed systems***, which combine exclusion with inclusion for different cases or posts, and contrasted with ***systems of continuance***, when no-systematic reform is conducted.²⁷

The operation of these systems may be illustrated in the cases of the Czech Republic, Hungary, and Poland, which developed the three archetypal models of lustration. The Czech exclusive lustration system, which has been in operation since 1991 is quite straightforward. A holder of, or a new appointee to, positions prescribed by law needs to present two documents to his or her superior: a certificate issued by the Ministry of the

²⁶ David, Roman (2006b) In Exchange for Truth: The Polish Lustration and the South African Amnesty Process. *Politikon* 32 (1), 81-99.

²⁷ David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press.

Interior that he or she did not collaborate with the secret services of the communist state at specified levels; and an affidavit that he or she did collaborate with other prescribed entities. A 'positive' lustration, indicating involvement in such entities and activities, prevents the individual from holding the post. The Hungarian inclusive system of 1994 was based on screening of specified senior public servants against their membership in the repressive apparatus of the previous regimes. If a panel consisting of at least three judges found that a public official collaborated, he or she would be confronted with the findings and requested to resign. If a person did not resign, his or her name was to be published by the official government gazette and disseminated by the Hungarian News Service. The reconciliatory system originated in Poland in 1997 and was a result of political compromise rather than an effort to achieve reconciliation. It required all holders or applicants for prescribed public posts to submit an affidavit saying whether they collaborated with the secret services. Those who did not collaborate and those who confessed their collaboration could hold public office, but the name of the latter would be published in the government gazette. Those who concealed their collaboration would be exposed, dismissed, and barred from return for 10 years.

Another possible classification method, overlapping with David's typology, suggested comparing measures according to bureaucratic change and symbolic change elements. Horne classified lustration cases as ***compulsory*** if they included mandatory employment consequences for previous regime involvement and mandatory screening of a wide range of political and social positions; ***limited*** for programs which passed and implemented employment screening, but did not force the removal of individuals found guilty of regime collaboration; and ***informal*** if programs relied on public disclosures of previous collaboration to shame individuals and catalyze voluntary employment

change.²⁸ Importantly, she included a ***non-case*** in the typology, namely countries that debated lustration measures and rejected them. This allows for a comparison of how the type of lustration measure might have affected transition goals.

4. The Origin of Personnel Systems

How do personnel systems come to being? Personnel systems can be considered as a present response to the problems inherited from the past regime. While some scholars consider the systems to be a response to the past, accentuating the notions of repression and ideology, others emphasize a range of present factors, whereby personnel systems respond to present needs, the ideological beliefs of the ruling elites, their political interests, and popular demands. Still others see the origin of personnel systems as a combination of both, suggesting an interplay of past and present factors.

According to the first school, personnel systems are a function of a set of historical factors. This essentialist or historical school see transitional justice in general, and personnel systems in particular, to be a response to repression, its scale, intensity, and patterns.²⁹ It is argued that greater overall repression in the past leads to stronger demands for personnel change in a new regime. If the intensity of repression increased over the duration of the regime, or if the regime had a violent end, we could expect that it would result in a stronger demand for personnel change that may be extensive and/or exclusive in its nature. On the other hand, if the repression gradually decreased, we

²⁸ Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries*. Oxford: Oxford University Press.

²⁹ Hayner, Priscilla. (2010). *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge Press; Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press.

could expect to find declining demand for personnel reform even though the original repression had been large in scale. Patterns of repression may also affect the demand for particular forms of personnel reform. As a truth deficit generated by disappearances in Latin America gave birth to truth commissions, the truth deficit generated by secret reporting increased demands for the transparency of the state and the exposure of secret collaborators. On the other hand, when the protagonists of the old regime were known, any revelation of truth carries less weight and therefore demands for dismissals may appear as an option.

Another past factor is the ideological rigidity of the previous regime ³⁰ Communist regimes that were more ideological were more likely to approve broader lustration as the cases of Germany and Czechoslovakia suggest. Conversely, the degree of liberalization has been considered a factor that decreased the demand for personnel reforms. It was argued that more liberalization gave people more voice in the past, which turned into lesser demands for transitional justice, including lustration.³¹

The nature of the transition, or the mode of exit from authoritarianism, might be another determinant of personnel systems and transitional justice in general .³² If a

³⁰ Nedelsky, Nadya (2004) Divergent responses to a common past: Transitional justice in the Czech Republic and Slovakia. *Theory and Society* 33(1): 65–115; Stan, Lavinia, ed. (2009) *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*. New York: Routledge.

³¹ Moran, John (1994) The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget? *Communist and Post-Communist Studies*. 27 (1): 95-109; Nedelsky, Nadya (2004) Divergent responses to a common past: Transitional justice in the Czech Republic and Slovakia. *Theory and Society* 33(1): 65–115

³² Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press; Huyse, Luc (1995) *Justice after Transition: On the Choices*

country is occupied or the former opposition gets enough power as a result of war, revolution or the implosion of the former regime, then the new ruling elites tend to institute more extensive personnel measures. If a country's transition is negotiated and a balance of power is established after the transition between the old and the new elite, the resulting personnel reform could be mild and the system may be inclusive. If, however, the former ruling elite never loses power as it pursues reform from above, the likelihood of any personnel reform is minimal.

