The Timing of Transitional Justice Measures

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Starting in 1989 with the fall of communism, countries in Central and Eastern Europe and the former Soviet Union began the process of transitional justice, with many continuing to engage in a variety of accountability mechanisms through the present. The direct and indirect effects of transitional justice on reform goals remain conditional and contended, reflecting both differences in the quality of reforms across countries and the causal ambiguity surrounding a process as complex as regime transformation.[1] As Lynch and Marchesi demonstrate in this volume, lustration demonstrates different effects when enacted separately or as part of multiple transitional justice measures, and lustration can have divergent effects on different transition goals, such as improving political rights but having limited impact on physical integrity rights. Nonetheless, there is evidence to suggest these measures have supported numerous post-communist transition goals, increasing trust in targeted public institutions at the national level, improving government effectiveness, supporting political rights and contributing to the process of democratization in many but not all cases.[2] While the effects of lustration and supporting measures on reform goals may remain active first order impact assessment questions, this article engages with a related but different, second order question. With 25 years of experience with

transitional justice in the post-communist region, does the timing of transitional justice affect

relative efficacy? When is it too late to start transitional justice measures?

There is a widespread assumption that measures should be enacted as soon after a

transition as possible for maximal benefit, and that if enacted too late could even be harmful. [3]

The counterpoint to this assumption is a belief that there is no automatic expiration date on

reforms and that delayed transitional justice is better than none at all.[4] This chapter explores the

two sides of the debate, asking: Is there a time after which transitional justice is no longer

constructive? Is there evidence that late programs undermine reform goals? Using a cross-

national comparison of lustration programs, file access policies, and public disclosures in ten

post-communist countries, this chapter provides a retrospective on *if* and *how* the timing of these

transitional justice reforms affected trust in government and democratization.

In particular, this chapter looks at variation both within and across countries over a 12-15

year time period, tracing whether timing has independent causal impact on two reform goals

across the region. Timing might matter, but not very much in the larger reform picture. Using

quantitative methods, we can estimate both how much timing matters, if at all, and model the

relationship between timing and reform efficacy. The large-N research design (a large number of

cases) and the time series nature of the analysis allow us to examine cross-national changes over

time, thereby giving us traction on some causal relationships that would not be possible with

small-N studies (a small number of cases) or with quantitative studies that looked at a single year

or moment in time.

To preview the findings, first this chapter demonstrates that timing does affect final levels

of trust in government and democracy, but the size of the overall effect is small. In the case of

democracy it explains only 3 percent of the variation in level of democracy, although trust in

government is more sensitive to timing with earlier reforms having a 5-9 percent trust premium on later reforms. Moreover, the magnitude of effect of measures enacted early in the transition was similar to measures enacted 15-16 years into the transition. This demonstrates the limited impact of the timing of reforms on overall efficacy. In other words, although timing matters, it is not the only or necessarily the most important determinant of democracy or trust; the quality of implementation most certainly counts for more than timing. Lynch and Marchesi reach similar conclusions in this volume, highlighting the importance of the quality and extensiveness of reforms for beneficial outcomes.

That said, timing does have an independent impact on outcomes. This chapter then models the timing of reforms across the region and demonstrates that delayed lustration measures were the most efficacious, with a decade or so after the transition being the peak moment for passing reforms. This is contrary to popular assumptions that delayed transitional justice measures are less efficacious or even harmful. There is evidence of declining efficacy several decades after the transition; starting reforms more than twenty years after the regime change could be counterproductive to certain reform goals. In sum, timing matters very little to the overall success of transitional justice reforms. These findings significantly elongate the window of opportunity for starting reforms, and qualify our understanding of the alleged drawbacks of *late reforms* in practice.

Early versus Late Reforms

Although a variety of transitional justice measures have been used across the post-communist region, this chapter focuses on the timing of lustration or employment vetting, file access, and public disclosure reforms.[5] They are the dominant regional transitional justice

choices and are often grouped together in reform packages. Lustration is broadly defined as a process that authorizes legally constrained government actions against individuals who were complicit with the previous communist regime, defined in terms of secret police affiliation, secret police collaboration, active abetting of the communist regime, and/or possible Communist Party affiliations.[6] The consequences for this involvement encompass a range of government actions, including: disqualifying those individuals from public and semi-public positions of trust, publically disclosing information about those individuals, and outright employment bans. Some of the social and political reasons given to enact lustration include the pursuit of justice, forced bureaucratic cleansing and personnel changes, the securitization of the state, anti-corruption efforts, trust building, and democracy promotion.[7]

Lustration involves a mixture of backward and forward looking justice mechanisms, both redressing wrongs in the past and building an effective state and society for the future.[8] Because of the backward looking elements, policymakers and academics have assumed that reforms should be enacted as quickly after the regime change as possible to prevent a state from becoming mired in the past. There are several justifications for the early or not at all approach to lustration and public disclosures. First, lustration measures are framed as reform mechanisms possible, necessary, and maybe only beneficial during periods of *extraordinary politics* at the start of the transition.[9] Lustration entails legal compromises, in particular the prioritization of justice concerns over strict rule of law adherence.[10] These compromises are potentially appropriate for a short period early in the transition. Once that early extraordinary transitional environment has passed, the appropriateness and utility of lustration becomes questionable.

Second, policymakers argue that if lustration comes too late it is no longer a practical means of removing communist collaborators from positions of power, as there is a natural

changing of the old guard of public office holders with time.[11] Third, in some countries lustration

laws were caught in cycles of political manipulation, with political parties wielding the laws

against rivals in order to improve their political standing.[12] There is fear that the danger of overt

politicization of the laws increases as the time period from the transition stretches out.[13] In sum,

there is a hypothesized inverse relationship between timing and efficacy, with early reforms

assumed to be both the most efficacious and the most legally appropriate. As time from the

transition increases, not only are reforms considered less legitimate but they could also

undermine the goals of the transition.

This conceptualization of lustration as a policy for use early in the transition is evident in

the short expiration dates included in the first laws. For example, the Czech law was originally

designed to last for five years.[14] Similarly, the Hungarian lustration law was designed to expire

after six years, and Latvia's Election Law was designed to expire after ten years.[15] Temporal

constraints were also placed on the time period for which employment penalties would be in

place. For example, Lithuania's law included employment bans for five years, and Albania's

Verification Law barred individuals from serving in certain public positions for seven years.[16] In

Poland, individuals who lied about their past during the lustration process were banned from

positions for ten years.[17] In essence, the design of the laws focused on early lustration, implicitly

suggesting that late reforms were either not necessary or not productive.