According to the second school of thought, the demand for personnel reforms stems from various present factors, which might be more variable and subjective than historical factors. The approval of lustration, for instance, may be seen as a function of its popular demands, politics of the present, and present security debates.³³ The 'politics of the present' may use personnel reforms more instrumentally to compromise a political opponent; and the 'present security debate' may refer to the debate over whether lustration-- or its absence-- is the best way of protecting national security. Lustration may be considered a result of party competition and an ability of political parties to form a coalition in order to pass lustration measures.³⁴ In addition to political interests, scholars also stress ideological beliefs about justice and retributive emotions as other motivations for reforms.³⁵

Successor Elites Make in Dealing with the Past. *Law and Social Inquiry* 20, 1 (Winter): 51-78; Posner, Eric, and Adrian Vermeule (2004) *Transitional Justice as Ordinary Justice*. *Harvard Law Review* 117:761-825.

³³ Szczerbiak, Aleks (2002) Dealing with the communist past or politics of the present?: Lustration in post-communist Poland. *Europe-Asia Studies* 54 (4): 553-572.

³⁴ Williams, Kieran, Brigid Fowler and Aleks Szczerbiak (2005) Explaining Lustration in Central Europe: A "Post-communist Politics" Approach. *Democratization* 12(1): 22-43.

³⁵ Elster, Jon (2004) *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.

If all politicians seek to maximize power and eliminate their opponents in the ruthless politics of the present, how can we explain that the three Central European countries – the Czech Republic, Hungary, and Poland – adopted different forms of lustration. They defeated communist parties in the first election by approximately the same margin, they all learnt about the injustices of the previous regime, and they all faced approximately the same level of security threat. It has been suggested that lustration may be a function of perceptions about the tainted and by the tainted. First, in Hungary and Poland where communist parties were transforming, the perceived level of threat posed by them and their tainted collaborators was lower than in the Czech Republic, where the communist party remained unreformed and unrepentant. Second, the demand for exclusive lustration was a function of the size of the so-called ‘gray zone’. Communist regimes created gray zones of people who were neither victims, nor perpetrators; they nevertheless participated in the operation of these regimes and became tainted as a result of their involvement. After the regimes collapsed, they sought to divert their responsibility to others in order to purify themselves. In the Czech Republic, membership in the gray zone was a significant predictor of support for dismissal of former communist party members.³⁶

In the third school, both the past and the present play a significant role in the approval of transitional justice in general and lustration in particular. Lustration was thus considered a function of the nature of the communist regime, the mode of exit, and the

³⁶ David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press.

politics of the present.³⁷ It was said to be motivated by the need to delegitimize the previous regime and legitimize the new one.³⁸ In particular, it was said to be motivated by security needs, a need to demonstrate discontinuity with the past, and an urge to reveal the truth.³⁹ It reflected a demand for making democracy better; it was linked to anticorruption initiative; or was considered a response to previous failures.⁴⁰ Many past factors, such as the experience of victimization and the position of the family in the past regime, were passed to the present through the family in intergenerational transmission and predicted demands for transitional justice decades later (Aguilar, Balcells, and Cebolla-Boado 2011).⁴¹

There are many other factors that may affect – in a positive or negative way – the approval of personnel reforms. They may include identity,⁴² resemblance with rituals (Paez 2010,⁴³ and local culture.⁴⁴ A factor that frequently affects approval of

³⁷ Welsh, Helga (1996). Dealing with the Communist Past: Central and Eastern European Experiences after 1990. *Europe-Asia Studies* 48 (3): 413-29.

³⁸ Teitel, Ruti G. (2000) *Transitional Justice*. Oxford: Oxford University Press.

³⁹ David, Roman (2003) Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001). *Law and Social Inquiry* 28(2): 387-439

⁴⁰ Horne, Cynthia M. (2009) 'International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context' *Law & Social Inquiry* 34(3): 713-44; Szczerbiak, Aleks (2016) 'Deepening democratisation? Exploring the declared motives for 'late' lustration in Poland' *East European Politics & Societies* 32 (4): 426-445; Szczerbiak, Aleks (2018) *Politicising the Communist Past: The Politics of Truth Revelation in Post-Communist Poland*. Routledge.

⁴¹ Aguilar Paloma, Laia Balcells, and Hector Cebolla-Boado. "Determinants of Attitudes toward Transitional Justice: An Empirical Analysis of the Spanish Case." *Comparative Political Studies* 44, no. 10 (2011): 1397-1430.

⁴² Gibson, James L. (2002) Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa. *American Journal of Political Science* 46(3): 540-56.

⁴³ Carlos Martín-Beristain, Darío Páez, Bernard Rimé & Patrick Kanyangara (2010) 'Psychosocial effects of participation in rituals of transitional justice: A collective-level analysis and review of the literature of

transitional justice is contagion: countries do what their neighbors do (Pion-Berlin 1994).⁴⁵ Three other contextual factors have been considered in comparative research on the country-level analysis. The first one refers to economic conditions, whereby some suggest that ‘living well is the best revenge’ (Roederer 1999);⁴⁶ the second refers to the previous transitional law that modifies people’s memory of the past (Markovitz 2002);⁴⁷ and the third one is an international environment, whereby international law, global human rights NGOs and foreign governments advice, or discourage, particular methods of reforming the state apparatus.