National and international legal authorities were more explicit in their arguments about

the benefits of early reforms only. The European Court of Human Rights (ECHR) ruled that

while lustration laws were acceptable rule of law compromises during periods of extraordinary

politics early in the transition period, they lost their appropriateness, legality, and utility over

time.[18] Rule of law derogations should be the exception, rather than the rule, and must be phased

out when the transition was over.[19] Similarly, the Polish Constitutional Tribunal addressed the temporal limitations of lustration by arguing that "lustration measures should cease to take effect as soon as the system of a democratic state has been consolidated."[20]

At the same time, the focus on timing could minimize the cognitive and organizational importance of exposing collaborators and removing them from political life.[21] This perspective contends that the quality of reforms matters more than the speed of the measures. In particular, the presence of collaborators in positions of public trust demoralizes citizens and erodes the legitimacy of the new state. The low bureaucratic turnover and high penetration of former collaborators in positions of authority across many post-communist countries elevate the issue of timing politically, socially and economically.[22] From this perspective, timing is less important than correcting the problems of the past that haunt the present and the future.

There is regional evidence to support this perspective, with many post-communist countries changing their views on the initial temporal limitations on lustration measures. The Czech Republic's original five year expiration date was extended for an additional five years, and then indefinitely in 2000.[23] Hungary's lustration law was extended in 2000 for an additional four years, and file access in Hungary has remained active and even expanded in recent years.[24] Poland, Bulgaria and Romania all reengaged actively with public disclosures late in the transition, with Poland and Bulgaria expanding the number of individuals subjected to employment vetting.[25] In this volume, Aleks Szczerbiak explores in detail the dynamics of late lustration programs. Despite the initial assumption that lustration and public disclosures should be enacted immediately after the regime change and only until democracy is established, countries continue to find utility in new and renewed policies. The next section turns to the issue

of how to empirically and conceptually examine the conditions under which the timing of reforms affects efficacy.

Conceptualizing Temporal Dimensions

I examine ten post-communist countries that passed lustration, file access, and/or public disclosure policies: Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovakia. The majority of these countries started to engage with transitional justice issues soon after the collapse of the communist regime and continued those policies over a period of two decades or more. The dominant approach can be most generally classified as protracted transitional justice, with noticeable variation in the start of reforms and the actual implementation of reforms.

To test the impact of timing, I use two different measures. First, timing can be most simplistically measured as a function of the years that pass between the collapse of the communist regime and the time when lustration policies are passed. For this measure the focus is on the start of reforms, understood as the moment when the first law is passed. Measuring timing as a function of the passage of the first major lustration or public disclosure policies takes into consideration the fact that lustration is a catalyst for both symbolic and institutional changes, even if there are problems or delays with later implementation.

For this measure, timing is recorded as the difference between the year of the first lustration policy and the earliest possible start of a lustration program, meaning the year of regime change.[26] Exact dates are presented in Table 1. Since lustration measures are assumed to have continued impact on the state and society even when they technically expire, once lustration is enacted it remains coded as "active" for the duration of the time period considered. The

literature suggests a linear relationship between timing and efficacy, with efficacy declining over time. This assumption can be tested by including a variable for the timing of lustration and a variable for timing squared, in order to test for the possible presence of a non-linear relationship between timing and efficacy. This variable is measured in years and will be called *timing* and *timing squared* in the quantitative analyses (see Appendix 1 for data details).

Insert Table 1 around here

The date of the passage of laws does not always capture the period over which reforms were primarily implemented. Elster presents a simple categorization along three temporal dimensions capturing more broadly the concept of the timing of reforms. He suggests that: *immediate transitional justice* takes place right after the start of the transition and lasts for five years; *protracted transitional justice* starts immediately and then lasts until the issues are resolved; and *postponed transitional justice* takes place ten or more years after the start of the transition.[27] Using this loose conceptual periodization of reforms, I developed a second timing variable to capture the regional waves of reforms. The lustration waves variable represents the period in which the bulk of a country's reform efforts took place, including lustration policies, file access measures, and public disclosures. While it is difficult to determine the exact moment of reform implementation in each country, there is a distinctive clustering effect observed in the implementation of measures. This resulted in overlapping but clearly discernible periods: First Wave (1989-1996), Second Wave (1997-2005), and Third Wave (2006-2014). Table 2 summarizes this variable called *lustration waves***,** showing the ordinal categorizing of the three main time periods for reform.

Insert Table 2 around here

This variable focuses less on the exact year of the passage of the lustration laws, and more on when the main discourse on transitional justice was translated into concrete policy actions. For example, Bulgaria's first Law on Banking was passed in 1992, but not really implemented, with actual public disclosures gearing up in the third wave period. Hungary passed its first lustration laws in 1994, but only engaged in a committed lustration and reform processes during the second wave period. Table 2 illustrates that all countries in the region have protracted reforms, spanning the past 25 years, with some overlap across the temporal categories. Poland continues to engage in lustration efforts, as does Bulgaria and Romania. However, the main periods of reform passage and implementation in each country are relatively concentrated and suggest discernible, if not discrete, regional waves of reforms.

In sum, both timing variables complement each other. One focuses on the moment the laws are passed, and the other focuses on the primary implementation period. Together and separately they serve as our primary independent variables, in order to assess *if* and *how* the timing of reforms affects efficacy. In other words, neither addresses the *quality* of reforms directly—both are timing variables. Other papers in this volume focus on implementation, therefore the findings here complement and qualify what we know about the conditions under which reforms are beneficial in a given country case.

Testing the Impact of Timing

Dependent variables

There are a variety of transition goals that lustration measures allegedly support, including building trust, promoting democracy, enhancing civil society, reducing corruption, and supporting good governance. There is evidence that lustration does promote some but not all of

9

these goals.[28] If we believe the preliminary evidence that lustration supports *trust in government* and *democratization*, we can ask the second order question: To what extent is the efficacy of lustration, both to improve trust in government and support democratization, conditional on timing? If this preliminary assumption is not true, then we will see no relationship between the timing of reforms and outcomes in this study.

Trust in national government is a multi-variable composite, capturing a holistic assessment by citizens of the credibility, fairness, transparency, compliance, and effectiveness of the government. It spans both different agencies and various social, political and economic issue areas. [29] Lustration is often framed as a way of increasing trust in government, both directly through changing perceptions of trust in public institutions and indirectly through demonstrations of the transparency and legitimacy of government. There is evidence to support the claims that lustration improves trust in targeted public institutions and by extension trust in government as well.[30] Using Eurobarometer public opinion surveys on trust in national government, it is possible to test if the timing of lustration affects citizen perceptions of trust in national government (see Appendix 1).

Democratization is an important transition goal for post-communist states. The use of lustration measures is framed as a means of protecting and supporting democracy. Using Freedom House's Nations in Transit measure of democracy, we can test for a relationship between the timing of reforms and democratization. This measure provides substantial nuance in evaluating changes in democratization both within and between countries in the same region. Again, if there is no relationship between lustration and democracy, we will see no effects from timing on outcomes in this study.

Social, Economic and Political Controls

This study considers several control variables: economic growth, levels of inequality, perceptions of corruption, levels of democracy, and the strength of the political opposition. The data sources and transformations are described in Appendix 1. There is significant variation across these political, economic and social variables within our country sample, as well as variation in country groupings and historical and current political alliances as well.