5. Controversies of personnel reform and liberal democracy

Personnel reforms are perhaps the most controversial measure of transitional justice. Many policy makers, academics, dissidents, international institutions and courts have raised legal, political, administrative, and ethical questions regarding the use of personnel reforms in general and lustration measures specifically. Critics maintain – explicitly or implicitly – that illiberal means cannot bring liberal ends. They are concerned that the transition to liberal democracy may be jeopardized by adopting

the effects of TRCs and trials on human rights violations in Latin America. *International Journal of Social Psychology* 25(1): 47-60; Choi, Susanne Y.P., and Roman David (2012) ‘Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland, *American Journal of Sociology*’ 117(4): 1172–1201

⁴⁴ Fletcher, Laurel E., Harvey M. Weinstein, and Jamie Rowen (2009) ‘Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective’ *Human Rights Quarterly* 31: 163-220.

⁴⁵ David Pion-Berlin (1993), ‘To Prosecute or to Pardon? Human Rights Decisions in the Latin American Southern Cone,’ *Human Rights Quarterly* 15: 105-130.

⁴⁶ McAdams, A. James, ed. (1997) *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame: University of Notre Dame Press. Roederer, Christopher (1999) “Living Well is the Best Revenge”—If one can,’ *South African Journal on Human Rights* 15(1): 75-97.

⁴⁷ Markovits, Inga (2001) ‘Selective Memory: How the Law Affects What We Remember and Forget about the Past: The Case of East Germany,’ *Law & Society Review* 35(3): 513-563.

personnel reforms that violate international human rights standards. Supporters, however, suggest that keeping human rights abusers in public posts would undermine trust in government and put the prospects for democracy at risk. This section reviews the debates. It is divided into three parts. The first part reviews some of the most common arguments for and against the process from political and moral viewpoints. The second part considers the conformity of personnel reforms with international human rights standards. The third part invokes the concept of ‘democracy capable of defending itself’ that allows balancing the encroachment of human rights by personnel reforms with the necessity of their pursuit in support of a democratic society.

a. Problems of personnel reforms

Salient moral questions are raised regarding the potential instrumentalization of these transitional justice measures. Lustration or vetting measures might be spearheaded by political parties, hoping to unseat opponents, tarnish the reputation of political competitors by revealing past collaboration, and sway elections. Václav Havel, Czech dissident and former President of the Czech Republic, raised a broader moral question, namely who was innocent in a regime of complicity and collaboration? Trying to draw a hard distinction between active and passive collaboration under oppressive systems is morally specious, and therefore possibly a bad foundation on which to build a new trustworthy regime.⁴⁸ Broadly, vetting public institutions of the old guard is uncomfortably reminiscent of the purges that might have been used by previous non-democratic regimes.

There are technical and moral problems surrounding the use of the secret police files as

⁴⁸ Michnik, Adam, and Václav Havel (1993) Justice or Revenge. *Journal of Democracy* 4 (1): 20-27.

the primary source of evidence upon which personnel reforms are administered. First, the opposition to the process maintains that the veracity of the files is uncertain. Many files were allegedly falsified by secret police agents in order to meet recruitment quotas, or information was intentionally distorted by agents and collaborators, thereby leaving a possibly misleading record on which to base vetting decisions.⁴⁹ Second, selective file destruction, often of high ranking officials, means the files are an incomplete record creating a possible selectivity bias in vetting. Third, information in files is without context, meaning we do not know the circumstances surrounding an individual's collaboration, such as if the individual was coerced to collaborate to protect family, colleagues, and friends. This could result in a vetting process that misascribes punishment. Fourth, even if the files were complete and accurate, there is something morally questionable about using the contents of secret police files to determine the integrity or guilt of individuals to serve in the new regime.⁵⁰

b. Lustration and human rights standards

Legal questions surrounding the use of lustration examined whether the retrospective justice component of personnel reforms violated rule of law principles.⁵¹ Personnel reforms with employment penalties in the present for memberships, positions, political opinions, or behaviors in the past, which were not criminal acts at that time, might

⁴⁹ Welsh, Helga (1996). Dealing with the Communist Past: Central and Eastern European Experiences after 1990. *Europe-Asia Studies* 48 (3): 413-29.

⁵⁰ Łoś, Maria (1995) Lustration and Truth Claims: Unfinished Revolutions in Central Europe. *Law and Social Inquiry* 20 (1): 117-161.

⁵¹ Minow, Martha (1998) *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press; Posner, Eric, and Adrian Vermeule (2004) *Transitional Justice as Ordinary Justice*. *Harvard Law Review* 117:761-825.

violate the prohibition of retroactivity principle. The Czech and Slovak Constitutional Court and the Hungarian Constitutional Court heard similar cases at similar moments in the transition surrounding this very issue of whether lustration's backward looking dimension violated rule of law. The Czech and Slovak Constitutional Court decision ruled that lustration laws did not inherently violate rule of law, while the Hungarian Court ruled against the constitutionality of various aspects of the law, requiring a reframing of the scope and implementation of the personnel reforms.⁵² This dualized ruling highlights the legally contentious nature of retrospective personnel reforms.

A number of specific legal challenges to the constitutionality of lustration measures have been raised, including possible due process violations, employment discrimination claims, and possible derogations of freedom of assembly and free speech guarantees.⁵³ These issues have been raised in national constitutional courts, regional courts like the European Court of Human Rights (ECtHR), and even international forum like the International Labour Organization (ILO). This section briefly reviews three main legal critiques, with the following section exploring in detail the conditions under which a democracy is capable of defending itself by vetting based on bureaucratic loyalty criteria.

Plaintiffs have raised due process violation cases in national courts and at the ECtHR, arguing that the lustration process violated their right to appeal, or access to classified information, or their right to privacy. In particular, the fairness of lustration has been

⁵² Kritz, Neil, ed. (1995) *Transitional Justice. Volumes I, II, III.* Washington, D.C.: United States Institute of Peace Studies.

⁵³ Horne, Cynthia M. (2009) *International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context.* *Law & Social Inquiry* 34(3): 713–44

challenged in the courts, with plaintiffs raising concerns about the unequal and secret nature of the process, the confidentiality of documents and the fairness of proceedings and appeals.⁵⁴ While the ECtHR ruled there was nothing inherent in this form of transitional justice that violated due process safeguards, the contentious nature of the laws raises important human rights questions.

The ECtHR has heard several cases in which plaintiffs argued that lustration violated freedom of speech and freedom of assembly by punishing individuals for their participation in the communist party or espousing values consistent with the previous regime.⁵⁵ For example, lustration laws generally vet individuals based on the positions or affiliations they held under the old regime, on the basis that those affiliations demonstrate deficiencies in their integrity or competency. However, vetting based on past membership, affiliations or political opinions could be a violation of freedom of speech and assembly. Both the ILO and ECtHR have heard cases addressing whether political opinion or former membership in political groups constituted grounds for employment disqualification.⁵⁶ The ILO has censured the use of such criteria but the ECtHR has upheld the laws, once again demonstrating the legally contentious nature of the vetting procedures.

Plaintiffs have also charged that the employment penalty component of lustration and vetting might violate fair employment principles. Lustration can ban individuals from

⁵⁴ Horne, Cynthia M. (2009) International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context. *Law & Social Inquiry* 34(3): 713–44

⁵⁵ Ibid.

⁵⁶ Horne Ibid; David, Roman (2004) Transitional injustice? Criteria for conformity of lustration to the right to political expression. *Europe-Asia Studies* 56(6): 789-812.

holding certain positions for anywhere from 5-10 years in a typical lustration program. The outright limitation of employment opportunities for individuals in a new regime was legally challenged as excessive. Moreover, disqualifying individuals based on group affiliations, as opposed to individual criteria, could constitute both a due process violation and employment discrimination. For example, the ILO Committee of Experts ruled that the Czech screening laws violated fair employment provisions by disproportionately limiting employment opportunities on the basis of political opinions.⁵⁷ However, the ECtHR issued a contrary ruling on similar cases, arguing that employment exclusions were legally viable if implemented in a clear and consistent manner.⁵⁸ While the ECtHR reaffirmed that lustration does not intrinsically violate fair employment laws, the contentious rulings highlight legal gray areas for consideration in vetting.

c. Personnel reform and democracy capable of defending itself

The implementation of lustration laws has been typically examined in light of European standards, especially the ECHR and its Protocols, the jurisprudence of the European Court of Human Rights (ECtHR), and Resolution 1096 on Measures to Dismantle the Heritage of Former Communist Totalitarian Systems.⁵⁹ None of the sources of European

⁵⁷Horne, Cynthia M. (2009) 'International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context' *Law & Social Inquiry* 34(3): 713–44.

⁵⁸ See for example International Labour Organization (2004) CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Czech Republic (ratification: 1993) Published: 2004.; and European Court of Human Rights (2006) *Case of Ždanoka v. Latvia*, Judgment 58278/00. ECtHR. 16 March 2006. Strasbourg: Council of Europe.

⁵⁹ David, Roman (2017) 'Ukrainian Lustration and Democracy Capable of Defending Itself'. In Cynthia M. Horne and Lavinia Stan, eds., *Transitional Justice in the Former Soviet Union*. Cambridge: Cambridge University Press.

standards in principle prohibits the conduct of personnel reform.⁶⁰ Rights stipulated by the European Convention that are typically applied to lustration laws may be encroached if necessary in a democratic society, for instance, for the protection of national security, to maintain territorial integrity, for public safety, or to uphold the rights of others.

In cases related to public employment, the ECtHR has applied the concept of “*wehrhafte demokratie*,” or a “democracy capable of defending itself.” The concept of “a democracy capable of defending itself” was coined by Karl Loewenstein.⁶¹ Based on the analyses of legal and constitutional provisions in pre-war Czechoslovakia and other European countries struggling with Fascism and Nazism, he observed that German democracy in the 1930s lacked legal provisions that would grant it a “militant defense” against groups who sought to destroy it. Therefore, a democracy should adopt measures to strengthen its capacity to protect itself from potential internal enemies.