First, economic growth or decline could affect citizen perceptions of any of these dependent variables, particularly in the post-communist environment in which economic stability is often conflated with democracy and trust. Second, in terms of material conditions, inequality could negatively impact citizen perceptions of trust in government or the quality of democracy, especially given the noted increases in regional inequality since the fall of communism.[31] Third, corruption could undermine perceptions of democracy or trust in government, minimizing any possible benefits from transitional justice measures. Fourth, while democracy is a key dependent variable in this analysis, levels of democracy could systematically affect citizens' perceptions of trust in government. Since democracy could be so important an explanatory variable as to obviate any impact lustration has on reform goals, it is important to consider its independent effects in the trust analysis.

Fifth, one of the principal concerns of late transitional justice is the susceptibility of the measures to manipulation. The logic of the political manipulation hypothesis is that as the political landscape takes shape after the transition from communism to democracy, political parties will actively use lustration against potential rivals. If political opposition is low, there is little need for the messy politics of lustration. If political opposition is high, lustration could be employed as a tool for political advantage. Because of the real concern that late lustration

11

policies will be instrumentally manipulated for narrow party politics reasons, it is especially important to consider this variable in our temporal analysis.

To test for the effects of the timing of reforms on transition goals, the next sections analyze the two dependent variables separately. First, I examine the extent to which *trust in government* is sensitive to the timing of reforms using the two independent variables for timing discussed above. Second, I examine how the timing of reforms affects *democratization*. I expect the findings with respect to this big picture goal of democratic consolidation to differ from the narrower trust goal both because of the complexity of democratization and the multiplicity of economic, social and political factors that affect the process.

The regression analyses employed are cross-national time series models, in which the country experiences are treated individually (within country variation) and collectively (between country variation). This allows us to estimate how timing affects outcomes in each country and across the sample over time. In this way, we are able to see if there is independent causal weight attributed to the timing of reforms, and then we can estimate how strong the effect of timing is on overall reform efficacy. If lustration reforms do not support trust in government and democracy, we will see no relationship between the timing of reforms and outcomes. In this way a quantitative approach to timing sheds light on causal relationships that would be harder to isolate in a single or paired country study or a study that did not investigate changes over time.

Trust in Government

With respect to trust in government, are lustration's trust building effects conditional on the timing of reforms? This section examines the dependent variable trust in government, over the time period 2001-2012. Table 3 presents the results of a series of regression analyses across

nine of the ten countries in our sample with trust in government as the dependent variable: Albania is not included due to lack of data.[32] The table shows that the lustration waves variable is significant in both Models 1 and 2. This means that the timing of reforms affected the level of trust in government. The coefficient is negatively signed, demonstrating that earlier programs are associated with more trust in national government than later programs. This means that timing does affect overall trust in government in the hypothesized manner—early reforms are associated with more trust in government.

Insert Table 3 around here

We know timing matters, but how much? I calculate the magnitude of the effect of the timing of reforms on trust in government using predicted value calculations. Because Model 1 is the simplest presentation of variables with the largest sample size covering the longest time period, I use this model specification to calculate the magnitude of the effect. First wave reform programs produce 4.5 percent more trust in government than second wave lustration programs, and the same is true for second wave programs compared to third wave programs. In total there is a 9 percent trust in government dividend that first wave programs get in comparison to third wave programs. These trust numbers suggest that as more time passes after the regime transition, the magnitude of the effect of reform programs on building trust in government goes down. Each wave of delayed reform forgoes trust in government by approximately 5 percent. While this is statistically significant it is a relatively moderate effect.

We can qualify these findings about lustration waves using the actual timing in years variables. With respect to the timing of lustration variable, both timing and timing squared are robust. Timing is positively signed and robust, and timing squared is negatively signed and robust. This suggests a non-linear relationship between the timing of lustration and trust

building. Put more simply, timing can be represented as an inverted parabola, or a modified inverted U shape. The efficacy of lustration rises over time, reaches a critical tipping point, and then declines with time. Timing matters but not in the hypothesized inverse relationship assumed in the literature. In fact, timing and efficacy show a more complex non-linear relationship with later lustration yielding the biggest trust gains.

This relationship can be graphed using the quadratic functional form for a parabola[33]:

$y=ax^2$ + bx + c, where a and b represent two of the slope coefficients of the quadratic equation, x is timing and x^2 is timing squared, and c is the constant term.

The coefficients for timing, timing squared, and the constant term are shown in Table 3 (Model 1), and can be plugged into the quadratic equation in order to derive the following equation:

Trust in Government: *$y= -0.13x^2 + 2.33x + 78.94$*

Figure 1 models this relationship, with the inverted parabola representing the relationship between timing of lustration and trust in government. The vertex of the parabola is at point (9, 89.3), representing the apex of trust building in terms of timing. This means that delaying lustration for approximately a decade after the regime change has the biggest impact on trust building. Reforms enacted at the start of the transition are less efficacious than moderately delayed reforms. It is only after a decade that the expected negatively sloped line emerges, showing a decrease in the utility of measures over time. To be clear, the vertex point is just an estimate of optimal timing, as that point would vary according to country and circumstances. However, it shows that delaying reforms is most effective.

<div align="center">Insert Figure 1 around here</div>

There are several observations to make from this figure. First, the overall magnitude of effect of timing on outcomes is moderate to weak. Timing matters but even late reforms only

impact trust in government by less than 10 percent. Second, the optimal time to start lustration is nine to ten years after the regime change.[34] Third, the effects from lustration measures on trust in government are similar over a period of six-twelve years after the regime change. Therefore, there is a window of opportunity for the passage of optimal lustration measures over which levels of trust differ by less than 1 percent. A much wider window for *optimal* reforms exists than hypothesized. Fourth, the benefits from policies continue even after that *optimal* window of opportunity, with the trust gains from reforms seventeen years after the transition looking very similar to reforms enacted two years after the transition.

In terms of the control variables, we see that as corruption goes down, trust in national government goes up, as per our expectations. Material conditions like economic growth and inequality do not affect the robustness of the timing of lustration and are not significant in their own right. We would also expect government polarization or a strong political opposition to affect perceptions of the trustworthiness of the national government. However, the strength of the political opposition does not undermine the robustness of lustration waves and is not a significant predictor of trust in national government. In general, the controls do not obviate the importance of timing on trust in national government, and are not important explanatory variables in their own right.

In sum, our two timing variables demonstrate that, contrary to the assumption that only early lustration is positive, reforms do not have to take place immediately to be beneficial. While we see a trust boost from the first wave countries, the magnitude of the effect is small to moderate. This means timing is not an overwhelmingly important factor in determining trust in government. The timing of lustration variables measured in years (timing and timing squared) demonstrates that the efficacy of reform rises after the regime change for almost a decade.