The concept was enshrined in the Federal German Constitution of 1949 and applied by the Federal Constitutional Court and the ECtHR. For instance, in the lustration case concerning dismissal of a collaborator with the Romanian communist-era secret service *Securitate*, the Court ruled that in order “to avoid a repetition of its past, the Romanian State had to be founded on a democracy capable of defending itself” (*Naidin v. Romania*,

⁶⁰ David, Roman (2004) Transitional injustice? Criteria for conformity of lustration to the right to political expression. *Europe-Asia Studies* 56(6): 789-812; Horne, Cynthia M. (2009) ‘International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context’ *Law & Social Inquiry* 34(3): 713-44.

⁶¹ Loewenstein, Karl (1937a) Militant Democracy and Fundamental Rights I, *American Political Science Review* 31(3): 417-432; Loewenstein, Karl (1937b) Militant Democracy and Fundamental Rights II, *American Political Science Review* 31(4): 638-658.

2014).⁶² It unanimously ruled that there was no violation of Mr. Naidin's rights, which had been assessed in conjunction with the prohibition of discrimination.

The concept of democracy capable of defending itself enables an assessment of personnel measures in light of both the human rights standards and the political and security situation in a country. For instance, human rights standards alone should not prevent Ukraine, which experienced the loss of some of its territory and an open war on other parts of its territory, to conduct personnel reforms. The undue focus on the protection of human rights of the dismissed personnel could essentially undermine human rights, territorial integrity and democracy in the country.

6. Effects on trust

Personnel reforms are linked to several kinds of trust, with some arguing that vetting measures can improve trust in government, trust in public institutions, and even societal trust. The United Nations described vetting as a means of changing citizen perceptions of the trustworthiness of public institutions.⁶³ Post-communist governments similarly argued that lustration measures were necessary to both restore trust in government and promote trust in society.⁶⁴ There are reasons to expect citizens might distrust public institutions after a regime transition, such as if the institutions continued to be staffed by the same personnel. Therefore, we can expect citizens' trust

⁶² Naidin v. Romania (2014) European Court of Human Rights, Application no. 38162/07.

⁶³ United Nations (2006) Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework . Office of the UN High Commission on Human Rights, New York, United Nations HR/PUB/06/5.

⁶⁴ David, Roman (2003) Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001). *Law and Social Inquiry* 28(2): 387-439; Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries*. Oxford: Oxford University Press.

in their public institutions would improve if former regime collaborators, agents, and officials were vetted through a regulated process of personnel reform.

Studies of the post-communist transitions have shown positive relationships between exclusive and reconciliatory systems and political trust.⁶⁵ Vetting improves citizen perceptions of the trustworthiness of public institutions, such as the judiciary, the police, and civil service.⁶⁶ In particular, trust in oversight institutions, like the press, the army, the police and the judiciary, appears to improve when these institutions are lustrated. However, not all institutional trust is improved with lustration. Elected institutions, like parliament and political parties, show fewer trust effects from lustration, and trust in them could be undermined if politicized vetting programs are applied.⁶⁷

Trust in government appears less directly affected by lustration measures, most likely due to the many competing economic, political and social factors that affect citizens' perceptions of government. However, there are noted positive indirect effects on trust in government, and lustration is associated with improvements in government effectiveness.⁶⁸ In sum, lustration appears to support political trust building.

The relationship between personnel reforms and social trust is more complex. Networks

⁶⁵ David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press; Choi, Susanne Y.P., and Roman David (2012) 'Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland, *American Journal of Sociology*' 117(4): 1172–1201.

⁶⁶ Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries*. Oxford: Oxford University Press.

⁶⁷ Ibid.

⁶⁸ Ibid.

of secret police agents recruited individuals to spy on their neighbors, colleagues, friends, and even family members, leaving scars that if disclosed could undermine interpersonal trust after the transition. Part of lustration programs involved revealing the background of individuals in positions of public trust in social institutions like churches, unions, and clubs.⁶⁹ Revelations that high ranking clergy members, or well-respected union advocates, were secret police informers have negatively affected trust in certain social institutions.⁷⁰ However, contrary to fears that file revelations would catalyze interpersonal distrust, there has been a limited effect on generalized interpersonal trust in post-communist states.⁷¹

In sum, while lustration is often legitimized as a trust builder, in practice the effects on trust are differentiated. Exclusive and compulsory lustration measures have been associated with higher levels of trust in public institutions like the judiciary, the police and civil service, but have had limited or no effects on more politicized institutions, like parliament. There is evidence that personnel reforms support trust in government and government performance as well. However, lustration was associated with less social trust. This suggests that vetting and lustration programs support political trust but

⁶⁹ Horne, Cynthia M. (2014) 'Lustration, Transitional Justice, and Social Trust In Post-Communist Countries: Repairing or Wrestling The Ties That Bind?' *Europe-Asia Studies* 66(2): 225-54.

⁷⁰ Stan, Lavinia and Lucian Turcescu (2005) 'The Devil's Confessors: Priests, Communists, Spies, and Informers' *East European Politics and Societies* 19(4): 655-685; Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries* Oxford: Oxford University Press.

⁷¹ Horne, Cynthia M. (2014) Lustration, Transitional Justice, and Social Trust In Post-Communist Countries: Repairing or Wrestling The Ties That Bind? *Europe-Asia Studies* 66(2): 225-54; Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries* Oxford: Oxford University Press; Choi, Susanne Y.P., and Roman David (2012) Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland. *American Journal of Sociology* 117(4): 1172-1201.

might not always yield positive social trust outcomes.

7. Effects on democratization

Personnel reform, like transitional justice measures in general, are often framed by policymakers, politicians, and scholars as mechanisms to support democratization in new post-conflict and post-authoritarian regimes.⁷² The Council of Europe endorsed lustration measures in their resolution *On Measures to Dismantle the Heritage of Former Communist Totalitarian Systems* as a means of securing democratic principles in the post-communist transitions.⁷³ There are a number of reasons why personnel reforms might support democratization. First, removing individuals from positions of power signals to citizens that people will be held accountable for crimes. This can lay a foundation for a democracy committed to rule of law principles, as well as prevent future abuses under the new system.⁷⁴ Second, personnel reforms catalyze bureaucratic changes, potentially renewing public institutions, and resetting the allegiance of personnel within those public institutions toward democratic values. Third, there are potential indirect effects as personnel reform measures might combat corruption by preventing the continued abuse of power by officials associated with the previous regime.⁷⁵ Finally, should personnel reforms target the security sector, such as security sector reform programs targeting the police, the courts, and the prosecutor's offices in

⁷² Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press; McAdams, A. James, ed. (1997) *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame: University of Notre Dame Press.

⁷³ Council of Europe (1996) *Measures to Dismantle the Heritage of Former Communist Totalitarian Systems* Resolution 1096. Parliamentary Assembly. Strasbourg, France: Council of Europe.

⁷⁴ Elster, Jon (2006) Retribution in Jon Elster, ed. *Retribution and Reparation in the Transition to Democracy*. New York: Cambridge University Press: 33-56.

⁷⁵ Mayer-Rieckh, Alexander and Pablo De Greiff, eds. (2007) *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council.

Bosnia and Herzegovina, this could support improved security, promote development, and foster an environment conducive to democracy .⁷⁶

Critical counterpoint arguments have suggested that personnel reforms might fail to support or even undermine democracy. If a new state pursued justice concerns over rule of law practices, or instituted highly politicized and unfair programs, or if specific individual rights, liberties and legal safeguards were suspended in the pursuit of justice against the previous regime, all of these things could undermine democratization efforts.⁷⁷ The instrumentalization of measures to disadvantage political competitors, as evidenced in the post-communist transitions in Romania and Hungary, is not conducive with democratization.⁷⁸ The use of personnel reforms to purge the administration of individuals with different religious, ideological, or political beliefs, as was the case with de-Ba'athification, would also be incompatible with democratization.⁷⁹

⁷⁶ Mayer-Rieckh, Alexander and Roger Duthie (2009) 'Enhancing Justice and Development Through Justice-Sensitive Security Sector Reform'. In Pablo de Greiff and Roger Duthie, eds. *Transitional Justice and Development: Making Connections*. New York: Social Science Research Council: 214-248; Mayer-Rieckh, Alexander (2007) Vetting to Prevent Future Abuses: Reforming the Police, Courts, and Prosecutor's Offices in Bosnia and Herzegovina. In Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council: 180-220.

⁷⁷ Minow, Martha (1998) *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press; Offe, Claus (1992) Coming to Terms with Past Injustices: An Introduction to Legal Strategies Available in Post-communist Societies. *Archives Européennes de Sociologie* 33 (1): 195-201.

⁷⁸ Kiss, Csilla (2006) 'The Misuses of Manipulation: The Failure of Transitional Justice in Post-Communist Hungary'. *Europe-Asia Studies* 58(6): 925-940; Stan, Lavinia (2012) *Transitional Justice in Post-Communist Romania: The Politics of Memory*. Cambridge: Cambridge University Press..

⁷⁹ David, Roman (2006) From Prague to Baghdad: Lustration systems and their political effects. *Government and Opposition* 41(3): 347-372

While there are competing arguments surrounding the democracy-promoting or undermining elements of personnel reform mechanisms like lustration, empirical studies have shown strong and consistent relationships between lustration and democratization in the post-communist states.⁸⁰ In the post-communist transitions, countries that implemented more compulsory and punitive/exclusive lustration measures had deeper levels of democratization compared to countries with more limited lustration measures or no lustration measures. In a word, more expansive and punitive/exclusive measures were associated with higher levels of democracy in the years after the transition. While there is always a possibility that poorly designed, or manipulated transitional justice could undermine transition goals, even limited and largely informal personnel reforms relying on public disclosures still appeared to enhance democratization.⁸¹ Delayed measures, informal measures, expansive measures, and limited measures were all associated with democratization, suggesting there might be robust reasons to believe that personnel reforms do support the process of democratization.

Conclusion

Neil Kritz captured the importance of vetting and lustration as transitional justice mechanisms when he remarked:

noncriminal sanctions, such as purges, lustration, and public access to security

⁸⁰ Letki, Natalia (2002) 'Lustration and Democratisation in East-Central Europe'. *Europe-Asia Studies* 54 (4): 529-552; Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries*. Oxford: Oxford University Press..