Delayed lustration is best, but early reforms and later reforms continue to be effective in improving trust in national government. However, the model presents cautionary evidence that 18-20 years after the regime change the start of lustration could negatively impact trust in government. There is a moment that is too late for the start of lustration reforms. The findings from the reform waves variable and the timing variables complement each other, introducing nuance in our understanding of the conditions under which timing affects reform efficacy. The next section turns to the effects of the timing of reforms on democratization.

Levels of Democracy

Are the effects of lustration on democracy also conditional on the timing of reforms? To what extent does democracy evidence patterns similar to trust in government? Table 4 presents the results of a set of cross-national analyses of the impact of the timing of lustration measures on democracy across all countries in our sample over the period 1997-2012.

Insert Table 4 around here

Models 1 and 2 demonstrate that lustration waves are significant predictors of democracy. The negative sign indicates that earlier programs are more efficacious than later programs in supporting democracy. Timing does matter, but how much? Using predicted value estimations, I calculate the magnitude of the effect of timing on democratization. For each successive reform wave there is a 1-2 percent change in democracy. Early lustration programs (the first wave) have a greater impact than later lustration programs (wave 2), but only by 1 percent. The difference in trust building between wave one and wave three lustration programs is only 3 percent. This suggests that while timing matters, it only weakly affects the efficacy of

lustration programs on democratization. In other words, the timing of reforms has very little impact on overall levels of democracy in the region.

We see this confirmed with the timing of reforms and timing squared variables measured in years. Unlike the previous analysis of trust in government, the timing and timing squared variables are not even consistently significant. In Model 1, there is no statistically significant relationship between timing and democracy. In Model 2, with the truncated time period, there is the familiar inverted parabolic (inverted U shaped) relationship between timing and the efficacy of reforms. Earlier reforms are not the best. Efficacy rises for a period after the regime change, before reaching a vertex moment after which there is relatively declining efficacy. Using Model 2 in Table 4, the equation for this relationship can be algebraically represented by using the quadratic functional form for a parabola, and plugging in the x^2, x and constant term coefficients:

Democratization: $y = -0.03x^2 + 0.79x + 33.76$

Figure 2 graphs the parabolic relationship between democratization and the timing of reforms. There are two observations that can be drawn from these models. First, the timing for optimal policy measures is also delayed from the start of the transition. The vertex position is thirteen years after the start of the transition. This presents us with at least a decade or more of time after the regime change in which to pass lustration laws that could support democratization. Second, the widow of opportunity for policy measures is much wider than previously assumed. The slope of the parabola near the vertex, either plus or minus, is not steep (m = -0.03). There are actually large windows of time for hitting an 'optimal' vertex point or a 'peak policy moment.' For example, even twenty years after the start of the transition, there is only a 3 percent change in the effect on democracy.[35]

Insert Figure 2 around here

In terms of our controls, corruption continues to be an important predictor of democracy, with higher levels of corruption undermining democratization. However, the additional controls fail to account for shifts in levels of democracy over time in the region. We see that democracy is affected by lustration because the lustration waves variable is significant. This means lustration does support democratization, however the effects are not sensitive to the timing of reforms.

In sum, the timing of reforms has a very small effect on their overall efficacy to support democracy. While early reform waves do show more gains in democracy over time, the utility gained from late lustration can be similar to early lustration programs—with marginal changes of 1-2 percent. The timing variables illustrate that the window of opportunity for enacting—not implementing fully but simply passing lustration measures—is much wider than the accepted folk wisdom about the need for early reforms or none at all. Passing lustration anywhere from 10-15 years or later after the start of the transition yields similarly optimal returns in terms of democracy levels.[36] Moreover, compared to the analyses of trust in national government, democracy can still be supported with reforms starting twenty or more years after the regime change.

Lessons from the Post-Communist Experience

This chapter explored how the timing of transitional justice policies in the post-communist space affected efficacy with respect to two transition goals—trust in government and democratization. The chapter demonstrated that timing does matter but not very much and not in the way assumed in the transitional justice literature. First, while we do see greater efficacy in first wave reform countries, the boost in trust building or democracy promotion was moderate to weak. In other words, early reformers did not have an overwhelming advantage. In the case of

democracy the boost for the earliest reforms compared to the latest reforms was approximately 3 percent. Overall, timing is less important than the quality of reforms. While there is much debate about the importance of timing on reform efficacy, the models do not support that assumption. Second, our timing variables illustrated that delayed transitional justice measures were the most efficacious, with a decade or so after the start of the transition being the peak moment for passing lustration measures. While there is evidence that significantly delaying the passage of measures could undermine reforms, in practice this means more than twenty years after the regime change. This is much longer than the assumed five to ten year post-transition window hypothesized in the literature.

There are several important messages to draw from this comparison of the impact of the timing of reforms on transition goals. First, although the peak moment to start reforms differed between the goals, in both cases delaying the passage of lustration measures was better than immediate reforms and in both cases reforms were associated with more trust and more democracy. Future research could examine whether other types of transitional justice in other regions evidence similar delayed reform tendencies. Additionally, neither timing variable captured the quality of implementation of measures. Further research is needed to explore how variation in the scope and implementation of reforms combined with timing considerations affect overall transition goals. Lynch and Marchesi's chapter incorporates a quality of lustration measure to assess how different types of programs affect outcomes. They find more extensive programs improve political rights significantly, although find little impact on democracy. Together this piece on the timing of lustration and Lynch and Marchesi's chapter on the impact of lustration complement each other and further our understanding of the conditions under which transitional justice supports regime goals.

Second, the magnitude of the effect of timing was small. Timing mattered, but not very much. While lustration affected both outcomes—trust and democracy—the timing of the reforms was less important than the reforms themselves. The magnitude of effect of timing on democratization was almost inconsequential, with each successive wave of reforms seeing a 1-2 percent change in effectiveness. In some cases earlier reforms have a bigger impact on reform goals, but the size of the dividend is neither uniform nor overwhelming. Post-transition states must make trade-offs and balance their many reform needs in the uncertain transition environment. Recognizing that the magnitude of foregone gains from delayed transitional justice measures could be relatively low is useful information for post-transition states juggling competing policy goals.

Third, the window of opportunity within which reform measures could be passed to positively contribute to transition goals was also much wider than originally believed. The window of opportunity for supporting trust in government with maximal efficacy was nine to twelve years after the regime change, while democratization was most efficaciously promoted in the ten-fifteen year time window. Although very delayed lustration measures could adversely impact transition goals, even fifteen years after the regime change a country still has optimal conditions to *initiate* measures. Of course initiating reforms and implementing them well are separate but related issues. However, the findings give us some temporal context as to what it means to be *too late* to start reforms.