⁸¹ Horne, Cynthia M. (2014) 'Lustration, Transitional Justice, and Social Trust In Post-Communist Countries: Repairing or Wrestling The Ties That Bind?' *Europe-Asia Studies* 66(2): 225-54.

files, are a critical piece of transitional justice programs and have been featured in one combination or another, in almost every transitional justice case, yet they continue to get short shrift in the research literature... They are more important for the democratic reform element and arguably for the peacebuilding element. Research must evaluate how effective these efforts have been.⁸²

This quote captures a number of important points about personnel reforms. First, they are widely used and can be used in a variety of post-conflict and post-authoritarian settings. Second, they can be used in conjunction with other forms of transitional justice, showing the flexibility of this type of measure to meet unique country reform needs. Third, they are linked to positive outcomes, such as democratization, peacebuilding, and trust building. Fourth, despite how often they are used, we are still working to discern the conditions under which different types of personnel reforms meet desired transition needs. This suggests a continued need for more systematic conceptualization and measurement of different varieties of vetting and lustration in order to better understand their strengths and weaknesses as methods of personnel reform.

Our own research has shown that exclusive, more extensive and compulsory lustration systems appeared to have greater effects on political trust-building and democratization than more limited programs. However, even reconciliatory and informal lustration programs were positively associated with governance and trust building goals, in

⁸² Kritz, Neil (2009) Policy Implications of Empirical Research on Transitional Justice, in Hugo Van der Merwe, Victoria Baxter, and Audrey Chapman, eds. *Assessing the Impact of Transitional Justice*. Washington, D.C.: U.S. Institute of Peace: 13-21, 19-20.

comparison to countries that rejected lustration. Our typologies found that the type of lustration program mattered, calling attention to our need to better understand how the structure, scope and implementation of personnel reforms affect transition goals.

References:

- Binningsbø, Helga M., Cianne Loyle, Jon Elster and Scott Gates (2012) Armed Conflict and Post-Conflict Justice, 1946-2006: A Dataset. *Journal of Peace Research* 49(5):731-740.
- Choi, Susanne Y.P., and Roman David (2012) Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland, *American Journal of Sociology* 117(4): 1172–1201.
- Council of Europe (1996) *Measures to Dismantle the Heritage of Former Communist Totalitarian Systems*. Resolution 1096. Parliamentary Assembly. Strasbourg, France: Council of Europe.
- David, Roman (2003) Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001). *Law and Social Inquiry* 28(2): 387-439.
- David, Roman (2004) Transitional injustice? Criteria for conformity of lustration to the right to political expression. *Europe-Asia Studies* 56(6): 789-812.
- David, Roman (2006) From Prague to Baghdad: Lustration systems and their political effects. *Government and Opposition* 41(3): 347-372.
- David, Roman (2006b) In Exchange for Truth: The Polish Lustration and the South African Amnesty Process. *Politikon* 32, no. 1, 81-99.
- David, Roman (2011) *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press.
- David, Roman (2017) Ukrainian Lustration and Democracy Capable of Defending Itself.

- In Cynthia M. Horne and Lavinia Stan, eds., *Transitional Justice in the Former Soviet Union*. Cambridge: Cambridge University Press.
- Duthie Roger (2007) Introduction, in Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council, 16-39.
- Elster, Jon (2004) *Closing the Books. Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.
- Elster, Jon (2006) Retribution in Jon Elster, ed. *Retribution and Reparation in the Transition to Democracy*. New York: Cambridge University Press: 33-56.
- European Court of Human Rights (2006) *Case of Ždanoka v. Latvia*, Judgment 58278/00. ECtHR. 16 March 2006. Strasbourg: Council of Europe.
- Fithen, Caspar (2009) *The Legacy of Four Vetting Programs: An Empirical Review*. New York: International Center for Transitional Justice: February.
- Fletcher, Laurel E., Harvey M. Weinstein, and Jamie Rowen (2009) Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective. *Human Rights Quarterly* 31: 163-220.
- Gibson, James L. (2002) Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa. *American Journal of Political Science* 46(3): 540–56.
- Hayner, Priscilla. (2010). *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge Press
- Herz, John H. (1982) *From dictatorship to democracy: coping with the legacies of authoritarianism and totalitarianism*. Westport, Conn.: Greenwood Press.
- Horne, Cynthia M. (2009) International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context. *Law & Social Inquiry* 34(3):

713–44.

- Horne, Cynthia M. (2014) Lustration, Transitional Justice, and Social Trust In Post-Communist Countries: Repairing or Wrestling The Ties That Bind? *Europe-Asia Studies* 66(2): 225-54.
- Horne, Cynthia M. (2014b) The Impact of Lustration on Democratization in Post-Communist Countries. *International Journal of Transitional Justice* 8 (3): 496-521.
- Horne, Cynthia M. (2017) *Building Trust and Democracy: Transitional Justice in Post-Communist Countries*. Oxford: Oxford University Press.
- Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press.
- Huyse, Luc (1995) Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past. *Law and Social Inquiry* 20, 1 (Winter): 51-78.
- International Labour Organization (2004) CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Czech Republic (ratification: 1993) Published: 2004.
- Kiss, Csilla (2006) *The Misuses of Manipulation: The Failure of Transitional Justice in Post-Communist Hungary*. *Europe-Asia Studies* 58(6): 925-940.
- Kritz, Neil, ed. (1995) *Transitional Justice*. Volumes I, II, III. Washington, D.C.: United States Institute of Peace Studies.
- Kritz, Neil (2009) Policy Implications of Empirical Research on Transitional Justice, in Hugo Van der Merwe, Victoria Baxter, and Audrey Chapman, eds. *Assessing the Impact of Transitional Justice*: Washington, D.C.: U.S. Institute of Peace: 13-21.
- Loewenstein, Karl (1937a) Militant Democracy and Fundamental Rights I, *American Political Science Review*, 31(3): 417–432;

- Loewenstein, Karl (1937b) Militant Democracy and Fundamental Rights II, *American Political Science Review*, 31(4): 638–658.
- Letki, Natalia (2002) Lustration and Democratisation in East-Central Europe. *Europe-Asia Studies* 54 (4): 529-552.
- Łoś, Maria (1995) Lustration and Truth Claims: Unfinished Revolutions in Central Europe. *Law and Social Inquiry* 20 (1): 117-161.
- Łoś, Maria and Andrzej Zybertowicz (2001) *Privatizing the Police-State: The Case of Poland*. New York: Palgrave.
- Lynch, Moira (2013) Purges, in Lavinia Stan and Nadya Nedelsky, eds. *Encyclopedia of Transitional Justice*. Cambridge: Cambridge University Press: 61-64
- Markovits, Inga (2001) Selective Memory: How the Law Affects What We Remember and Forget about the Past: The Case of East Germany. *Law & Society Review* 35(3): 513-563.
- Mayer-Rieckh, Alexander and Pablo De Greiff, eds. (2007) *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council.
- Mayer-Rieckh, Alexander. (2007) Vetting to Prevent Future Abuses: Reforming the Police, Courts, and Prosecutor's Offices in Bosnia and Herzegovina, in Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: ICTJ and Social Science Research Council: 180-220.
- Mayer-Rieckh, Alexander and Roger Duthie (2009) Enhancing Justice and Development Through Justice-Sensitive Security Sector Reform, in Pablo de Greiff and Roger Duthie, eds. *Transitional Justice and Development: Making Connections*. New York: Social Science Research Council: 214-248.

- McAdams, A. James, ed. (1997) *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame: University of Notre Dame Press.
- Michnik, Adam, and Václav Havel (1993) Justice or Revenge. *Journal of Democracy* 4 (1): 20-27.
- Minow, Martha (1998) *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press.
- Naidin v. Romania* (2014) European Court of Human Rights, Application no. 38162/07.
- Nedelsky, Nadya (2004) Divergent responses to a common past: Transitional justice in the Czech Republic and Slovakia. *Theory and Society* 33(1): 65–115.
- Offe, Claus (1992) Coming to Terms with Past Injustices: An Introduction to Legal Strategies Available in Post-communist Societies. *Archives Européennes de Sociologie* 33 (1): 195-201.
- Posner, Eric, and Adrian Vermeule (2004) Transitional Justice as Ordinary Justice. *Harvard Law Review* 117:761-825.
- Stan, Lavinia and Lucian Turcescu (2005) The Devil's Confessors: Priests, Communists, Spies, and Informers. *East European Politics and Societies* 19(4): 655-685
- Stan, Lavinia (2012) *Transitional Justice in Post-Communist Romania: The Politics of Memory*. Cambridge: Cambridge University Press.
- Stan, Lavinia, ed. (2009) *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*. New York: Routledge.
- Szczerbiak, Aleks (2002) Dealing with the communist past or politics of the present?: Lustration in post-communist Poland. *Europe-Asia Studies* 54 (4): 553-572.
- Szczerbiak, Aleks (2016) Deepening democratisation? Exploring the declared motives for 'late' lustration in Poland. *East European Politics & Societies* 32 (4): 426-445.
- Szczerbiak, Aleks (2018) *Politicising the Communist Past: The Politics of Truth Revelation*

in Post-Communist Poland. Routledge.

Teitel, Ruti G. (2000) *Transitional Justice*. Oxford: Oxford University Press.

United Nations (2006) *Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework*. Office of the UN High Commission on Human Rights, New York, United Nations HR/PUB/06/5.

United Nations Development Programme (2006) *Vetting Public Employees in Post-conflict settings: Operational Guidelines*. UNDP Bureau of Crisis Prevention and Recovery Justice and Security Sector Reform.

Welsh, Helga (1996). Dealing with the Communist Past: Central and Eastern European Experiences after 1990. *Europe-Asia Studies* 48 (3): 413-29.

Williams, Kieran, Brigid Fowler and Aleks Szczerbiak (2005) Explaining Lustration in Central Europe: A “Post-communist Politics” Approach. *Democratization* 12(1): 22-43.

Williams, Kieran, and Dennis Deletant (2001) *Security Intelligence Services in New Democracies: The Czech Republic, Slovakia and Romania*. New York: Palgrave.

Wilke, Christiane (2007) The Shield, the Sword, and the Party: Vetting the East German Public Sector, in Alexander Mayer-Rieckh and Pablo de Greiff, eds. *Justice as Prevention*. New York: ICTJ and Social Science Research Council: 348-400.