In sum, there are potential policy lessons for other countries to be derived from the post-communist experience. If early reforms are not always better and late reforms not always bad, this opens up policy options for countries post-transition. Knowing that transitional justice measures could remain effective reform tools for a decade or more after the regime change helps

to reduce the burden of immediate reform placed on fledgling regimes. It also demonstrates that transitional justice measures might be most efficacious once institutions are in place to fairly and comprehensively implement reforms. While our findings come too late to benefit the post-communist countries studied here, the information remains important for more proximate and future cases of post-authoritarian transitions, such as those that swept the Middle East during the Arab Spring. It also resonates with the recent examples of late transitional justice measures in Cambodia, Spain, and Guatemala. For those countries the post-communist experiences could inform the structure and function of current and future vetting programs.[37]

Table 1: Timing of First Lustration Laws

Country (start of transition)	Year first law passed	First Lustration and/or Screening Policies Refers to the earliest effort to move forward with the process of lustration, which could be either citizen access to secret police files, employment vetting laws, and/or citizenship requirements.
Albania (1990)	1995	Law Nr. 8001 of September 22, 1995 on Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons (The Genocide Law) Law Nr. 8043 of November 30, 1995 on the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State (The Verification Law)
Bulgaria (1989)	1992	Law No. 25 of March 18, 1992 on Banks and Credit Activity Law of December 9, 1992 for Temporary Introduction of Some Additional Requirements for the Members of the Executive Bodies of Scientific Organizations and the Higher Certifying Commission (The Panev Law)
Czech Republic (1989)	1991	Czech and Slovak Federal Republic: Screening ("Lustration") Law, Act No. 451 of October 4, 1991 on Conditions for Holding Certain Positions in State Bodies and Organizations
Estonia (1991)	1992	Citizenship Law and Local Election Law of 1992, stipulating written oath of conscience (*süümevanne*) for civil service positions
Hungary (1989)	1994	Law No. 23 of March 8, 1994 on Background Checks to Be Conducted on Individuals Holding Certain Important Positions
Latvia (1991)	1994	Citizenship Law of 1994 Article 9 of the Election Law of January 25, 1994 on Cities and Town Councils, District and Pagasts Councils
Lithuania (1991)*	1991	Decree No. 418 of October 12, 1991 Banning KGB Employees and Informers from Government Positions Law No. I-2115 of December 17, 1991 on the Verification of Mandates of Those Deputies Accused of Consciously Collaborating with Special Services of Other States
Poland (1989)	1997	Law of April 11, 1997 on Disclosing Work for or Service in the State's Security Services or Collaboration with Them between 1944 and 1990 by Persons Exercising Public Functions (The Lustration Act)
Romania (1989)	1999	Law No. 187 of December 9, 1999 on Access to Personal Files and the Disclosure of the Securitate as a Political Police (The Ticu Law)
Slovakia (1989)	2002	Act No. 553/2002 of August 19, 2002 on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939-1989 and on Founding the Nation's Memory Institute and on Amending Certain Acts (The Nation's Memory Act)**

Author compiled. For transition dates see: J.F. Brown, *Surge to Freedom: The End of Communist Rule in Eastern Europe* (Duke University Press, 1991); and Jan Zielonka, *Democratic Consolidation in Eastern Europe* (Oxford University Press, 2001). For additional country details see Lavinia Stan, "Conclusion," in *Transitional Justice in Eastern Europe and the Former Soviet Union* (New York: Routledge 2009).
* Lithuania declared independence in March 1990, but was not recognized by the Soviet Union until September 1991.
** Slovakia renounced the Czechoslovak Lustration Law after independence. 2002 reflects its first efforts at lustration.

Table 2: The Timing of Reforms: Lustration Waves

First Wave 1989-1996 (1)	Albania	1991- Ruli Report-first trials of former regime on economic grounds 1993 - first lustration attempts, focus on lawyers 1995 - Genocide and Verification laws—limited implementation-expire 2001 ***Current--2008 renewed lustration declared unconstitutional—end process***
	Czech Republic	1991- Lustration Law passed; 1992 minor lustration law also passed 1995 - lustration extended, some file accessibility 1998 - more file declassification, and 2000 -lustration extended indefinitely 2007 - increase file transparency, and 2008 -National Memory Institute created ***Current--On-going file access, no significant lustration***
	Estonia	1992 - Citizenship and Local Elections Law 1995 - Citizenship Law requires public disclosures for all civil positions 1998 - Security Police Board releases names of those who gave false info ***Current—process not active***
	Latvia	1991 - citizenship and language laws exclude Russians from public positions 1994 - Citizenship Law and Election Law-employment bans for council positions 1995 - former collaborators banned from parliamentary positions 1999 - Police Act vets police 2000 - State Civil Service Act ***Current –President vetoes attempts to open files--ends process***
Second Wave 1997-2005 (2)	Hungary	1994 - Lustration Law passed but delayed implementation 1995-6 - parts of lustration unconstitutional and narrowed to top political positions 2000 - lustration extended for four years, screenings increase from 900 to 17,000 2002 - Mécs Commission investigates public officials 2003 - Historical Archives created—public file access ***Current—ongoing file access but lustration terminated***
	Poland	1997 - Lustration law passed 2000 - created Institute of National Remembrance to oversee file access 2001 - lustration implementation in earnest 2006 - expanded lustration program with creation of Vetting Office ***Current—active, on-going lustration process***
	Slovakia	1996 - Czechoslovak lustration law expires with no implementation 2002 - Memory Bill passed—ÚPN created 2004 - no official lustration but some public disclosures of collaboration 2007 - ÚPN increases file access and continues some limited public disclosures ***Current—weak public disclosure program, fading out***
Third Wave 2006- present/ on-going (3)	Bulgaria	1992 - Panev lustration law passed, only lustrated science and academics 2006 - Declassification of secret police archives 2006 - present -Dossier Commission starts massive file reviews of public and semi-public officials, covering more than 100,000 files 2012 - continued public outing of collaborators across positions ***Current—active, on-going public disclosure process***
	Lithuania	1991- Lustration law passed --but immediately halted so no implementation 1999 - New lustration law passed but immediately halted—no implementation 2005 - Lustration commission renews activities and reopens cases 2005-10 - renewed interest in lustration and expansion of voluntary lustration 2010 - lustration amended eliminating private sector positions ***Current—scheduled to terminate in 2012, but still actively debated in 2012***
	Romania	1999 - Ticu Law creates CNSAS and file oversight, but little implementation 2005 - 1 million files transferred to CNSAS, start more file access 2006 - renewed lustration and public disclosure program 2008-present - CNSAS makes public disclosures of public and semi-public positions across thousands of positions ***Current—active, on-going public disclosure process***

Table 3: Lustration and Transitional Justice Measures and Trust in Government

Trust in National Government (2001-2012, 9 countries)		
	Model 1 *Parabola model*	Model 2
Lustration Waves	-6.27** (2.07)	-8.10*** (2.42)
Timing Lustration	2.33* (1.08)	3.08** (1.21)
Timing Lustration squared	-.13** (.05)	-.16** (.06)
Corruption	-.53*** (.13)	-.72*** (.17)
Democracy	-1.33*** (.39)	-1.79*** (.44)
Economic growth	.23 (.21)	-.61 (.48)
Inequality	---	-.41 (12.63)
Strength of Pol Opposition	---	.001 (.002)
Constant	78.94***	98.90***
N	108	79
Wald χ^2	36.68***	35.83***
Cross sectional time series FGLS regression analyses, clustered by country. All models test for heteroskedasticity and multicollinearity—no problems with reported models. Unstandardized regression coefficients (b) reported, with standard errors in parentheses. 95% confidence interval, two tailed *p<.05, **p<.01, ***p<.001		

Table 4: Timing of Lustration and Democracy (1997-2012; 10 countries)

	Democracy	
	Model 1 1997-2012	Model 2 1997-2008 *Parabola model*
Lustration Waves	-1.23** (.47)	-2.37*** (.55)
Timing Lustration	.39 (.27)	.79** (.23)
Timing Lustration *Squared*	-.02 (.01)	-.03** (.009)
Corruption	-.38*** (.03)	-.33*** (.04)
Economic growth	-.01 (.07)	-.05 (.11)
Inequality	---	4.54 (4.06)
Strength of Political Opp	---	.0002 (.0005)
Constant	34.02***	33.76***
N	153	114
Wald χ^2	174.12***	136.68***
Cross sectional time series FGLS regression analyses, clustered by country. All models test for heteroskedasticity and multicollinearity—no problems with reported models. Unstandardized regression coefficients (b) reported, with standard errors in parentheses. 95% confidence interval, two tailed *p<.05, **p<.01, ***p<.001		

Figure 1: The Relationship between the Timing of Reforms and Trust in Government

Trust

(6, 88.24) (9, 89.3) (12, 88.18)

Trust in Govt
$y = -0.13x^2 + 2.33x + 78.94$

Timing-Years
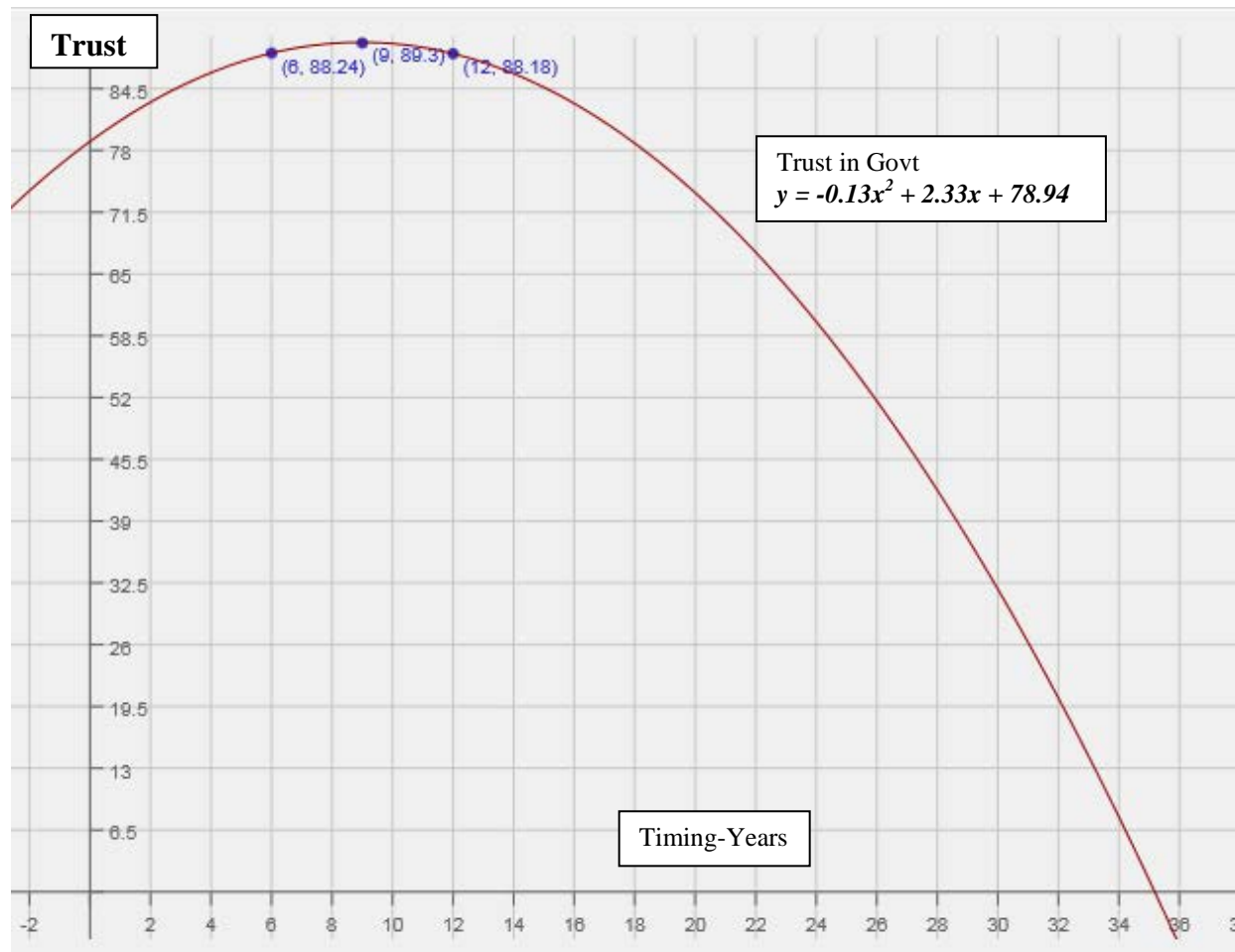
Figure 2: Democratization and the Timing of Reforms

Democracy Level

(13.25, 38.96)

(20, 37.53)

$y = -0.03x^2 + 0.79x + 33.76$
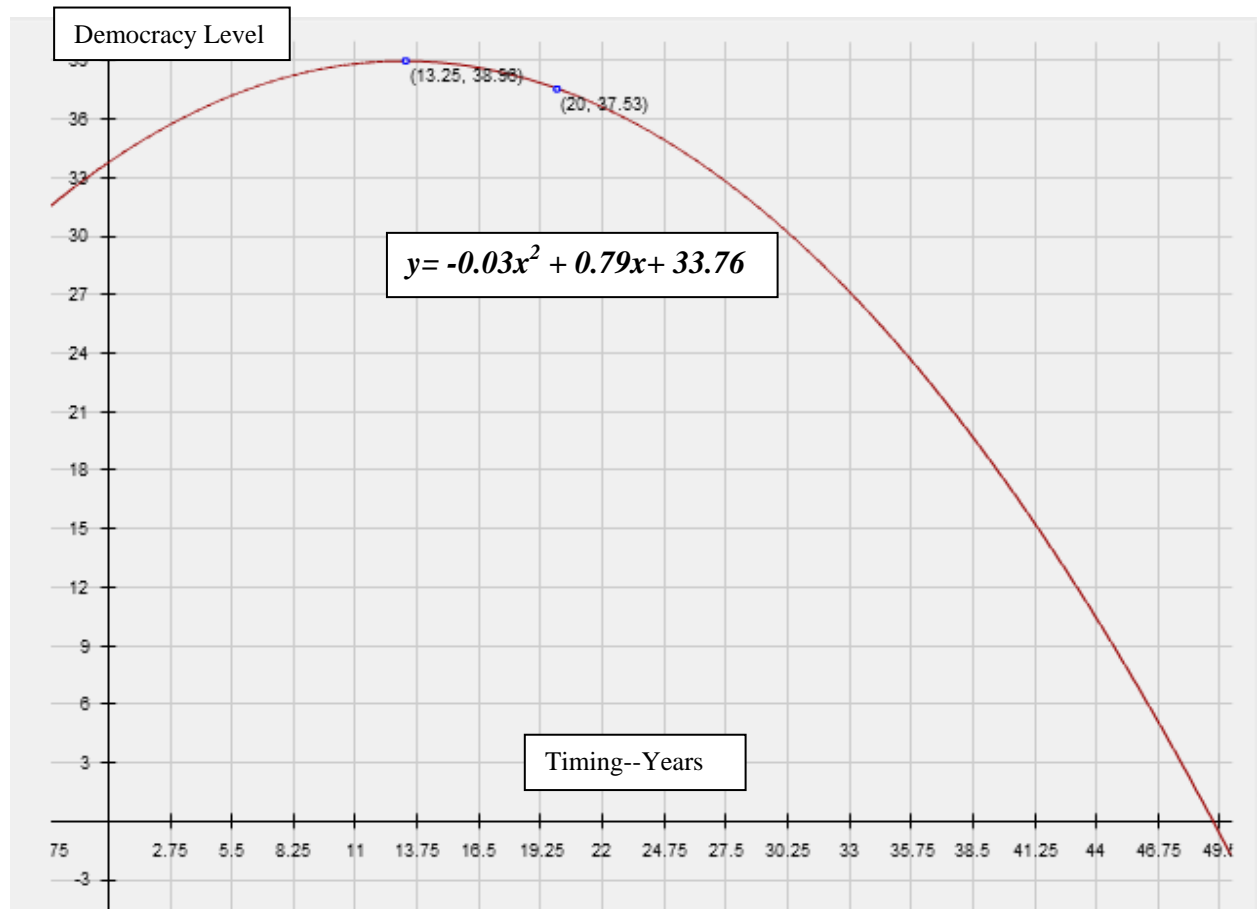
Timing--Years

Corruption—Corruption Perceptions Index (CPI), *Transparency International,* 1997-2012. http://www.transparency.org/cpi2012.
- *Transformations include using inverse of CPI scores (10 is transformed to mean more corruption on a scale of 1-10), and square of inverse measure.*

Democracy**--** *Freedom House, Nations in Transit*. 2012 updates. http://www.freedomhouse.org/report-types/nations-transit
- *Transformations include using inverse of democracy measure (7 is now more democracy on scale of 1-7), and square of inverse measure*

Economic Growth—GDP change. *International Monetary Fund, World Economic Outlook Database*, October 2012 updates. http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx
- *No transformations, two year lagged GDP change figures.*

Inequality –GINI coefficient. Branko Milanovic, *All the GINIS Dataset,* World Bank. Version summer 2012. (Measures between 0-1). Accessed 4 October 2013. http://siteresources.worldbank.org/INTRES/Resources/469232-1107449512766/all_ginis_Description_dataset.pdf
- *Lagged two year absolute numbers.*

Lustration Waves—Ordinal categories. Wave 1 countries coded 1; Wave 2 countries coded 2; Wave 3 countries coded 3. A negative regression coefficient means earlier lustration is more effective.

Strength of Political Opposition—share of opposition vote. Thorsten Beck, George Clarke, Alberto Groff, Philip Keefer, and Patrick Walsh, "New tools in comparative political economy: The Database of Political Institutions." 15:1, 165-176 (September), *World Bank Economic Review*. http://go.worldbank.org/2EAGGLRZ40. updated December 2010. (2001)
- *Transformed into square of share of vote.*

Timing of Lustration-- Timing is measured in years, as the difference between the year of the first lustration policy and the year of regime change. Before lustration is enacted, the absence of lustration is coded as the difference between 2012 and the year of regime change. After enactment, timing is coded as the difference between the year of the lustration policy and the year of regime change.

Timing of Lustration Squared—the timing variable is squared.

Trust in National Government—*Standard Eurobarometer Reports*, Public Opinion in the European Union, various reports covering period 2001-2012. Each trust measure is percentage of individuals polled who said they trusted the government. Last updated October 2012. http://ec.europa.eu/public_opinion/index_en.htm

Notes:

[1]Thoms, Ron and Paris's recent review of the state of the discipline concluded that given both the methodological problems with impact assessments and the contradictory findings thus far, we do not have sufficient knowledge to conclude definitely whether and under what conditions the impact of transitional justice is positive, negative or neutral. See Oskar Thoms, James Ron and Roland Paris. *The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners* (Ottawa: Centre for International Policy Studies, 2008).

[2] International institutions, such as the United Nations, the European Court of Human Rights and the Council of Europe, have supported a direct relationship between lustration and democracy promotion. See United Nations, *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 (2006); European Court of Human Rights, *Case of Ždanoka v. Latvia*, Judgment 58278/00, March 16, 2006 (Strasbourg: Council of Europe, 2006), 18§87; and Council of Europe, Measures to Dismantle the Heritage of Former Communist Totalitarian Systems. Resolution 1096 (1996), available at: http://assembly.coe.int/Documents/AdoptedText/ta96/ERES1096.HTM (accessed December 7, 2013). Academics have also demonstrated relationships between lustration, political trust, political rights, and governance. See Roman David, *Lustration and Transitional Justice* (Philadelphia: University of Pennsylvania Press, 2011); Cynthia M. Horne, "Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe," *Comparative Political Studies* 45, 4 (2012): 412-446; and Vladimíra Dvořáková and Anđelko Milardović, eds. *Lustration and Consolidation Of Democracy and Rule of Law in Central and Eastern Europe* (Zagreb: Political Science Research Centre Zagreb, 2007).

[3] László Sólyom, "The Role of Constitutional Courts in the Transition to Democracy: With Special Reference to Hungary," *International Sociology* 18, 1(2003): 141.

[4] Eric Posner and Adrian Vermeule, "Transitional Justice as Ordinary Justice," *Harvard Law Review* 117, 3(2004): 761-825.

[5] The *Encyclopedia of Transitional Justice* also reviews the use of trials, truth commissions, memorialization, reparations and rehabilitation of political prisoners as regional transitional justice measures. Lavinia Stan and Nadya Nedelsky, eds., *Encyclopedia of Transitional Justice* (New York: Cambridge University Press, 2013).

[6] Stan provides a broad definition to capture the umbrella of lustration like reforms. Lavinia Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the communist past* (New York: Routledge, 2009).

[7] Roman David, "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 (2003): 387-489; and 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, 2007).

[8] Claus Offe, *Varieties of Transition: The East European and East German Experience* (London: Cambridge University Press, 1996).

[9] This phrase is often attributed to Leszek Balcerowicz. Leszek Balcerowicz, *Socialism, Capitalism, Transformation* (Budapest: Central European University Press, 1995).

[10] Roman Boed, "An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice," *Columbia Journal of Transitional Law* 37, 2 (1999): 357-402.

[11] Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (New York: Cambridge University Press, 2013), 290.

[12] Csilla Kiss, "The Misuses of Manipulation: The Failure of Transitional Justice in Post-Communist Hungary," *Europe-Asia Studies* 58, 6 (2006): 925-940; Robert Austin and Jonathan Ellison, "Post-Communist Transitional Justice in Albania," *East European Politics and Societies* 22, 2 (2008): 373-401.

[13] This sentiment is widely held by scholars in Eastern Europe, and was often repeated in personal interviews with the author in Hungary, Bulgaria, Romania, and Poland during field research on the topic, 2012-2013. For example, interview with Dimitar Markov, Senior Analyst/Project Director Anti-corruption and Judicial Reform Unit, Center for the Study of Democracy, Sofia, Bulgaria, July 2, 2012; Interview with Dr. János Kornai, Professor Emeritus at the Corvinus University of Budapest, Budapest, Hungary, April 8, 2013; Interview with Dr. Gabriel Andreescu, Professor at Școala Națională de Studii Politice și Administrative, Bucharest, Romania, October 10, 2012.

[14] Act No. 451/1991 on Conditions for Holding Certain Positions in State Bodies and Organizations (October 4, 1991), the Screening ("Lustration") Law, translated in Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace Studies, 1995), 3: 312-321.

[15] Law on Background Checks to be Conducted on Individuals Holding Certain Important Positions, Law No. 23/1994 (March 9, 1994), translated in Kritz 1995, 3: 418-425; and Latvian Constitutional Court, Case No. 2004-13-0106, Judgment, 22 March 2005, available at: www.satv.tiesa.gov.lv/upload/2004-13-0106E.rtf (accessed December 21, 2013).

[16] Lithuania: Decree Banning KGB Employees and Informers from Government Positions. Decree No. 418 (October 12, 1991), translated in Kritz 1995, 3: 427; and Law Nr. 8001 of September 22, 1995, "On Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons" (the Genocide Law) and Law Nr. 8043 of November 30, 1995, "On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State" (The Verification Law), translated by Kathleen Imholz, available at: http://www.lustration.net/albania_documentation.pdf (accessed February 2, 2011).

[17] Mark Ellis, "Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc," *Law and Contemporary Problems* 59, 4(1997): 193.

[18] European Court of Human Rights, *Case of Ždanoka v. Latvia*, Judgment 58278/00, March 16, 2006 (Strasbourg: Council of Europe, 2006), 21§100.

[19] European Court of Human Rights, *Case of Sidabras and Dziautas v. Lithuania*, Final 55480/00 and 59330/00, July 27, 2004 (Strasbourg: Council of Europe, 2004). §115; European Court of Human Rights, Case of Matyvek v. Poland. 38184/03, April 24, 2007 (Strasbourg: Council of Europe, 2007) § 69.

[20] Polish Constitutional Tribunal; Judgment of 11th May 2007, file Ref. No. K 2/07 LUSTRATION (2007), available at: http://www.trybunal.gov.pl/eng/summaries/documents/K_2_07_GB.pdf (accessed December 23, 2013).

[21] Posner and Vermeule, "Transitional Justice," 808.

[22] Alexandru Grigorescu, "The Corruption Eruption in East-Central Europe: The Increased Salience of Corruption and the Role of Intergovernmental Organizations," *East European Politics and Societies* 20, 3(2006): 516-549; Marian Tupy, "The Rise of Populist Parties in Central Europe: Big Government, Corruption, and the Threat to Liberalism," *Development Policy Analysis,* No. 1 (Washington, D.C.: Cato Institute: Center for Global Liberty & Prosperity, 2006).

[23] See Act 254/1995 and Act No. 422/2000 and 424/2000.

[24] Act 93/2000, interview with Dr. Georgö Bendegúz Cseh, Deputy Head of Department, Historical Archives of Hungarian State Security, Budapest, Hungary, April 4, 2013.

[25] Cynthia M. Horne, "Late Lustration Programs in Romania and Poland: Supporting or Undermining Democratic Transitions?," *Democratization* 16, 2 (2009): 344-376.

[26] For similar coding in policy models, see Mark Donovan, Carolyn Tolbert, and Daniel Smith, "Political Engagement, Mobilization, and Direct Democracy," *Public Opinion Quarterly* 73, 1(2009): 98-118.

[27] Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 75-76.

[28] Horne and David both show trust in public institutions and trust in government benefits from lustration. Horne "Assessing the Impact," and David *Lustration and Transitional Justice.* Mayer-Rieckh and De Greiff focus on the relationship between lustration, justice, security, and state-building, see *Justice as Prevention*. For a discussion of the relationship between lustration, rule of law and democracy, see Dvořáková and Milardović *Lustration and Consolidation Of Democracy.*

[29] János Kornai and Susan Rose-Ackerman, eds., *Building a Trustworthy State in Post-Socialist Transition* (New York: Palgrave/Macmillan Press, 2004).

[30] Horne, "Assessing the Impact."

[31] Agnieszka Paczynska, "Inequality, Political Participation, and Democratic Deepening in Poland," *East European Politics and Societies* 19, 4(2005): 573-613; Bo Rothstein and Eric Uslaner, "All for All: Equality, Corruption, and Social Trust," *World Politics* 58, 1(2005): 41-72.

[32] Inequality data limits the time period to 2009 for Model 2.

[33] Standardized coefficients were derived using STATA 12, xtgls statistical techniques, clustered by country. Figures graphed using meta-calculator's graphing calculator functions, http://www.meta-calculator.com/online/.

[34] The coordinates for those dates and trust levels are (6.0, 88.24) and (12.0, 88.18). The x and y coordinates demonstrate a negligible trust effect over that time period. Author's calculations.

[35] Coordinates (20,37.56).

[36] Coordinates (10, 38.66) and (15, 38.86). This is marginally different from the vertex point (13, 38.96).

[37] See Mariano Castillo, "Guatemala confronts a dark chapter," *CNN*, April 11, 2013; and "Cambodia: Bringing the Khmers Rouges to justice," *The Economist,* October 7, 2004. Both Libya and Tunisia advanced plans for vetting

public offices. See "The Arab Uprisings: Democracy's Hard Spring," *The Economist,* March 10, 2011; "Libya's

Government and the militias: Is the Tide Turning?" *The Economist,* June 15, 2013.